

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 8

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the)	NOTICE OF
repeal of ARM 4.10.1808)	PROPOSED REPEAL
relating to the termination)	
of the pesticide disposal)	NO PUBLIC HEARING
program)	CONTEMPLATED

TO: All Concerned Persons

1. On May 28, 2000, the Department of Agriculture proposes to repeal ARM 4.10.1808 relating to the termination of the pesticide disposal program.

2. The Department of Agriculture 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 Agriculture no later than 5:00 p.m. on May 11, 2000, to advise us of the nature of the accommodation that you need. Please contact Gary Gingery, Administrator, Agricultural Sciences Division, Department of Agriculture at P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2944; TDD Phone: (406) 444-4687; FAX: (406) 444-7336 or E-mail: agr@state.mt.us.

3. ARM 4.10.1808, the rule proposed to be repealed, is on page 4-305.6 of the Administrative Rules of Montana.

AUTH: 80-8-105, MCA
IMP: 80-8-111, MCA

Reason: The authorizing statute was scheduled to sunset when this rule was adopted. The 1999 Montana Legislature eliminated the sunset and continued the program. The rule is therefore no longer needed.

4. Concerned persons may submit their data, views or arguments concerning the proposed action in writing to Gary Gingery, Administrator, Agricultural Sciences Division, Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; FAX: (406) 444-7336; or E-mail: agr@state.mt.us. Any comments must be received no later than May 25, 2000.

5. If persons who are directly affected by the proposed action 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 Gary Gingery, Administrator, Agricultural Sciences Division, Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; or E-mail: agr@state.mt.us no later than May 25, 2000.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 1,196 based on 11,962 licensed applicators, dealers, and operators.

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: noxious weed seed forage, noxious weeds, alfalfa seed, agriculture in Montana schools program, agriculture development, pesticides, warehouseman, produce, mint, seed, alternative crops, agriculture heritage program, wheat research and marketing, rural development and/or hail. Such written request may be mailed or delivered to Gary Gingery, Administrator, Agricultural Sciences Division, P.O. Box 200201, Helena, MT 59620-0201; faxed to the office at (406) 444-7336; or E-mail: agr@state.mt.us or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

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

DEPARTMENT OF AGRICULTURE

/s/ Ralph Peck
Ralph Peck
Director

/s/ Tim Meloy
Tim Meloy, Attorney
Rules Reviewer

Certified to the Secretary of State on April 17, 2000.

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed amendment of rules pertaining to temporary permits, general requirements for licensure, re-examination, licensure for foreign nurses, temporary practice permits, renewals and conduct of nurses) NOTICE OF PUBLIC HEARING
) ON THE PROPOSED AMENDMENT
) OF ARM 8.32.308 TEMPORARY PERMITS FOR GRADUATE
) ADVANCED PRACTICE
) REGISTERED NURSES (APRN),
) 8.32.401 GENERAL REQUIREMENTS FOR LICENSURE,
) 8.32.403 RE-EXAMINATION - REGISTERED NURSE, 8.32.404
) RE-EXAMINATION - PRACTICAL NURSE, 8.32.406 LICENSURE
) FOR FOREIGN NURSES,
) 8.32.408 TEMPORARY PRACTICE PERMIT, 8.32.411 RENEWALS,
) and 8.32.413 CONDUCT OF NURSES

TO: All Concerned Persons

1. On May 17, 2000, at 9:00 a.m., a public hearing will be held in the Division of Professional and Occupational Licensing conference room, Lower Level, Arcade Building, 111 North Jackson, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The Department of Commerce 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 Nursing no later than 5:00 p.m., on May 10, 2000, to advise us of the nature of the accommodation that you need. Please contact Jill Caldwell, Board of Nursing, 111 N. Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-7762; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1667.

3. The proposed amendments will read as follows: (new matter underlined, deleted matter interlined)

8.32.308 TEMPORARY PERMITS FOR GRADUATE ADVANCED PRACTICE REGISTERED NURSES (APRN) (1) will remain the same.

(2) If the graduate passes the certifying examination, the temporary permit shall remain valid until the Montana board of nursing grants full APRN recognition. If the graduate does not pass the certifying examination, privileges granted by the temporary practice permit are voided and the temporary practice permit shall be returned to the board office immediately.

(3) and (4) will remain the same.

Auth: Sec. 37-1-305, 37-8-202, MCA

IMP: Sec. 37-1-305, 37-1-319, 37-8-202, MCA

REASON: The board is proposing this amendment to clarify when the temporary practice permit is valid.

8.32.401 GENERAL REQUIREMENTS FOR LICENSURE (1) The requirements for licensure of registered and practical nurses in Montana include the provision that the applicant has written a state board test pool examination/national council licensing examination in a state of the United States ~~or a province of Canada.~~

Auth: Sec. 37-8-202, MCA

IMP: Sec. 37-8-406, 37-8-416, MCA

REASON: The board is proposing this amendment to clarify and improve the process of licensing nurses in Montana.

8.32.403 RE-EXAMINATION - REGISTERED NURSE

(1) Candidates who fail the licensing examination will be permitted to retake the examination after 90 days. Effective October 1, 2000, a candidate may retake the examination one time. If a candidate does not pass the retake, the candidate will be required to present a plan of study to the board before becoming eligible to take the examination again. A candidate may take the test a maximum of five times in three years. If a candidate does not pass the examination within three years, the individual will be required to complete a school of nursing program before being able to test a sixth time.

Auth: Sec. 37-8-202, MCA

IMP: Sec. 37-8-202, 37-8-406, MCA

REASON: The board is proposing this amendment to clarify and improve the process of licensing nurses in Montana.

8.32.404 RE-EXAMINATION - PRACTICAL NURSE

(1) Candidates who fail the licensing examination will be permitted to retake the examination after 90 days. Effective October 1, 2000, a candidate may retake the examination one time. If a candidate does not pass the retake, the candidate will be required to present a plan of study to the board before becoming eligible to take the examination again. A candidate may take the test a maximum of five times in three years. If a candidate does not pass the examination within three years, the individual will be required to complete a school of nursing program before being able to test a sixth time.

Auth: Sec. 37-8-202, MCA

IMP: Sec. 37-8-202, 37-8-416, MCA

REASON: The board is proposing this amendment to clarify and improve the process of licensing nurses in Montana.

8.32.406 LICENSURE FOR FOREIGN NURSES (1) Foreign educated nurses must fulfill the requirements of ARM 8.32.405 (1)(a), (b) and (c) and in addition will be required to write the Montana licensing examination unless they have written a state board test pool licensing examination in another state of the United States ~~or Canadian province~~.

(2) and (3) will remain the same.

Auth: Sec. 37-8-202, MCA
IMP: Sec. 37-8-406, 37-8-416, MCA

REASON: The board is proposing this amendment to clarify and improve the process of licensing nurses in Montana.

8.32.408 TEMPORARY PRACTICE PERMIT (1) will remain the same.

(2) The temporary permit shall remain valid until the graduate is notified of the results of the licensing examination scheduled by the applicant under (1)(b). If the graduate fails the examination, the temporary practice permit is null and void and must be immediately returned to the board.

(3) will remain the same.

Auth: Sec. 37-8-202, MCA
IMP: Sec. 37-1-305, 37-8-103, MCA

REASON: The board is proposing this amendment to clarify how long a temporary practice permit is valid.

8.32.411 RENEWALS (1) In November of each year, the board of nursing shall mail an application for renewal of license to all persons currently licensed. The licensee must fill out the application and return it to the board BEFORE January 1, together with the renewal fee. Upon receiving the renewal application and fee, the board shall issue a certificate of renewal for the current year beginning January 1, and expiring December 31. If the renewal application is postmarked subsequent to December 31, it is subject to a late fee of two times the renewal fee.

(2) will remain the same.

Auth: Sec. 37-1-131, 37-8-202, MCA
IMP: Sec. 37-1-134, 37-8-202, 37-8-431, MCA

REASON: The board is proposing this amendment to clarify and improve the process of licensing nurses in Montana.

8.32.413 CONDUCT OF NURSES (1) will remain the same.
(a) While working as a nurse, all nurses will identify themselves with a name badge disclosing their first and last

name, as it appears on their nursing license, and license type. The identification badge will be written in a standard bold face font no less than 18.

(2) will remain the same.

Auth: Sec. 37-1-136, 37-1-319, 37-8-202, MCA

IMP: Sec. 37-1-136, 37-1-319, 37-8-202, MCA

REASON: The board is proposing this amendment to protect the public by requiring all nurses to wear name tags identifying them by name and type of license.

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 Nursing, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, or by facsimile, number (406) 444-1667, and must be received no later than 5:00 p.m., May 25, 2000.

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

6. The Board of Nursing 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 Nursing administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Nursing, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 444-1667 or may be made by completing a request form at any rules hearing held by the agency.

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

BOARD OF NURSING
KIM POWELL, RN, PRESIDENT

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 17, 2000

BEFORE THE TRAVEL PROMOTION
AND DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of a rule pertaining) ON THE PROPOSED AMENDMENT
to the Travel Promotion and) OF A RULE PERTAINING TO THE
Development Division) TRAVEL PROMOTION AND
) DEVELOPMENT DIVISION

TO: All Concerned Persons

1. On May 26, 2000 at 9:00 a.m. the Montana Department of Commerce, Travel Promotion and Development Division will hold a public hearing in the upstairs conference room, at the Department of Commerce building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed amendment of ARM 8.119.101.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the department no later than 5:00 p.m. on May 15, 2000, to advise us for the nature of the accommodation that you need. Please contact Rachel Zeigler, Department of Commerce, 1424 Ninth Avenue, P.O. Box 200533, Helena, MT 59620-0533; telephone (406) 444-2654; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-1800. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rulemaking process should contact Rachel Zeigler.

3. The proposed amendments will read as follows: (new material underlined; deleted matter interlined)

8.119.101 TOURISM ADVISORY COUNCIL (1) Will remain the same.

(2) The tourism advisory council hereby incorporates by reference the guide entitled "Regulations and Procedures for Regional/CVB Tourism Organizations, February ~~1999~~ 2000" setting forth the regulations and procedures pertaining to the distribution of ~~accommodation~~ lodging facility use tax revenue. The guide is available for public inspection during normal business hours at the Montana Travel Promotion and Development Division, Department of Commerce, 1424 - Ninth Avenue, Helena, Montana 59620. Copies of the guide are available on request.

(3) Distribution of funds to regional nonprofit tourism corporations and to nonprofit convention and visitors' bureaus is contingent upon compliance with the "Regulations and Procedures for Regional/CVB Tourism Organizations, February ~~1999~~ 2000."

Auth: 2-15-1816, MCA
IMP: 2-15-1816, MCA

REASON: The rationale for revising these rules is to provide clarification and to clarify that the Montana Superhost Program was included to allow regions and CVBs the opportunity to participate in the Superhost as part of their annual marketing plan using lodging facility use tax funds.

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 Department of Commerce, Travel Promotion and Development Division, 1424 Ninth Avenue, P.O. Box 200533, Helena, MT 59620-0533, or by facsimile number (406) 444-1800, to be received no later than 5:00 p.m., May 26, 2000.

5. Matthew T. Cohn has been designated to preside over and conduct this hearing.

6. The Travel Promotion and Development Division 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 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 Travel Promotion and Development Division administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Travel Promotion and Development Division, 1424 Ninth Avenue, P.O. Box 200533, Helena, MT 59620-0533 or by phone at (406) 444-2654, or may be made by completing a request form at any rules hearing held by the agency.

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

TRAVEL PROMOTION AND DEVELOPMENT
DIVISION
MATTHEW T. COHN, TRAVEL DIRECTOR

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 17, 2000.

BEFORE THE HEALTH FACILITY AUTHORITY
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment, repeal and adoption) THE PROPOSED AMENDMENT,
of rules pertaining to the) REPEAL AND ADOPTION OF
health facility authority) RULES PERTAINING TO THE
) HEALTH FACILITY AUTHORITY

TO: All Concerned Persons

1. On May 22, 2000, at 9:00 a.m., a public hearing will be held in the Third Floor Conference Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment, repeal, and adoption of rules pertaining to the Health Facility Authority.

2. The Montana Health Facility Authority will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing. If you wish to request an accommodation, contact the Health Facility Authority no later than 5:00 p.m., May 11, 2000 to advise us of the nature of the accommodation that you need. Please contact Jerry R. Hoover, Montana Health Facility Authority, 2410 Colonial Drive, P.O. Box 200506, Helena, Montana; telephone (406)444-5435; Montana Relay 1-800-253-4091; TDD (406)444-2978; facsimile (406)444-0019. Persons with disabilities who need an alternative accessible format of this document in order to participate in this rule-making process should contact Jerry R. Hoover.

3. The proposed amendment of ARM 8.120.101, 8.120.201, 8.120.202 and 8.120.203 will read as follows: (new matter underlined, deleted matter interlined)

8.120.101 ORGANIZATION OF THE AUTHORITY (1) Purpose of the authority. The Montana health facility authority (the "authority") ~~was~~ is created ~~in 1983~~ by ~~section 2-15-1815, MCA,~~ to contain the costs of ~~health care~~ eligible facilities by making low-cost financing available to ~~health~~ eligible institutions for facilities and equipment.

(2) Membership of the board. The authority consists of a quasi-judicial board of seven members (the "board") appointed by the governor in the manner prescribed by ~~section 2-15-124, MCA. By statute the members of the board are chosen so as to be broadly representative of the state, and so as to balance professional expertise and public accountability.~~

(3) Organization of the Authority. The authority is ~~attached~~ allocated to the department of commerce (~~the "department"~~) for administrative purposes. It has the authority, ~~after consultation with the department,~~ to employ

or contract for professional staff and consultants, prescribe their duties and responsibilities, and assign classes and grades to its employees. ~~For other staffing purposes it is attached to the office of the director of the department. A chart of the organization of the department can be found in ARM 8.1.101(5), and the authority hereby adopts and incorporates this chart by reference into its organizational rule.~~

(4) Information and Submissions. Inquiries regarding the authority may be addressed to the ~~chairman of the board of the Montana Health Facility Authority, c/o Department of Commerce, Capitol Station, P.O. Box 200506, Helena, Montana 59620.~~

Auth: Sec. 2-4-201(1), MCA

IMP: Sec. 2-4-201(1), MCA

8.120.201 DEFINITIONS (1) When used in these rules, unless the context clearly requires a different meaning:

(a) (1) "Authority" means the Montana health facility authority created by ~~section 2-15-1815, MCA.~~

(b) (2) "Board" means the seven-member board created by ~~section 2-15-1815, MCA, as the governing body of the Montana health facility authority.~~

(c) (3) "Department" means the Montana department of commerce.

(d) (4) "Eligible health facility" means any structure or building described in 90-7-104, MCA, as amended. ~~used as a hospital, clinic, nursing home, or other health care facility as defined in 50-5-101, MCA; center for developmentally disabled; center for the handicapped; chemical dependency treatment center; nursing school; medical teaching facility; laboratory; dental care facility; or other structure or facility related to any of the foregoing or required or useful for the operation of a health facility. These related facilities include supporting service structures and all necessary, useful, and related equipment, furnishing, and appurtenances and include without limitation the acquisition, preparation, and development of all lands and real and personal property necessary or convenient as a site for any of the foregoing. An eligible health facility does not include such items as food, fuel, supplies, or other items that are customarily considered as current operating expenses; an eligible health facility does not include a structure used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship." Section 90-7-103, MCA.~~

(e) (5) "Health Institution" means an entity identified in 90-7-102(5), MCA, as amended ~~"any public or private nonprofit hospital, corporation or other organization authorized to provide or operate a health facility in this state." Section 90-7-102 (4), MCA.~~

(f) (6) ~~"Stand alone issue" means an issue of bonds or notes in a single series to provide financing for a single health institution. "Loan program" means a program for~~

funding loans from the proceeds of bond issues, permanent coal tax trust fund or other authority funds.

Auth: 90-7-202(3), MCA
IMP: 90-7-202(3), MCA

8.120.202 MODEL PROCEDURAL RULES (1) The authority hereby adopts and incorporates by reference ~~rules 1 through 28~~ ARM 1.3.204 through 1.3.233 of the attorney general's model procedural rules. A copy of these rules may be obtained from ~~the chairman of the board of the Montana Health Facility Authority, c/o the Montana Department of Commerce, Capitol Station P.O. Box 200506, Helena, Montana 59620.~~

Auth: 90-7-202(3), MCA
IMP: 2-4-201, MCA

8.120.203 CITIZEN PARTICIPATION RULES (1) The authority hereby adopts and incorporates by reference the citizen participation rules of the department as set forth in ARM 8.2.201 through 8.2.206~~7~~. A copy of these rules can be obtained from ~~the chairman of the board of the Montana Health Facility Authority, c/o the Montana Department of Commerce, Capitol Station, P.O. Box 200506, Helena, Montana 59620.~~

Auth: 90-7-202(3), MCA
IMP: 2-4-201, MCA

4. The Authority is proposing to repeal the following rules:

8.120.204 APPLICATION PROCEDURE (Auth: Sec. 90-7-202, MCA; IMP, Sec. 90-7-202, MCA), located on pages 8-4405 and 8-4406, Administrative Rules of Montana.

8.120.205 CONTENT OF APPLICATION (Auth: Sec. 90-7-202, MCA; IMP, Sec. 90-7-202, MCA), located on pages 8-4406 and 8-4407, Administrative Rules of Montana.

8.120.206 FEES (Auth: Sec. 90-7-202, MCA; IMP, Sec. 90-7-202, 90-7-211, MCA), located on pages 8-4407 through 8-4409, Administrative Rules of Montana.

8.120.301 CRITERIA FOR DETERMINING WHETHER AN APPLICATION IS QUALIFIED FOR FINANCING (Auth: Sec. 90-7-202, MCA; IMP, Sec. 90-7-202, MCA), located on page 8-4411, Administrative Rules of Montana.

8.120.302 CRITERIA FOR DECIDING WHICH ELIGIBLE PROJECTS TO FINANCE (Auth: Sec. 90-7-202, MCA; IMP, Sec. 90-7-202, MCA), located on pages 8-4411 and 8-4412, Administrative Rules of Montana.

5. The proposed new rules will read as follows:

NEW RULE I LOAN PROGRAM POLICIES (1) The authority shall adopt underwriting policies, procedures and criteria for the various types of loan programs. All policies, procedures and criteria must be approved during its board meetings. Policies and procedures developed and approved by the authority may include, but are not limited to:

(a) the development and approval of loan underwriting policies for all types of loans authorized by the authority, including the loan application process and any appeals process available to loan applicants whose application is disapproved;

(b) criteria for assessing and qualifying loan applications;

(c) criteria for deciding which eligible projects to finance;

(d) loan application forms and the type of information required on the application;

(e) the establishment and payment of initial and annual planning service fees and costs and expenses, when these fees, costs and expenses may be waived or reduced, and when they may be retained if the loan application is withdrawn or disapproved;

(f) the parameters and criteria for setting loan interest rates;

(g) a maximum loan amount based upon the actual total costs or appraised value of the project at the discretion of the authority;

(h) disclosure that a prerelease contract, as security for the bonds, between the department of corrections and the respective institution is valid and enforceable and does not constitute any liability or obligation of the authority; and

(i) the development and execution of policies, resolutions, agreements, contracts, certificates, opinions and other documents as may be necessary and appropriate to carry out the loan programs and the administrative programs of the authority.

Auth: 90-7-202(3), MCA

IMP: 90-7-202(3), MCA

REASON: The current rules have not been revised since their 1983 adoption; however the statutes that govern the Authority have been revised several times in order to expand the application of the Authority's programs. The rules being revised include rules applying to loans made from the proceeds of bond issues as well as the permanent coal trust fund and Authority funds. Many of the rules are proposed to be repealed because they no longer apply to all types of Authority loans or they simply duplicate the statutory language. The rationale for revising the rules is to provide the Health Facility Authority more flexibility in underwriting a broad spectrum of loans to a much larger array of eligible applicants and to make its loan programs easier to use by eligible facilities.

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 the Health Facility Authority, 2401 Colonial Drive, P.O. Box 200506, Helena, Montana, 59620-0506, or by facsimile number (406) 444-0019, to be received no later than 5:00 p.m., June 8, 2000.

7. Jerry R. Hoover has been designated to preside over and conduct this hearing.

8. The Health Facility Authority maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Authority. 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 Health Facility Authority administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Health Facility Authority, 2401 Colonial Drive, P.O. Box 200506, Helena, MT 59620-0506 or by phone at (406) 444-5435, or may be made by completing a request form at any rules hearing held by the agency.

9. The notice requirements of 2-4-302, MCA, apply and have been satisfied.

MONTANA HEALTH FACILITY AUTHORITY
AMOS R. LITTLE, JR. MD, CHAIRMAN

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 17, 2000.

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

In the matter of the proposed) NOTICE OF
amendment of ARM 12.9.602 and) PROPOSED AMENDMENT
12.9.604 pertaining to the)
pheasant enhancement program) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On May 31, 2000, the Montana Department of Fish, Wildlife and Parks (department) proposes to amend ARM 12.9.602 and 12.9.604 pertaining to the pheasant enhancement program.

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 this notice. If you request an accommodation, please contact the department no later than 5:00 p.m. on May 15, 2000, to advise us of the nature of the accommodation that you need. Please contact John McCarthy, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620;(406) 444-2612; FAX (406) 444-4952.

3. The department proposes to amend the rules as follows, stricken matter interlined, new matter underlined:

12.9.602 REQUIREMENTS OF PROJECTS (1) The department will not authorize participation in the pheasant enhancement program unless the proposed project meets the following requirements:

- (a) all birds must be at least 14 ~~8~~ weeks of age at the time of release;
- (b) not less than 40% of the birds in a release under this program must be cocks;
- (c) all birds must be fully feathered and ~~cocks must have at least 50% of their adult plumage;~~
- (d) through (q) and (2) remain the same

AUTH: 87-1-249, MCA
IMP: 87-1-248, MCA

12.9.604 PAYMENT BY DEPARTMENT (1) The department will pay authorized projects ~~\$4.00~~ \$3.00 for each bird released in compliance with all the provisions of ARM 12.9.601 through 12.9.603.

AUTH: 87-1-249, MCA
IMP: 87-1-247, MCA

4. The Department of Fish, Wildlife and Parks believes the the proposed rule amendments are reasonably necessary because the department adopted administrative rule amendments to

ARM 12.9.602 and 12.9.604 under 2-4-302, MCA in violation of 87-1-247(2)(a), MCA. The previous amendment provided pheasant release participants with a \$4 per bird reimbursement amount for the release of 14 week old birds. The statute limits the amount that participants may be reimbursed to \$3.00 per bird.

The adoption of these rule amendments would roll back pheasant release participants' reimbursement amount to \$3 per bird for the release of 8 week old birds. This change would prevent the unnecessary economic hardship for individuals who wish to participate in the pheasant release program, and these amendments would ensure that department rules are in compliance with the state statutes.

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 John McCarthy, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620, no later than May 26, 2000.

6. If persons who are directly affected by the proposed amendment 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 John McCarthy, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620, no later than May 26, 2000.

7. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the administrative rule review committee of the legislature; from a governmental agency or subdivision; or from any 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 has been determined to be in excess of one person based on the number of persons participating in the pheasant enhancement program.

8. The agency 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 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 6th Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

BY: /s/ Patrick J. Graham

BY: /s/ John F. Lynch

PATRICK J. GRAHAM
Director

JOHN F. LYNCH
Rule Reviewer

Certified to the Secretary of State April 17, 2000

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

In the matter of the) NOTICE OF PROPOSED
amendment of ARM 16.38.307) AMENDMENT
pertaining to laboratory)
testing fees) NO PUBLIC HEARING
CONTEMPLATED

TO: All Interested Persons

1. On May 27, 2000, the Department of Public Health and Human Services proposes to amend the above-stated rule.

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. If you request an accommodation, contact the department no later than 5:00 p.m. on May 7, 2000, 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 rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

16.38.307 LABORATORY FEES FOR ANALYSES (1) Fees for clinical analyses performed by the laboratory of the department of public health and human services are as follows, with the exception noted in (3) below:

(a) Air mold spores	\$15.00
(b) Atypical pneumonia panel	76.50
(c) Autoclave, sterility check	15.00
(d) Bacteriologic enteric panel	36.50
(e) Bacteriology culture, identification	26.50
(f) Blood-borne exposure panel	48.00
(g) Blood lead	15.00
(h) C. Difficile cytotoxin	24.60
(i) Chlamydia, direct probe	12.20
(j) Chlamydia, gene amplification	18.75
(k) Chronic fatigue panel	54.00
(l) EHEC toxin	19.60
(m) Encephalitis panel	54.00
(n) Exantham panel	51.35
(o) FTA	24.70
(p) Fungal culture	28.16
(q) GC + chlamydia, direct probe	21.80
(r) GC + chlamydia, amplification	35.00
(s) Hepatitis panel (acute)	54.00
(t) Hepatitis C	26.50

(u) Hepatitis B, anti HbsAb	17.80
(v) Hepatitis B, anti HBsAg	15.80
(w) Herpes simplex culture	24.50
(x) HIV screen, serum	12.80
(y) HIV screen, oral fluid	24.60
(z) HIV viral load	120.00
(aa) HIV western blot	44.00
(ab) Misc. direct Ag detection	17.60
(ac) Misc. serologies	15.20
(ad) Misc. serologies, IgG + IgM	42.50
(ae) Newborn screening	35.50
(af) Newborn screening + CF	55.30
(ag) Newborn screening, monitor	19.80
(ah) Parasite identification	21.20
(ai) Prenatal, short panel	30.00
(aj) Prenatal + HIV	35.00
(ak) Respiratory, long panel	76.50
(al) Respiratory, short panel	54.00
(am) Rubella screen	14.60
(an) Syphilis screen	14.60
(ao) Tb direct amplification	140.00
(ap) Tb screen	\$ 35.20
(aq) Tick-borne panel	54.00
(ar) TORCH short panel	54.00
(as) TORCH + Parvovirus	62.50
(at) Viral culture	28.20

<u>(a) Microbiology Tests</u>	<u>Fee</u>
(i) Anaerobic Culture	\$ 29.64
(ii) Autoclave Monitor	15.60
(iii) Bacterial Culture	27.56
(iv) Bacterial Screen	22.88
(v) C Diff Cytotoxin	25.58
(vi) Chemclave Monitor	15.60
(vii) Chlamydia by LCR	18.20
(viii) EHEC Toxin	20.38
(ix) Enteric Panel	27.56
(x) Gonorrhea by LCR	18.20
(xi) Pertussis DFA	18.30
(xii) Legionella DFA	18.30
<u>(b) Miscellaneous Tests</u>	
(i) Test sent out	7.80
(ii) Dangerous goods	52.00
<u>(c) Mycology Tests</u>	
(i) Air Mold Spores	15.60
(ii) Fungal Culture, Skin	29.29
(iii) Fungal Culture, Other	29.29
(iv) Fungal Culture, Blood	29.29
<u>(d) Newborn Tests</u>	
(i) IRT (Cystic Fibrosis)	9.88
(ii) Galactose	16.85
(iii) PKU	10.19

<u>(iv) Thyroxine</u>	<u>9.88</u>
<u>(e) Parasitology Tests</u>	
<u>(i) Crypto/Cyclo stain</u>	<u>22.05</u>
<u>(ii) O & P Conc. ID</u>	<u>11.96</u>
<u>(iii) O & P, Trichrome</u>	<u>10.09</u>
<u>(f) Serology Tests</u>	
<u>(i) Adenovirus</u>	<u>14.04</u>
<u>(ii) Blood Lead</u>	<u>15.60</u>
<u>(iii) Brucella</u>	<u>14.30</u>
<u>(iv) Chlamydia group</u>	<u>10.92</u>
<u>(v) CMV, IgG</u>	<u>14.04</u>
<u>(vi) CMV, IgM</u>	<u>28.39</u>
<u>(vii) Colorado Tick Fever</u>	<u>15.81</u>
<u>(viii) Enterovirus</u>	<u>7.80</u>
<u>(ix) Epstein Barr virus</u>	<u>14.04</u>
<u>(x) FTA</u>	<u>25.69</u>
<u>(xi) Hantavirus IgG</u>	<u>22.10</u>
<u>(xii) Hantavirus IgM</u>	<u>22.10</u>
<u>(xiii) Hepatitis A IgM</u>	<u>9.78</u>
<u>(xiv) Hepatitis B core IgM</u>	<u>9.78</u>
<u>(xv) Hepatitis B Antibody</u>	<u>18.51</u>
<u>(xvi) Hep B Surface Antigen</u>	<u>16.43</u>
<u>(xvii) Hepatitis C</u>	<u>27.56</u>
<u>(xviii) Herpes simplex 1 & 2</u>	<u>10.71</u>
<u>(xix) HIV screen</u>	<u>13.31</u>
<u>(xx) HIV Western Blot</u>	<u>45.76</u>
<u>(xxi) Influenza A</u>	<u>10.92</u>
<u>(xxii) Influenza B</u>	<u>10.92</u>
<u>(xxiii) Legionella</u>	<u>10.92</u>
<u>(xxiv) Mumps</u>	<u>15.81</u>
<u>(xxv) Mycoplasma</u>	<u>10.92</u>
<u>(xxvi) Parainfluenza 1,2,3</u>	<u>5.66</u>
<u>(xxvii) Q Fever</u>	<u>10.24</u>
<u>(xxviii) RMSF</u>	<u>15.81</u>
<u>(xxix) RSV</u>	<u>15.81</u>
<u>(xxx) Rubella</u>	<u>15.18</u>
<u>(xxxii) Rubeola</u>	<u>15.81</u>
<u>(xxxiii) Tularemia</u>	<u>14.30</u>
<u>(xxxiiii) Toxo IgG</u>	<u>14.04</u>
<u>(xxxv) Toxo IgM</u>	<u>28.39</u>
<u>(xxxvi) Varicella Zoster</u>	<u>15.81</u>
<u>(xxxvii) VDRL, qua</u>	<u>10.22</u>
<u>(xxxviii) VDRL, quant</u>	<u>10.56</u>
<u>(g) Tuberculosis Tests</u>	
<u>(i) Acid Fast Stain</u>	<u>11.02</u>
<u>(ii) Mycobact. Culture</u>	<u>25.58</u>
<u>(iii) Mycobact. Suscept., each drug</u>	<u>7.32</u>
<u>(iv) Mycobact. Sp. Probe</u>	<u>18.30</u>
<u>(v) Mycobact. Avium Probe</u>	<u>18.30</u>
<u>(vi) Mycobact. TB Probe</u>	<u>18.30</u>
<u>(vii) Mycobact. TB AMP</u>	<u>145.60</u>

<u>(h) Virology Tests</u>	
<u>(i) Chlamydia Culture</u>	<u>29.33</u>
<u>(ii) Herpes Culture</u>	<u>25.48</u>
<u>(iii) RSV Direct Detection</u>	<u>18.30</u>
<u>(iv) Viral Culture</u>	<u>29.33</u>

(2) through (4) remain the same.

AUTH: Sec. 50-1-202, MCA
IMP: Sec. 50-1-202, MCA

3. The proposed changes in ARM 16.38.307 reflect the expectations of the legislature. 50-1-202, MCA requires the laboratory to adopt fees for services which reflect the costs of the tests performed. The current fee structure was implemented March 15, 1998 and will not meet anticipated expenses incurred by the public health laboratory during FY 2001.

Alternatives to adjusting the fee schedule: Additional general fund support for the public health laboratory would eliminate the need for the proposed fee increase. Currently, general fund support represents approximately 10% of the laboratory revenue budget. A second alternative would be to do nothing with the fee structure. This may result in reduction in staff and services to the public.

4. Interested persons may submit their data, views or arguments concerning the proposed action in writing 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 May 25, 2000. 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. 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. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments 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 May 25, 2000.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten

percent of those directly affected has been determined to be 25 based on the 250 provider accounts affected by rules covering providers who send specimens for testing to the DPHHS Laboratory.

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and
Human Services

Certified to the Secretary of State April 17, 2000.

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

In the matter of the)	NOTICE OF PUBLIC
amendment of 37.85.212,)	HEARING ON PROPOSED
37.86.805, 37.86.1005,)	AMENDMENT
37.86.1006, 37.86.1401,)	
37.86.1402, 37.86.1405,)	
37.86.1406, 37.86.1807,)	
37.86.2105, 37.86.2205,)	
37.86.2207, 37.86.2405,)	
37.86.2505, 37.86.2605,)	
37.86.3201, 37.86.3205)	
pertaining to resource based)	
relative value scale (RBRVS);)	
early and periodic screening,)	
diagnostic and treatment)	
services (EPSDT); eyeglasses)	
services; clinic services;)	
dental and denturist)	
services; durable medical)	
equipment, orthotics,)	
prosthetics and supplies)	
(DMEOPS); hearing aid)	
services; transportation)	
services and non-hospital)	
laboratory and radiology)	
services)	

TO: All Interested Persons

1. On May 18, 2000, at 1:30 p.m., a public hearing will be held in the Sapphire Room, 2nd Floor, of the Board of Investments Building, 2401 Colonial Park Drive, 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. If you request an accommodation, contact the department no later than 5:00 p.m. on May 7, 2000, 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.

37.85.212 RESOURCE BASED RELATIVE VALUE SCALE (RBRVS)
REIMBURSEMENT FOR SPECIFIED PROVIDER TYPES (1) For purposes of

this rule, the following definitions apply:

(a) through (d) remain the same.

(e) "Resource based relative value scale (RBRVS)" means the most current version of the medicare resource based relative value scale contained in the physicians' medicare fee schedule adopted by the health care financing administration of the U.S. department of health and human services and published in the Federal Register annually, as amended through November 2, ~~1998~~ 1999 which is hereby adopted and incorporated by reference. A copy of the medicare fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. The RBRVS reflects RVUs for estimates of the actual effort and expense involved in providing different health care services.

(f) through (3)(d)(ii) remain the same.

(4) The conversion factor used to determine the medicaid payment amount for the services covered by this rule for state fiscal year ~~2000~~ 2001 is:

(a) ~~\$33.60~~ \$34.15 for medical and surgical services, as specified in (2); and

(b) through (7)(b)(iii) remain the same.

(8) Except for physician administered drugs as provided in ARM 37.86.105(3), if neither medicare nor medicaid sets RVUs, then reimbursement is by report.

(a) Through the by-report methodology the department reimburses a percent of the provider's usual and customary charges for a procedure code where no fee has been assigned. The percentage is determined by dividing the previous state fiscal year's total medicaid reimbursement for ~~RVRVS~~ RBRVS provider covered services by the previous state fiscal year's total medicaid billings.

(b) For state fiscal year ~~2000~~ 2001, the "by-report" rate is 57% 55% of the provider's usual and customary charges.

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

37.86.805 HEARING AID SERVICES, REIMBURSEMENT (1) The department will pay the lower of the following for covered hearing aid services and items:

(a) remains the same.

(b) the amount specified for the particular service or item in the department's fee schedule. The department hereby adopts and incorporates by reference the department's fee schedule effective July 1, ~~1999~~ 2000 which sets forth the reimbursement rates for hearing aid services and other medicaid services. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(2) remains the same.

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

IMP: Sec. 53-6-101, 53-6-113 and 53-6-141, MCA

37.86.1005 DENTAL SERVICES, REIMBURSEMENT (1) through (1)(c) remain the same.

(2) For the purpose of specifying fees for reimbursement of covered dental services, the department incorporates by reference the fee schedule, effective July ~~1999~~ 2000. Copies of the fee schedule are available 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 (10)(d) remain the same.

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

IMP: Sec. 53-6-101, 53-6-113 and 53-6-141, MCA

37.86.1006 DENTAL SERVICES, COVERED PROCEDURES (1) For purposes of specifying coverage of dental services through the medicaid program, the department incorporates by reference the dental services provider manual (~~1999~~ 2000 edition) effective July ~~1999~~ 2000 and the denturist services provider manual (~~1999~~ 2000 edition) effective July ~~1999~~ 2000. The dental and denturist services provider manuals, provided to providers of those services, inform the providers of the requirements applicable to the delivery of services. Copies of the manuals are available 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.

(2) remains the same.

(3) All services which require prior authorization from the designated review organization are identified in the provider manuals department's fee schedule. Reimbursement is not provided for such services unless prior authorization has been given by the designated review organization.

(4) through (11) remain the same.

(12) Dental implants are not a covered benefit of the medicaid program.

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

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

37.86.1401 CLINIC SERVICES, DEFINITIONS (1) "Clinic services" means preventive diagnostic, therapeutic, rehabilitative, or palliative items or services provided under the direction of a physician by an outpatient facility that is not part of a hospital, but is organized and operated to provide medical care to outpatients independent of a hospital. Clinic services may be provided in ~~diagnostic centers,~~ surgical centers and public health departments. Clinic services do not include mental health center services as defined in ARM 37.88.901.

(2) through (6) remain the same.

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

IMP: Sec. 53-6-101 and 53-6-141, MCA

37.86.1402 CLINIC SERVICES, REQUIREMENTS (1) through (5)(d) remain the same.

~~(6) Diagnostic clinic services shall not exceed the amount, duration and scope of the covered services outside of a clinic setting.~~

(7) and (8) remain the same but are renumbered (6) and (7).

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

IMP: Sec. 53-6-101 and 53-6-141, MCA

37.86.1405 CLINIC SERVICES, COVERED PROCEDURES

(1) through (1)(b) remain the same.

~~(2) Clinic services, covered by the medicaid program, include the following services provided by a diagnostic clinic:~~

~~(a) speech therapy;~~

~~(b) audiology;~~

~~(c) hearing aids;~~

~~(d) physical therapy;~~

~~(e) occupational therapy; and~~

~~(f) medical and dental evaluation, diagnosis and treatment services.~~

(3) and (4) remain the same but are renumbered (2) and (3).

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101 and 53-6-141, MCA

37.86.1406 CLINIC SERVICES, REIMBURSEMENT (1) through (2) remain the same.

~~(3) Reimbursement for diagnostic clinic services shall be negotiated rates not to exceed the cost of the same services outside of a clinic setting.~~

(4) through (4)(c) remain the same but are renumbered (3) through (3)(c).

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

IMP: Sec. 53-6-101 and 53-6-141, MCA

37.86.1807 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, FEE SCHEDULE (1) remains the same.

(2) The department's fee schedule, referred to in ARM 37.86.1806(1), for items other than wheelchairs and wheelchair accessories, shall include fees set and maintained according to the following methodology:

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

(d) The department's fee schedule effective July 1, 1999 2000 setting forth the reimbursement rates for prosthetic devices, durable medical equipment, medical supplies and other medicaid services, which is hereby adopted and incorporated by reference. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

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

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

37.86.2105 EYEGLASSES, REIMBURSEMENT (1) remains the same.

(2) Reimbursement for contact lenses or dispensing fees is as follows:

(a) and (a)(i) remain the same.

(ii) the amount specified for the particular service or item in the department's fee schedule. The department hereby adopts and incorporates by reference the department's fee schedule effective July ~~1, 1999~~ 2000 which sets forth the reimbursement rates for eyeglasses and other medicaid services. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101, 53-6-113 and 53-6-141, MCA

37.86.2205 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), REQUIRED SCREENING AND PREVENTIVE SERVICES (1) through (3) remain the same.

(4) The department hereby adopts and incorporates herein by reference the department's provider manual updated through June, ~~1999~~ 2000. The provider manual, issued by the department to all providers of EPSDT services, informs providers of the requirements applicable to the delivery of services. A copy of the department's EPSDT provider manual is available 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.

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

37.86.2207 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), REIMBURSEMENT (1) through (1)(c) 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, ~~1999~~ 2000. 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) Reimbursement for the therapeutic portion of therapeutic youth group home treatment services is as follows:

(a) for intensive level therapeutic youth group home services, ~~\$156~~ \$157.56 per patient day;

(b) for campus based therapeutic youth group home services, ~~\$127.40~~ \$128.67 per patient day; or

(c) for moderate level therapeutic youth group home services, ~~\$84.16~~ \$85 per patient day.

(4) Reimbursement for the therapeutic portion of therapeutic family care treatment services is as follows:

(a) for intensive level therapeutic family care services, ~~\$59.27~~ \$59.86 per patient day;

(b) for moderate level therapeutic family care services, ~~\$39.75~~ \$40.15 per patient day; or

(c) for permanency therapeutic family care services, ~~\$110~~ \$111.10 per patient day, which covers and includes all individual, group and family therapy, respite care and care coordination case management services provided to the recipient.

(5) through (10) 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

37.86.2405 TRANSPORTATION AND PER DIEM, REIMBURSEMENT

(1) through (1)(b) remain the same.

(2) The department hereby adopts and incorporates by reference the department's fee schedule effective July ~~1, 1999~~ 2000 which sets forth the reimbursement rates for transportation, per diem and other medicaid services. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) and (4) remain the same.

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

IMP: Sec. 53-6-101, 53-6-113 and 53-6-141, MCA

37.86.2505 SPECIALIZED NONEMERGENCY MEDICAL TRANSPORTATION, REIMBURSEMENT (1) through (1)(b) remain the same.

(2) The department hereby adopts and incorporates by reference the department's fee schedule effective July ~~1, 1999~~ 2000 which sets forth the reimbursement rates for specialized nonemergency medical transportation services and other medicaid services. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

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

IMP: Sec. 53-6-101, 53-6-113 and 53-6-141, MCA

37.86.2605 AMBULANCE SERVICES, REIMBURSEMENT (1) through (1)(c) remain the same.

(2) The department hereby adopts and incorporates by reference the department's fee schedule effective July ~~1, 1999~~ 2000 which sets forth the reimbursement rates for ambulance

services and other medicaid services. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) and (4) remain the same.

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

IMP: Sec. 53-6-101, 53-6-113 and 53-6-141, MCA

37.86.3201 NONHOSPITAL LABORATORY AND RADIOLOGY (X-RAY) SERVICES, REQUIREMENTS (1) "Nonhospital laboratory and radiology (x-ray) services" are professional and technical laboratory and radiology services which are either:

(a) ordered and provided by a physician, dentist or optometrist other practitioner licensed within the scope of his practice as defined by state law; or

~~(b) ordered and provided under the direction of a physician.~~

(2) remains the same.

(3) ~~Out-of-state providers~~ Providers must meet the following requirements:

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

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-113 and 53-6-141, MCA

37.86.3205 NONHOSPITAL LABORATORY AND RADIOLOGY (X-RAY) SERVICES, REIMBURSEMENT (1) remains the same.

(2) Independent laboratory providers must meet the following requirements to receive medicaid reimbursement:

(a) and (b) remain the same.

(c) the independent laboratory service must have been ordered by a physician, dentist or optometrist other practitioner licensed to practice in Montana.

(i) remains the same.

(3) Independent radiology (x-ray) services must meet the following requirements to receive medicaid reimbursement:

(a) remains the same.

(b) the independent radiology service must be ordered by a licensed physician, dentist or optometrist other practitioner licensed within the scope of his practice as defined by state law;

(c) technical components of diagnostic and therapeutic radiology services must be performed by an appropriately licensed provider within the scope of his practice as defined by state law and under the supervision of a physician; and

(d) and (e) remain the same.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-113 and 53-6-141, MCA

3. The Medicaid program provides medical assistance to low income Montanans. The program is jointly funded by the State of Montana and the federal government. The purpose of the

proposed rule amendments are to implement a funding increase authorized by the 1999 legislature. (See HB2, 56th Legislative Session, 1999.) To fulfill legislative intent, the proposed rules implement a 1% increase in provider payments for services paid under the Resource Based Relative Value Scale (RBRVS) and providers of Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT); Eyeglasses Services; Clinic Services; Dental and Denturist Services; Durable Medical Equipment, Orthotics, Prosthetics and Supplies (DMEOPS); Hearing Aid Services; Transportation Services and Non-hospital Laboratory and Radiology Services. The proposed amendments to these rules are necessary to implement the 1% increase authorized by the legislature. The proposed amendments to ARM 37.85.212 and 37.86.2207 incorporate the 1% increase by reflecting the increase in higher rates. The remaining proposed amendments are necessary to update the references to fee schedules and provider manuals in order to incorporate and reflect the 1% increase shown in those documents. Leaving the rules unchanged is not an option as it would be contrary to the legislative intent demonstrated by the 1999 legislature. Also in 37.85.212(8)(a) there was a typographical error where it was referred to as RVRVS, and that has been corrected to RBRVS.

The proposed amendment to ARM 37.86.1006 also states that dental implants will no longer be available through the Medicaid program. The implants are an expensive procedure which has proven to be of limited value to the recipient. Though the Department could have continued to provide payment for dental implants, it was more prudent to direct the funds being spent on implants to more effective services such as preventative and diagnostic procedures. Consequently, the proposed amendment to ARM 37.87.1006 is necessary to provide notice that dental implants are no longer a covered Medicaid service.

The proposed amendments to ARM 37.86.1401, 37.86.1402, 37.86.1405 and 37.86.1406 are necessary to reflect the fact that diagnostic centers are no longer recognized as individual providers for billing purposes. Medicaid recipients are still able to receive services from diagnostic centers, but the services must now be billed by the individual practitioner employed by the diagnostic center who provided them. The proposed amendment will not result in a change to benefits; it simply reflects a change in how payment for services is to be billed and received. This amendment is necessary to prevent a conflict between State and federal regulations governing diagnostic services of the Medicaid program.

The proposed amendments to ARM 37.86.3201 and 37.86.3205 are necessary to delete the reference to optometrist and to include the term "other practitioner" in its place. The Department determined that the use of optometrist unnecessarily limited access to x-ray services. Thus, in order to encourage a wider variety of practitioners to provide x-ray services, effectively increasing access to those services, the rules needed to be

changed. The Department could have left the rules unchanged, but that option would not have furthered the goal of increased access. An additional proposed amendment to ARM 37.86.3201 is necessary to correct the rule. Subsection (3) made reference to "out-of-state" providers, but the requirements actually apply to all providers. Thus, the amendment was necessary to clarify and correct the rule.

Because the amendments are being made for the purpose of incorporating an increase in the provider payments as authorized by the legislature, the costs of the Medicaid program will increase as a result of these amendments. While benefits to Medicaid recipients will not change, with the exception that dental implants are no longer provided, payments to providers will increase, increasing the costs of the program. The Department estimates that these amendments will add approximately \$447,000 to the costs of the program for fiscal year 2001, approximately \$122,000 of that amount will be paid by the State of Montana.

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 May 25, 2000. 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. 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.

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and
Human Services

Certified to the Secretary of State April 17, 2000.

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

In the matter of the)
amendment of ARM 37.86.2901)
and 37.86.2905 pertaining to)
inpatient hospital services)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 18, 2000, at 10:00 a.m., a public hearing will be held in the Sapphire Room, 2nd floor of the Board of Investments Building, 2401 Colonial Drive, 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. If you request an accommodation, contact the department no later than 5:00 p.m. on May 7, 2000, 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.

37.86.2901 INPATIENT HOSPITAL SERVICES, DEFINITIONS

(1) through (5) remain the same.

(6) "Hospital policy adjustor" means a payment to a Montana hospital paid under the DRG payment system. Data sources for the department to determine who meets policy adjustor criteria include but are not limited to information from the Montana hospital association database; Montana medicaid paid claims database; department's database for vital statistics; and licensing bureau. Evaluations will be made annually to determine which hospital will qualify for the policy adjustor. All of the following criteria must be met for a hospital to qualify:

(a) and (b) remain the same.

(c) delivered less than 200 babies (all payers) for state fiscal year ~~1998~~ 1999 (July 1, ~~1997~~ 1998 through June 30, ~~1998~~ 1999); and

(d) of the total babies delivered in state fiscal year ~~1998~~ 1999, 53% covered were either medicaid primary or medicaid secondary.

(7) through (12) remain the same.

(13) "Medical assistance facility" or "critical access hospital" means a facility ~~licensed by the department as a limited-service rural hospital or a facility commonly referred~~

~~to as a medical assistance facility/critical access hospital as defined in 50-5-101, MCA, and licensed by the Montana department of public health and human services and participating in a demonstration project authorized by the United States department of health and human services.~~

(14) through (17) remain the same.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

37.86.2905 INPATIENT HOSPITAL SERVICES, REIMBURSEMENT

(1) For inpatient hospital services, the Montana medicaid program will reimburse providers as follows:

(a) For inpatient hospital services provided within the state of Montana, providers will be reimbursed under the diagnosis related groups (DRG) prospective payment system described in (2) except as otherwise specified in these rules. Medicare certified rehabilitation units, isolated hospitals and medical assistance facilities/critical access hospitals will be reimbursed their actual allowable costs determined on a retrospective basis, with allowable costs determined according to ARM 46.12.509(2). Except as otherwise specified in these rules, facilities reimbursed under the DRG prospective payment system will be reimbursed, in addition to the prospective DRG rate, for the following:

(i) through (iv) remain the same.

(v) catastrophic case payments as provided in (8); and

(vi) disproportionate share hospital payments as provided in (14) and (15); and

(vii) hospital policy adjustor payments as provided in (17).

(b) Inpatient hospital services provided in hospitals located outside the state of Montana, but no more than 100 miles from the border, referred to in these rules as "border hospitals", will be reimbursed under the DRG prospective payment system described in (2). In addition to the prospective rate, border hospitals will be reimbursed for cost outliers as set forth in (6) and (7), and for capital costs as set forth in ~~(5)~~ (4), but shall not be reimbursed in addition to the DRG payment for medical education costs, neonatal intensive care stop-loss reimbursement or certified registered nurse anesthetist costs or catastrophic cases.

(c) through (c)(ii) remain the same.

(2) The department's DRG prospective payment rate for inpatient hospital services is based on the classification of inpatient hospital discharges to diagnosis related groups (DRGs). The procedure for determining the DRG prospective payment rate is as follows:

(a) For recipients admitted on or after July 1, ~~1999~~ 2000, the department assigns a DRG to each medicaid discharge in accordance with the medicare grouper program version ~~16-0~~ 17.0, as developed by 3M health information systems. The assignment of each DRG is based on:

(i) through (2)(b) remain the same.

(c) The department computes a Montana average base price per case. This average base price per case is ~~\$2075.00~~ \$2337.00 including capital expenses, effective for services provided on or after July 1, ~~1999~~ 2000.

(d) through (3) remain the same.

~~(4) The department shall reimburse inpatient hospital service providers for capital-related costs that are allowable under medicare cost reimbursement principles as set forth at 42 CFR 412.113(a), as amended through October 1, 1986. The department hereby adopts and incorporates by reference 42 CFR 412.113, sections (a) and (b), as amended through October 1, 1986, which set forth medicare cost reimbursement principles. Copies of this section may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

~~(a) Prior to settlement based on audited costs, the department shall make interim payments for each facility's capital-related costs as follows:~~

~~(i) The department shall identify the facility's total allowable medicaid inpatient capital-related costs from the facility's most recent audited or desk reviewed cost report. These costs will be used as a base amount for interim payments. The base amount may be revised if the provider can demonstrate an increase in capital-related costs as a result of an approved certificate of need that is not reflected in the base amount.~~

~~(ii) All out-of-state hospitals that are reimbursed under the DRG prospective payment system will be paid the statewide average capital cost per case as an interim capital-related cost payment. The statewide average capital cost per case is \$222.83. Such rate shall be the final capital-related cost reimbursement for facilities' cost reporting periods with respect to which the department waives retrospective cost settlement in accordance with these rules.~~

~~(iii) The department will make interim capital payments with each inpatient hospital claim paid.~~

~~(4) The department shall reimburse inpatient DRG hospital providers for capital-related costs under a prospective payment methodology. The actual cost per case shall be computed using submitted cost reports for state fiscal year 1998. The prospective payment for capital-related costs for dates of service on or after July 1, 2000 is \$262.00. The prospective capital payment amount shall be added to the base DRG amount as proposed in (2)(c).~~

(5) through (11)(b)(iii) remain the same.

(12) The medicaid statewide average cost to charge ratio equals including prospective capital expenses is 61%.

(13) The Montana medicaid DRG relative weight values, average length of stay (ALOS), outlier thresholds and stop loss thresholds are contained in the DRG table of weights and thresholds (June ~~1998~~ 2000 edition). The DRG table of weights and thresholds is published by the department of public health and human services. The department hereby adopts and

incorporates by reference the DRG table of weights and thresholds (June 1998 2000 edition). Copies may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(14) through (17) remain the same.

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

IMP: Sec. 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

3. The proposed rule changes are necessary for the administration of medicaid for inpatient hospital services.

The proposed rule changes are necessary to implement an update of the DRG grouper from Version 16.0 to Version 17.0; to update references to the Department's table of weights and thresholds (table modified to reflect update); amend the process for paying capital expenses; amend the statewide cost-to-charge ratio to include capital-related costs; update the hospital policy adjustor based on data from state fiscal year 1999 and include critical access hospital in the definitions.

ARM 37.86.2901 updates the reference to state fiscal year 1999 (July 1, 1998 through June 30, 1999) as the time frame for which the hospital policy adjustor is computed. The annual update of this time frame criteria is necessary for continued evaluation of which hospitals will qualify for the hospital policy adjustor. The Department considered and rejected the option of leaving the date contained in the current rule because it would not be fair to small rural hospitals who had a high percentage of medicaid births in their facilities for the most recent state fiscal year.

Subsection (13) updates the definition of medical assistance facility to include critical access hospital as a limited-service rural hospital licensed by the Montana Department of Public Health and Human Services. Language referencing Montana Code Annotated, 50-5-101, was removed from this subsection as the critical access hospital is not included in the law. In addition, the medical assistance facility is no longer considered a demonstration project authorized by the United States Department of Health and Human Services. The Department chose to update this subsection to include the critical access hospital and to remove old language regarding the demonstration project.

Throughout the proposed amendments, where there is a reference to medical assistance facilities, critical access hospitals was added.

ARM 37.86.2905 includes under (1)(a) a new (vii) which states facilities reimbursed under the DRG prospective payment system will be reimbursed, in addition to the prospective DRG rate, a

hospital policy adjustor payment as provided in (17). This language should have been included at the time the hospital policy adjustor was included in the rule.

Subsection (1)(b) includes the reference from (5) to (4) to correct a clerical error in the existing version.

Subsection (2)(a) updates the admission date on or after July 1, 2000 for the assignment of a DRG in accordance with medicare grouper program version 17.0. The Department rejected the alternative of keeping the medicare grouper program at version 16.0 as there are too many problems for the hospitals relating to reimbursement when medicaid's grouper is not kept current. The proposed amendment is also a reflection of a comment received last year whereby the Montana Hospital Association recommended the Department keep current with the medicare grouper.

Subsection (2)(c) defines the computed average base price per case at \$2337 which includes capital related expenses. Subsection (4) is amended in its entirety to reflect the reimbursement methodology for capital related costs under a prospective payment methodology using the actual cost per case computed from submitted cost reports for state fiscal year 1998. This subsection also references the prospective capital payment amount shall be added to the base DRG amount as proposed in (2)(c). An option for not implementing prospective payment for capital expenses would be to leave the methodology at the current process of cost settlement practices. The cost settlement process lags several years behind the current operational year and may not be an accurate reflection of the hospitals' financial responsibilities. Medicare has phased in prospective payment for capital expenses and this year is year nine in a 10 year phase-in. Therefore, the Department rejected the alternative of leaving the methodology for capital expenses at the current practices.

Subsection (12) includes the new cost to charge ratio at 61% which includes prospective capital expenses.

Subsection (13) references the DRG table of weight values, average length of stay, outlier thresholds and stop/loss thresholds as contained in the DRG table of weights and thresholds dated June 2000 which the Department adopts and incorporates by reference.

The proposed changes are necessary to update the grouper, weights/thresholds, and include prospective payment for capital-related costs in the DRG base and statewide cost to charge ratio.

Alternatives to the proposed changes in ARM 37.86.205 (formerly ARM 46.12.505) include no action which would create billing/payment problems as our grouper would be different than

the current grouper. Taking no action was not reasonable. An option for not implementing prospective payments for capital expenses would be to leave the methodology at the current process of cost settlement practices. The cost settlement process lags several years behind the current operational year and may not be an accurate reflection of the hospitals' financial responsibilities. Medicare has phased in prospective payment for capital expenses (this year is year 9 in a 10 year phase-in). Therefore, medicaid chose to align with medicare's practices. The proposed prospective payment for capital expenses is budget neutral as recommended by comments received last year from the Montana Hospital Association in response to the proposed amendments filed in 1999 relative to hospital services.

In the aggregate the reimbursement amounts for the proposed rules remain the same as the previous fiscal year. There may be an increase or decrease, however, per facility depending upon the DRG. There are 51 instate hospital providers.

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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on May 25, 2000. 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. 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.

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and
Human Services

Certified to the Secretary of State April 17, 2000.

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

In the matter of the transfer)
of ARM 16.35.101 through)
16.35.113 and the amendment)
of ARM 16.35.101 through)
16.35.103, 16.35.106 through)
16.35.109 and 16.35.111)
pertaining to end stage renal)
disease (ESRD) recipients)

NOTICE OF PUBLIC HEARING
ON PROPOSED TRANSFER AND
AMENDMENT

TO: All Interested Persons

1. On May 18, 2000, at 11:00 a.m., a public hearing will be held in the Sapphire Room, 2nd floor of the Board of Investments Building, 2401 Colonial Drive, Helena, Montana to consider the proposed transfer and 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. If you request an accommodation, contact the department no later than 5:00 p.m. on May 7, 2000, 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 Department of Public Health and Human Services has determined that the transferred rules will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
16.35.104	37.55.1001	Right to Hearing
16.35.105	37.55.301	Non-Financial Eligibility Requirements
16.35.110	37.55.701	Documentation of Claims
16.35.112	37.55.705	Priority of Payment
16.35.113	37.55.206	Notice of End of ESRD Benefits

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

16.35.101 [~~37.55.101~~] DEFINITIONS (1) through (5)(d) remain the same.

(6) "Third party" means a public or private agency which is or may be liable to pay all or part of the medical costs of a claimant, including, but not limited to, medicare (Title XVIII of the Social Security Act), medicaid (Title XIX of the Social Security Act), a county fund for the medically needy, private

insurance (including group health, private health, or family health carried by an absent parent, if applicable), the veteran's administration, CHAMPUS (civilian health and medical program of the uniformed services), the Indian health service of the U.S. public health service, and the rehabilitative services of the department of social and rehabilitation public health and human services.

~~(7) "Severe economic imbalance" means deprivation of the family unit of the necessities of life, caused by payment of expenses for the treatment of renal disease.~~

AUTH: Sec. 53-6-202, MCA
IMP: Sec. 53-6-202, MCA

16.35.102 [37.55.201] APPLICATION PROCEDURES (1) A new applicant must:

(a) submit an application to the department in writing on the form and in the manner prescribed by the department and ~~within 4 weeks after initial contact with the department (e.g. by phone or mail) together with all income information and documentation supporting eligibility; and~~

(b) through (4) remain the same.

(5) The claimant must provide the department with a new written application for the continuation of program benefits at the end of the period during which he the claimant is entitled to benefits, as determined in ARM 16.35.103 [37.55.202]. ~~If the department receives the new application within 4 weeks after the end of the benefit entitlement period, benefits will continue without a break and can verify continued eligibility before the current benefit period expires, benefits shall continue uninterrupted provided funding is available.~~

(6) remains the same.

AUTH: Sec. 53-6-202, MCA
IMP: Sec. 53-6-202, MCA

16.35.103 [37.55.202] TIME PERIOD FOR BENEFITS (1) An approved application entitles the claimant to ESRD benefits, to the extent the ESRD appropriation allows, for the following periods:

~~(a) for one year from the date the department is first contacted (by phone, mail, or otherwise) and informed of a claimant's intent to apply for ESRD benefits, if the claimant is applying for ESRD benefits for the first time and the department receives a completed written application within 4 weeks after the initial contact~~

~~(b) for one year after the date the department receives a written application, if the claimant previously received benefits but either:~~

~~(i) for a period of time was ineligible for or otherwise not receiving ESRD benefits; or~~

~~(ii) failed to submit a written application to the department within 4 weeks after the end of the last period in which s/he was entitled to benefits;~~

~~(c) for one year from the end of the prior one-year period, if the claimant has been receiving ESRD benefits for that year and submits (and the department receives) a new written application within 4 weeks after the end of the prior benefit period.~~

(a) for July 1 to June 30 of each fiscal year. Benefits shall begin in the month following receipt of and approval of the claimant's application. Retroactive benefits are not available;

(b) if a claimant's application is originally denied, or the claimant's circumstances change in such a way as to impact eligibility during any fiscal year, the claimant may submit a new application and the department will reconsider its eligibility determination.

AUTH: Sec. 53-6-202, MCA
IMP: Sec. 53-6-202, MCA

16.35.105 [37.55.301] NON-FINANCIAL ELIGIBILITY REQUIREMENTS (1) In order to participate in ESRD, the claimant applying for benefits must:

(a) through (c) remain the same.

(d) participate in medicare part A and part B or have written documentation from the social security administration that s/he the claimant is not eligible for social security benefits.

AUTH: Sec. 53-6-202, MCA
IMP: Sec. 53-6-202, MCA

16.35.106 [37.55.303] FINANCIAL ELIGIBILITY REQUIREMENTS In order to participate in ESRD, the claimant must:

~~(1) Take all reasonable steps necessary to apply for and utilize any third-party benefits, other than ESRD, to which he is or may be entitled;~~

~~(2) Show that he, or the person financially responsible for his support, is unable, without creating a severe economic imbalance in the family unit to which he belongs, to pay the cost of needed care and treatment for end-stage renal disease which remains after the third-party benefits which are reasonably available to him have been exhausted.~~

(1) In order to participate in ESRD, the claimant must take all reasonable steps necessary to apply for and exhaust any and all third party benefits, other than ESRD, to which the claimant is or may be entitled.

(2) If costs of treatment for end stage renal disease remain unpaid after the claimant has exhausted all other third party benefits, ESRD will pay the following benefits, provided funds are available:

(a) for claimants whose family unit's income is 200% of federal poverty level or less, ESRD will pay the claimant's unpaid costs for treatment of end stage renal disease or \$1000 per month, whichever is less, except the ESRD will not pay medicaid copayments or medicaid deductibles for the claimant;

(b) for claimants whose family unit's income is between 200% and 300% of federal poverty level, ESRD will prorate the available benefits by determining the percentage of income over 200% of federal poverty level and applying that percentage to the benefit cap of \$1000 per month except the ESRD will not pay medicaid copayments or medicaid deductibles for the claimant;

(c) for claimants whose family unit's income is over 300% of federal poverty level, no benefits are available from ESRD.

AUTH: Sec. 53-6-202, MCA

IMP: Sec. 53-6-202, MCA

16.35.107 [37.55.501] ELIGIBLE SERVICES AND SUPPLIES: GENERAL (1) The department, to the extent of its appropriation for ESRD, will pay for the costs listed in ARM 16.35.108 for approved ESRD-eligible individuals only if each service or supply is directly related to end-stage renal disease, medically necessary, ordered by a physician, and provided after the time the individual in question first contacts the department (in person, by mail, or by phone) to apply for ESRD benefits, with the exception noted in ARM 16.35.108(3)(b) for renal transplant patient transportation costs individual's application has been approved by the department.

AUTH: Sec. 53-6-202, MCA

IMP: Sec. 53-6-202, MCA

16.35.108 [37.55.502] ELIGIBLE SERVICES AND SUPPLIES (1) ESRD will pay for the cost of each of the following services and supplies which remains after all available third-party benefits have been utilized to pay for them:
(a) through (a)(iii)(J) remain the same.
(b) For home dialysis patients only:
(i) through (iii) remain the same.
(iv) for those patients choosing to obtain and maintain their own home dialysis supplied supplies and equipment (medicare method II):
(A) through (c)(v) remain the same.

AUTH: Sec. 53-6-202, MCA

IMP: Sec. 53-6-202, MCA

16.35.109 [37.55.505] NON-ELIGIBLE SERVICES (1) The cost of the following services and supplies is not eligible for payment from ESRD:
(a) attendant or "back-up" person;
(b) through (h) remain the same.
(i) access-site surgery prior to initiation of dialysis treatments; and
(j) medicaid copayments or medicaid deductibles.

AUTH: Sec. 53-6-202, MCA

IMP: Sec. 53-6-202, MCA

16.35.110 [37.55.701] DOCUMENTATION OF CLAIMS (1) A claim for ESRD reimbursement, in order to be reimbursable, must contain, or be accompanied by, the documentation required by the following sections of this rule: .

(2) through (2)(b) remain the same.

(3) A physician service claim must be:

(a) submitted and itemized on a completed universal health insurance claim form approved by the American medical association's council on medical services; and

(b) ~~accompanied by~~ have a completed medicare EOB and an EOB from any private insurance which the patient might have which covers the service in question attached.

(4) A hospital service claim (inpatient or outpatient) must be:

(a) submitted on the universal hospital insurance form approved by the health insurance association of America and accepted for hospital use by the American hospital association; and

(b) ~~accompanied by~~ have an itemized statement, medicare EOB, and an EOB from any private insurance which the patient might have which covers the service in question attached.

(5) A claim for dialysis supplies must be ~~accompanied by~~ have an itemized statement from the supplier, proper invoice numbers, medicare EOB's and the EOB's from any private insurance which the patient might have which covers purchase of the supplies in question attached.

(6) and (7) remain the same.

AUTH: Sec. 53-6-202, MCA

IMP: Sec. 53-6-202, MCA

16.35.111 [37.55.702] CONDITIONS OF CLAIM PAYMENT

~~(1) Payment of a claim will be made only when the balance due exceeds \$20 and:~~

~~(a) to the provider of the service or supply for which a claim is made;~~

~~(b) after all other reasonably available sources of payment for that service or supply, such as medicare or private insurance, have either paid in part or denied payment for the service or supply in question;~~

~~(c) for the portion of the cost of an ESRD-eligible service or supply which does not exceed either the amount allowed by medicare for that service or supply or the actual cost of that service or supply, whichever is less;~~

~~(d) in the case of a charge for a drug, to the extent it does not exceed the average wholesale price specified in the drug topics redbook (excluding updates to that volume) for that drug; and~~

~~(e) for services and supplies obtained by a claimant during a given month, up to a maximum of \$2,000, subject to the proviso that if any ESRD funds remain at the end of a fiscal year in excess of the eligible claims against them, the excess funds will be used to pay for claims unpaid because they exceeded the \$2,000 limit, payment being made in the order in~~

~~which such claims from all claimants were submitted to the department.~~

~~(2) The department hereby adopts and incorporates by reference the "Annual Pharmacists' Reference", 1991 edition, referred to as the drug topics redbook, which contains the average wholesale prices for most commercially available drugs. A copy of the drug topics redbook may be obtained from Drug Topics Redbook Publications, Medical Economics Co., Inc., Oradell, New York 07649, and the average wholesale prices currently set by the Redbook for drugs may be obtained from the ESRD program, Department of Health and Environmental Sciences, Cogswell Building, Capitol Station, Helena, Montana 59620; telephone (406)444-3121.~~

~~(1) Payment of a claim will be made only when the amount payable by ESRD exceeds \$20.~~

~~(2) Payment will be made, subject to (5) below, directly to the provider for that portion of the cost of eligible services or supplies which does not exceed either the amount allowed by medicare for the particular service or supply or the actual costs, whichever is less.~~

~~(3) Payment will be made only after all other reasonably available sources of payment, such as medicare or private insurance, have either paid in part or denied payment for the services or supplies.~~

~~(4) Payments for drugs will be made, subject to (5) below, only to the extent that the charges do not exceed the average wholesale price specified in the drug topics redbook for the specific drug. The department hereby adopts and incorporates by reference the most current version of the "Annual Pharmacists' Reference", referred to as the drug topics redbook which contains the average wholesale prices for most commercially available drugs. A copy of the drug topics redbook may be obtained from Drug Oradell, New York 07649. The average wholesale price for drugs used to treat end stage renal disease may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, ESRD Program, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

~~(5) Benefit payments may not exceed \$1000 per month per eligible claimant.~~

AUTH: Sec. 53-6-202, MCA

IMP: Sec. 53-6-202, MCA

4. The State of Montana operates an End Stage Renal Disease Program (ESRD), using State general fund money, to assist persons who suffer from end stage renal disease with the payment of costs of treatment. Presently, the program provides assistance to all who apply and meet the medical need criteria. Consequently, the program's funding resources are usually depleted about six months into the fiscal year. In order to address the funding shortfall, the Montana legislature passed HB 170, amending 50-44-102, MCA, to require the Department to provide ESRD benefits first to those most in need, based either on financial need, medical need, or both. The amended law also

requires the Department to amend its rules governing the ESRD program in order to ensure that program funds are used to provide benefits to those most in need first.

In order to determine the best way to provide benefits to those most in need, the Department consulted with experts at the University of Montana. The University conducted a study and provided a report on suggested methods for using scarce ESRD funds to cover the broad base of needs. The Department has considered those suggestions in constructing the need-based scheme proposed in the rule amendments.

The Department is proposing the amendment to ARM 16.35.101 [37.55.101] in order to delete the definition of "severe economic imbalance". Under the new needs-based scheme it will not be necessary for claimants to certify that the costs of end stage renal disease are creating a "severe economic imbalance". Rather, eligibility will be determined on the basis of the family unit's income and medical need. Consequently, there is no need to define "severe economic imbalance" in the rule. The amendment is necessary to delete the obsolete term.

The Department is proposing the amendments to ARM 16.35.102 [37.55.201] in order to address the changes necessary in the application process to accommodate a needs-based approach. Previously, an application was submitted and benefits were paid upon proof of medical need. Due to the 1999 legislative mandate of HB 170, income criteria must now be gathered and assessed. Consequently, the proposed changes to ARM 16.35.102 [37.55.201], adding language about income information and supporting documentation, are necessary to allow the Department to make appropriate decisions regarding a particular claimant's financial need prior to awarding or continuing benefits.

The proposed changes to ARM 16.35.103 [37.55.202] are necessary in order to allow the Department to effectively manage the limited funds available to the ESRD program. Through HB 170, the 1999 legislature made it clear that the Department must award benefits to those most in need. Consequently, the Department must reevaluate a claimant's circumstances on a periodic basis in order to ensure that the claimant's circumstances have not changed significantly and that the claimant's circumstances, relative to the need of others, has not become more or less severe. The Department chose to reevaluate each claimant's circumstances annually as a matter of course in order to ensure continued eligibility. The Department could have chosen to reevaluate circumstances more frequently, but that course of conduct would have resulted in added administrative costs and would have required the claimants to gather and submit documentation more frequently adding a significant burden on the part of the beneficiaries of the program. Thus, the Department determined that annual reevaluation was adequate and most appropriate. The Department did not, however, wish to prevent persons whose needs had

significantly changed during the course of the fiscal year from becoming eligible. Consequently, the Department added the language of the new subsection (1)(b) allowing claimants to reapply for benefits after denial or during any fiscal year if their medical or financial circumstances changed in such a way as to impact eligibility. The Department changed the eligibility period to run from July 1 to June 30 of each year in order to bring the program into accord with the State fiscal year. This will allow the Department to more effectively manage and budget its funds.

The proposed amendments to ARM 16.35.106 [37.55.303] are necessary in order for the Department to meet the mandate of HB 170 and develop a needs-based approach for the ESRD program. The amendments state that the program will pay benefits, up to \$1000 per month, for persons whose family unit's income is 200% of federal poverty level or less, provided the other eligibility requirements are met and funding is available. For eligible claimants whose family unit's income is 200% to 300% of federal poverty level, the Department will prorate benefits according to the percentage of claimant's family unit's income that is over 200% of poverty level. For example, if a claimant's family unit's income is 250% of federal poverty level, the Department will use the 50% proportion and prorate the available \$1000 a month cap, creating a maximum benefit for that claimant of \$500 per month, provided that funding is available. Benefits will no longer be available to persons whose family unit's income is over 300% of federal poverty level. The amendment also says that ESRD will not pay Medicaid copayments and deductibles. The Department notes that Medicaid recipients are already receiving State-paid benefits and that the Medicaid program is supposed to be the payor of last resort. Thus, the Department does not feel it is appropriate for the ESRD program to be contributing additional funds, as a gap filler, for Medicaid recipients.

The Department considered higher and lower income levels, but in consultation with the University experts and using the experience and expertise of the program administrators, the Department determined that it would be most effective, and would likely allow the Department to sustain its funding resources for a longer period of the fiscal year, if income levels were set at 200% and 300% of federal poverty level. The Department also reduced the monthly cap to \$1000 per month per eligible claimant in order to attempt to spread the program resources over a broader base of need.

The amendment to ARM 16.35.107 [37.55.501] is necessary to accommodate the change in the application process in order to consider additional criteria, including financial information, before awarding benefits based on need. Previously, applications were approved upon a showing of medical need and could be retroactive to the time the claimant first made contact with the ESRD program, provided the medical need existed at the time contact was made. But, pursuant to the mandate of HB 170,

financial criteria must now also be considered. Thus, the change to the language of ARM 16.35.107 [37.55.501] is needed to ensure that benefits will only be paid upon approval of a claimant's application and only after all necessary documentation required for the Department to approve an application has been submitted.

The proposed amendment to ARM 16.35.108 [37.55.502] is necessary to correct a typographical error in the text of subsection (1)(b)(iv). The rule currently reads "dialysis supplied" when it should read "dialysis supplies". The amendment is necessary to correct the error and add clarity to the language of the rule.

The proposed amendment to ARM 16.35.109 [37.55.505] is necessary to add the restriction against using ESRD funds to pay for Medicaid copayments and deductibles. The rules need to be consistent and since proposed ARM 16.35.106 [37.55.303] specifically exempts payments for Medicaid copayments and deductibles, the language of ARM 16.35.109 [37.55.505] must be adjusted accordingly. The amendment is necessary, consequently, to avoid a conflict of law and to avoid confusion.

The amendments to ARM 16.35.111 [37.55.702] are necessary to clarify the conditions of payment to address the new needs-based benefits scheme and to reduce the available benefits cap to \$1000 per month per claimant in order to conform with the amendments to ARM 16.35.106 [37.55.303]. The amendment restructures the conditions to avoid confusion and to add clarity. Substantive changes to the rule were not made, with the exception of reducing the cap to the \$1000 a month per claimant as mentioned above.

The proposed rule amendments are intended to provide benefits to those most in need and to spread the limited program funds over a broader base of need. Presently, the program generally runs out of funds after approximately the sixth month in the fiscal year. The amendments, hopefully, will assist the Department in making funds available throughout the fiscal year. While the monthly benefit cap has been reduced under the proposed amendment, it is the Department's hope that the availability of funds over a longer period of time will alleviate any hardship the reduced cap may create for claimants most in need. While the new eligibility scheme is likely to create changes in benefit amounts and total benefit payments available during the eligibility period for some recipients, the actual impact is presently unknown. The amendments will not increase fiscal costs to the State of Montana as the appropriation for the program has not changed, the Department will simply distribute its appropriated funds according to the scheme required by HB 170 under the amendments, rather than upon medical need alone. It is the Department's sincere hope that, in the long run, these amendments will benefit those recipients most in need.

5. 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 May 25, 2000. 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. 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.

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

/s/ Dawn Sliva
Rule Reviewer

/s/ Laurie Ekanger
Director, Public Health and
Human Services

Certified to the Secretary of State April 17, 2000.

BEFORE THE STATE COMPENSATION INSURANCE FUND
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF ADOPTION OF NEW
of New Rule I pertaining to)	RULE I (2.55.327A)
the construction credit)	PERTAINING TO THE
program, amendment of ARM)	CONSTRUCTION CREDIT PROGRAM
2.55.320, 2.55.323, 2.55.324,)	AND AMENDMENT AND REPEAL OF
2.55.325, 2.55.326, 2.55.402,)	RULES PERTAINING TO PREMIUM
2.55.403, 2.55.407, 2.55.408,)	RATES AND MODIFIERS
2.55.409, 2.55.502 pertaining)	
to premium rates, premium)	
modifiers and dividends, and)	
repeal of 2.55.404 and)	
2.55.405 pertaining to)	
premium modifiers)	

TO: All Concerned Persons

1. On January 13, 2000, the State Compensation Insurance Fund published notice of the proposed adoption of New Rule I pertaining to the construction credit program; and the proposed amendment of rules 2.55.320, 2.55.323, 2.55.324, 2.55.325, 2.55.326, 2.55.402, 2.55.403, 2.55.407, 2.55.408, 2.55.409, 2.55.502 pertaining to premium rates, premium modifiers and dividends; and the repeal of rules 2.55.404 and 2.55.405 pertaining to premium modifiers at pages 1-12 of the 2000 Montana Administrative Register, issue number 1.

2. The Board adopted new Rule I, amended rules 2.55.320, 2.55.323, 2.55.324, 2.55.325, 2.55.326, 2.55.402, 2.55.403, 2.55.407, 2.55.408, 2.55.409, 2.55.502, and repealed rules 2.55.404 and 2.55.405 as proposed.

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

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

/s/ Jim Broulette
Jim Broulette
Chairman of the Board

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

Certified to the Secretary of State April 17, 2000.

BEFORE THE BOARD OF CLINICAL LABORATORY SCIENCE PRACTITIONERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) CORRECTED NOTICE
of rules pertaining to) OF AMENDMENT
applications for license,)
fees, minimum standards for)
licensure, continuing education))
requirements)

TO: All Concerned Persons

1. On December 2, 1999, the Board of Clinical Laboratory Science Practitioners published notice of the proposed amendment of the above-stated rules, pertaining to applications, fees, minimum standards for licensure and continuing education requirements, at page 2675 of the 1999 Montana Administrative Register, Issue Number 23, and on March 16, 2000 published notice of the amendment of said rules at page 727 of the 2000 Montana Administrative Register, Issue Number 5.

2. This corrected notice is being filed to correct an error in the amendment of ARM 8.13.306 in that subsections (b) through (3)(d) were not referred to in the notice of amendment.

8.13.306 CONTINUING EDUCATION REQUIREMENTS (1) through (2)(a)(xvi) remain as amended.
(b) through (3)(d) remain as proposed.

3. Replacement pages for the corrected notice of amendment were submitted to the Secretary of State on March 31, 2000.

BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
SONJA BENNETT, CHAIRPERSON

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 17, 2000

BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of amendment) NOTICE OF AMENDMENT
of rules pertaining to)
examinations, continuing)
education and fee schedule)

TO: All Concerned Persons

1. On February 10, 2000, the Board of Nursing Home Administrators published a notice of the proposed amendment of ARM 8.34.414 EXAMINATIONS, 8.34.416 CONTINUING EDUCATION and 8.34.418 FEE SCHEDULE at page 227, 2000 Montana Administrative Register, issue number 3.

2. The Board has amended ARM 8.34.414, 8.34.416 and 8.34.418 exactly as proposed.

3. The Board received no comments.

BOARD OF NURSING HOME
ADMINISTRATORS
BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 17, 2000.

BEFORE THE BOARD OF OCCUPATIONAL THERAPISTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of rules pertaining to fees)

TO: All Concerned Persons

1. On March 16, 2000, the Board of Occupational Therapists published a notice of the proposed amendment of ARM 8.35.407 FEES at page 685, 2000 Montana Administrative Register, issue number 5. The hearing was held April 5, 2000.

2. The Board has amended ARM 8.35.407 exactly as proposed.

3. The Board received three comments. The comments received and the Board's response are as follows:

COMMENTS 1-3: Three comments were received concerning the proposed fee increases and requesting a more detailed explanation of the expenditures and what necessitated the proposal for a 300% increase in licensing fees.

RESPONSE: The Board is required to set fees commensurate with costs in administering the program. Since the Board was created in 1985, revenue from fees collected was always greater than the expenditures and a cash balance was created that was in excess of the amount recommended. For example, the cash balance for the Board at the end of fiscal year 1996 was \$70,300 when the expenditures for the same fiscal year were \$8,345, a surplus greater than eight times the budget. In 1997, House Bill 240 was passed prohibiting state agencies from maintaining a cash balance that is greater than necessary to finance the services of the entity for more than two years. The Department of Commerce, in order to address the cash balance inequity, received approval from the Board to use some of the excess cash balance to support the creation of a new database for the Professional and Occupational Licensing Division. The Board committed \$29,000 to the project and also requested an increase in its funding level to support a grant of \$10,000 per year for continuing education purposes. At the end of fiscal year 1999, the cash balance of the board was decreased to \$20,179. The Board's general operating expenses have increased from \$8,345 in fiscal year 1996 to \$37,026 in fiscal year 2000. The breakdown of the \$37,026 budget appropriation for the Board in fiscal year 2000 is as follows:

<u>Category</u>	<u>Amount</u>	<u>Explanation</u>
Per diem	\$ 700	\$50/day for board members while conducting board business
Other services	14,687	Contracted services, legal fees and printing
Communications	2,499	Postage and mailing, telephone charges

Travel	2,047	Board member and staff travel reimbursements
Rent	14	Records storage
Other expenses	241	Dues, registration fees, indirect costs
Recharges	16,838	Division charges for every day costs of business operations, i.e. staff salaries (program manager, attorneys, investigators, management), rent, utilities, audit fees, monthly computer charges

BOARD OF OCCUPATIONAL THERAPISTS
LINDA BOTTEN, CHAIRMAN

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 17, 2000.

BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of rules pertaining to fees)

TO: All Concerned Persons

1. On February 24, 2000, the Board of Physical Therapy Examiners published a notice of the proposed amendment of 8.42.403 FEES at page 543, 2000 Montana Administrative Register, issue number 4.
2. The Board has amended ARM 8.42.403 exactly as proposed.
3. The Board received no comments.

BOARD OF PHYSICAL THERAPY
EXAMINERS
BEVERLY HANCOCK, PT
BOARD CHAIRPERSON

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 17, 2000.

BEFORE THE BOARD OF RESPIRATORY CARE PRACTITIONERS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of amendment) NOTICE OF AMENDMENT
of rules pertaining to)
definitions, procedures for)
renewal, inactive status)
licenses and continuing)
education requirements)

TO: All Concerned Persons

1. On February 24, 2000, the Board of Respiratory Care Practitioners published a notice of the proposed amendment of ARM 8.59.402 DEFINITIONS, 8.59.505 PROCEDURES FOR RENEWAL, 8.59.507 INACTIVE STATUS, and 8.59.601 CONTINUING EDUCATION REQUIREMENTS at page 548, 2000 Montana Administrative Register, issue number 4. The hearing was held March 15, 2000.

2. The Board has amended ARM 8.59.402 and 8.59.505 as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

8.59.402 DEFINITIONS (1) through (3) will remain as proposed.

(4) The board defines "pulse oximetry," pulmonary function testing" and "spirometry" as diagnostic procedures that, pursuant to the orders of a physician, may be performed only by, or under clinical supervision of, a licensed respiratory care practitioner, or other licensed health care professional or individuals provider who have has met the minimum competency standards. Pulmonary function testing and spirometry minimum competency standards, as they currently exist, as are established by the national institute for occupational safety and health (NIOSH) or the national board for respiratory care (NBRC) certification examination for entry level pulmonary function technologist (CPFT) credential or registry examination for advanced pulmonary function technologists (RPFT) specific to pulmonary function testing.

8.59.505 PROCEDURES FOR RENEWAL (1) will remain as proposed.

(2) Licenses expire every even numbered year on May 1 the renewal date set forth in ARM 8.2.208.

(3) will remain as proposed.

3. The Board has amended ARM 8.59.507 and 8.59.601 exactly as proposed.

4. The Board received 17 comments. The comments received and the Board's response are as follows:

COMMENT No. 1: Brenda St. Clair, Bureau Chief from the Department of Commerce, Professional and Occupational Licensing Division commented in writing that the renewal dates are established in ARM 8.2.208 and the specific board rule should reference the department rule so that the specific date is not in two locations. Should the date be changed in the future, only one rule will need to be amended and eliminates the possibility of one rule being amended and the other being missed.

RESPONSE: The Board acknowledged the comment and voted to accept the changes as proposed by Ms. St. Clair.

COMMENTS No. 2 through 17: The Board received 16 comments from St. Patrick Hospital personnel and testimony at the public hearing regarding no guidelines being in place for competency by "other licensed health care professionals." There was also concern regarding grouping pulse oximetry with pulmonary function testing and spirometry in the definitions section of the proposed rule.

REASON: The Board acknowledged the comments and amended the rule to establish the guidelines for minimum competency standards for pulmonary function testing and spirometry.

BOARD OF RESPIRATORY CARE
PRACTITIONERS
RICK LUNDY, PRESIDENT

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 17, 2000.

BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) CORRECTED NOTICE OF
of ARM 8.94.3001, 8.94.3002 and) AMENDMENT
8.94.3003 pertaining to the)
monumentation of surveys and to)
the form, accuracy, and descrip-))
tive content of records survey)

TO: All Concerned Persons

1. On February 10, 2000, the Local Government Assistance Division published notice of the amendment of ARM 8.94.3001, 8.94.3002 and 8.94.3003 pertaining to the monumentation of surveys and to the form, accuracy, and descriptive content of records survey at page 462 of the 2000 Montana Administrative Register, issue no. 3.

2. The reason for the correction is to add necessary language to 8.94.3003(2)(p)(i). This new material was not added in the proposal but was added in the adoption notice. ARM 8.94.3003 is corrected to read as follows: (authority and implementing sections will remain as adopted)

8.94.3003 UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS

(1) through (2)(p) will remain the same.

(i) If the parcel being subdivided is either an aliquot part of a U.S. government section or a U.S. government lot, the information required by this subsection is the aliquot or government lot description of the parcel.

(ii) through (3) will remain the same.

3. Replacement pages for the corrected notice of amendment were submitted to the Secretary of State on March 31, 2000.

LOCAL GOVERNMENT ASSISTANCE
DIVISION
DEPARTMENT OF COMMERCE

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 17, 2000.

BEFORE THE LOCAL GOVERNMENT ASSISTANCE DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
of the rule for the submission) RULE 8.94.3806 PERTAINING
and review of applications) TO THE 2000/2001 TREASURE
under the 2000/2001 Treasure) STATE ENDOWMENT PROGRAM
State Endowment Program (TSEP))

TO: All Concerned Persons

1. On February 24, 2000, the Local Government Assistance Division published notice of a public hearing on the proposed amendment of the above-stated rule at page 552, 2000 Montana Administrative Register, issue number 4. The Local Government Assistance Division convened the hearing on March 15, 2000, at 1:30 p.m. in the downstairs conference room at the Department of Commerce building, 1424 Ninth Avenue, Helena, Montana 59620.

2. The Local Government Assistance Division has amended 8.94.3806 exactly as proposed.

3. No members of the public attended the hearing. The Local Government Assistance Division did receive two written comments during the comment period provided for by the Administrative Procedure Act. Both of these comments supported the proposed amendment.

LOCAL GOVERNMENT ASSISTANCE
DIVISION
DEPARTMENT OF COMMERCE

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 17, 2000.

BEFORE THE BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment,) CORRECTED NOTICE OF
repeal and adoption of rules) AMENDMENT AND
pertaining to the board of) ADOPTION
investments)

TO: All Concerned Persons

1. On February 10, 2000, the Board of Investments published notice of the proposed amendment, repeal and adoption of rules pertaining to the Board of Investments at page 470 of the 2000 Montana Administrative Register, issue no. 3.

2. The reason for the correction of these rules is to change incorrect rule numbers assigned as ARM 8.97.2103, 8.97.2104 and 8.97.2105 as follows:

- 8.97.2103 becomes 8.97.1308
- 8.97.2104 becomes 8.97.1309
- 8.97.2105 becomes 9.97.1310.

In addition, the incorrect statute was used as the authority cite for ARM 8.97.2103 (8.97.1308).

Corrections to internal references within ARM 8.97.2102 are also being made in this notice. ARM 8.97.1308 and 8.97.2102 are corrected to read as follows:

8.97.1308 AUTHORIZED LOAN TYPES (1) will remain the same.

Auth: Sec. 17-6-~~342324~~, MCA; IMP, Sec. 17-6-308, MCA

8.97.2102 GENERAL REQUIREMENTS OF THE ENVIRONMENTAL REVIEW PROCESS (1) through (2)(c) will remain the same.

(i) the action is not excluded under ~~subsection (5) (e)~~ or ~~(6) (f)~~ and it is not clear without preparation of an EA whether the proposed action is a major one significantly affecting the quality of the human environment;

(ii) the action is not excluded under ~~subsection (5) (e)~~ or ~~(6) (f)~~ and although an EIS is not warranted, the agency has not otherwise implemented the interdisciplinary analysis and public review purposes listed in ~~(2)(a) and (d)~~ (b)(i) and (iv) through a similar planning and decision-making process; or

(iii) through (e)(vi) will remain the same.

(f) In addition to the categories of actions listed under ~~(5) (e)~~, the board has determined that the following programs and/or actions do not have a significant impact on the human environment, are primarily economic in nature, and therefore do not require the preparation of an EA or an EIS;

(i) through (x) will remain the same.

(g) If an extraordinary circumstance pertaining to one of the programs and/or actions excepted in ~~(6)~~ (f) is brought to the attention of the board or board staff, the board shall determine whether such circumstance may create a significant impact on the human environment. If the board determines that such circumstance may create a significant impact on the human environment, then the program and/or action is no longer exempt under ~~subsection (6)~~ (f) and ARM 8.2.302 through 8.2.327 applies.

Auth: Sec. 2-3-103, 2-4-201, MCA; IMP, Sec. 2-3-104, 75-1-201, MCA

3. Replacement pages for the corrected notice of amendment and adoption were submitted to the Secretary of State on March 31, 2000.

BOARD OF INVESTMENTS
DEPARTMENT OF COMMERCE

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 17, 2000.

BEFORE THE ECONOMIC DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT OF
and repeal of rules pertaining) ARM 8.99.401,
to the MicroBusiness Finance) 8.99.403, 8.99.404,
Program) 8.99.501, 8.99.502,
) 8.99.503, 8.99.504,
) 8.99.505, 8.99.506,
) 8.99.508, 8.99.511, AND THE
) REPEAL OF 8.99.402,
) 8.99.405 AND 8.99.510

TO: All Concerned Persons

1. On February 24, 2000, the Economic Development Division published a notice of the proposed amendment and repeal of the above stated rules at page 555, 2000 Montana Administrative Register, issue number 4. The hearing was held March 16, 2000.

2. The Division has amended ARM 8.99.401, 8.99.403, 8.99.404, 8.99.501, 8.99.502, 8.99.503, 8.99.504, 8.99.505, 8.99.506, 8.99.508, 8.99.511 and repealed 8.99.402, 8.99.405 and 8.99.510 exactly as proposed.

3. The Division has thoroughly considered all comments and testimony received. Those comments and the Division's responses are as follows:

COMMENT NO. 1: Commentor, Gary Winship of Northwest Montana Human Resources, Inc., stated it makes it a lot easier to read when it is shortened so much. In the world of microbusiness, we appreciate that.

RESPONSE: The Department acknowledged Gary Winship's comments. No further response is necessary as Gary Winship concurred with the proposed rule amendments.

COMMENT NO. 2: Commentor, Rosalie Sheehy Cates of Montana Community Development Corporation stated the changes are appropriate.

RESPONSE: The Department acknowledged Rosalie Sheehy Cates' comments. No further response is necessary as Rosalie Sheehy Cates concurred with the proposed rule amendments.

COMMENT NO. 3: Commentor, Lynn Robson of Gateway Economic Development Corporation stated the effect of these proposed changes is far reaching and though many of the proposed changes simplify the administration of the program, questioned the effect of a few of the proposed changes on future Microbusiness Development Loan Agreements. Gateway submitted the following five questions for comment from the Department:

1. Will these proposed changes affect the standard MicroBusiness Development Loan Agreements currently in effect?

RESPONSE: The Department has developed a new development loan agreement. The MBDCs that have reviewed the agreement support the changes and like the new agreement. Copies of the boilerplate agreements are available from the Department.

2. The proposed change adds the term "financial stability" to required sources and sufficiency of the operating income for the MBDC development loan criteria. Are there qualifications or is there a definition for "financial stability"? What criteria and process will be used to determine financial stability?

RESPONSE: There are a variety of measures of organizational "financial stability". It would be difficult to define this in rules. However, based upon the past experience of the program it is clear that we must depend on the host organization's other financial resources to help support the Microloan program activities.

3. The proposed change in ARM 8.99.503 allows a change in the development loan interest rate annually. Having a stable and increasingly reduced cost of funds is very important. Will the Department change its practice of having a fixed rate of interest in the four-year loan agreements?

RESPONSE: The current administrative rules already include language that allows the Department to adjust the development loan interest rate annually. The interest rates in the current loan agreements are not fixed. The intent of the new language is to establish that a maximum rate will be specified in the four-year development loan agreement. Without the additional language, the MBDCs have less protection from changes in interest rates.

4. Changes proposed in ARM 8.99.504 move the nature of the microbusiness development loan from one of an "equity-like" investment to a term loan.

RESPONSE: The MicroBusiness Finance Program has never provided an equity investment. The statute clearly refers to development loans.

5. The proposed change in ARM 8.99.505 to eliminate the term "collateral" will find MBDCs, who are leveraging the funds by providing the funds as "match" for other like loan funds, eliminated for consideration by this change.

RESPONSE: The Department stated the Act (17-6-407, MCA) provides that the development loan funds may be used by a certified microbusiness development corporation to satisfy matching funds requirements for other state, federal, or

private funding if funding is intended and used for the purpose of providing or enhancing the corporation's ability to provide and administer loans, technical assistance, or management training to microbusinesses. This statute allows an MBDC to utilize development loan funds as matching funds for Federal programs such as CDFI programs.

In addition to these questions and comments regarding the proposed changes, Gateway proposed an additional change to the ARM 8.99.504 Development Loan - Terms as follows: Development loans ~~shall~~ may be interest only loans, renewable at intervals of up to ten years. MBDCs which meet standards of portfolio performance may be considered for a conversion of the development loan to an equity investment in the MBDCs loan program.

RESPONSE: The Department does not concur with Gateway's additional change. Your recommendation that we amend the rules to allow the conversions of development loans to equity investment is not a change that can be effected through the rule making process. The MicroBusiness Development Act would have to be changed. This would require legislation.

ECONOMIC DEVELOPMENT DIVISION

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 17, 2000

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the)
adoption, transfer,)
transfer and amendment,)
and repeal of rules)
relating to special)
education)

NOTICE OF ADOPTION, TRANSFER,
TRANSFER AND AMENDMENT,
AND REPEAL OF RULES RELATING
TO SPECIAL EDUCATION

TO: All Concerned Persons

1. On January 27, 2000, the Superintendent of Public Instruction published notice of the proposed adoption, transfer, transfer and amendment, and repeal of rules concerning special education, at page 129 of the 2000 Montana Administrative Register, Issue Number 2.

2. After consideration of the comments received, the agency has adopted the following new rules exactly as proposed: RULE I, ARM 10.16.3007; RULE II, ARM 10.16.3008; RULE III, ARM 10.16.3340; RULE V, ARM 10.16.3502; RULE VI, ARM 10.16.3506; RULE VII, ARM 10.16.3528; RULE IX, ARM 10.16.3530; and RULE X, ARM 10.16.3531.

RULE II (10.16.3008) ADVERSELY AFFECT THE STUDENT'S
EDUCATIONAL PERFORMANCE

COMMENT 1: Sue Paulson, Director of Prickly Pear Cooperative, commented that the rule allows for the interpretation that a student's condition which impacts his or her performance to any degree, can be determined to "adversely affect" the student's educational performance and qualify the student for the first prong of the test for eligibility to special education. More guidance in concrete terms is needed to define "adversely affects" as a determinant of disability.

COMMENT 2: Leonard Orth, Director of Eastern Yellowstone Special Services Cooperative, and Pat Gum, Director of Special Education for the Billings Public Schools, commented that the additional terms of "severe," "significant," and "substantially limits" should be defined.

RESPONSE 1 & 2: Rule I (ARM 10.16.3007), was adopted to emphasize the two-part test used by the child study team (CST) to determine whether a student qualifies for services under the Individuals with Disabilities Education Act (IDEA). The student must have a disability as defined in federal regulations at 34 CFR 300.7 and ARM 10.16.1115 through 10.16.1128 (10.16.3010 through 10.16.3022). The identified disability must "adversely affect the student's educational

performance" to the extent that the student needs special education as defined in 34 CFR 300.26.

The IDEA requires that "a group of individuals" reviews evaluation data and determines whether a student qualifies for IDEA services on a student by student basis. In Montana, these individuals are members of the child study team. This process relies on parental and professional judgment to define the terms "severe," "significant," and "substantially limits." One reason Montana continues to use the child study team model is to allow team members to pool their knowledge and reach agreement on whether the individual student meets the requirements of Rule I (ARM 10.16.3007).

RULE III (10.16.3340) INDIVIDUALIZED EDUCATION PROGRAM AND PLACEMENT DECISIONS

COMMENT 3: Sue Paulson commented that specific topics such as the requirement that physical education be addressed on the individualized education program (IEP) are found in several different federal regulations making it difficult to find without guidance in state administrative rules.

RESPONSE 3: The content of the IEP is outlined in 34 CFR 300.347. Physical education is defined as special education (see 34 CFR 300.26) and is included in 34 CFR 300.347(a).

The State Superintendent recognizes that the decision not to repeat IDEA federal regulations in the state administrative rules may result in a less user-friendly set of ARMS and may require development of additional guidelines for public agency users.

3. After consideration of the comments received, the agency has adopted the following new rules with the changes given below, stricken matter interlined, new matter underlined:

RULE IV (10.16.3342) TRANSFER STUDENTS: INTRASTATE AND INTERSTATE (1) When an IDEA eligible student moves to a new school district within the state and the student's current IEP is available, the new school district shall ensure that there is no interruption of special education and related services. If the current IEP is not available, or if the new school district or the parent believes that the IEP is not appropriate, the new school district must develop a new IEP through appropriate procedures within a short time (normally within one week) after the student enrolls in the new school district. Before the new IEP is finalized, the new school district may provide interim services agreed to by both the parents and the new school district. If the parents and the new school district are unable to agree on an interim IEP and placement, the new school district must implement the former IEP to the extent possible until a new IEP is developed and

implemented. To the extent that implementation of the former IEP is impossible, the new district must provide services that approximate, as closely as possible, the former IEP.

(2) remains the same as proposed.

AUTH: 20-7-402, MCA

IMP: 20-7-403, MCA

COMMENT 4: Sondra Strong, Special Education Director at Evergreen School District, Bigfork School District, Helena Flats School District, and Flathead Special Education Cooperative, commented that there is no provision for the new school district to review the existing evaluation data to determine if it is adequate. She also felt that it was unclear what process an IEP team would use when a new district, at its discretion, elects not to provide a program such as preschool services to children who do not meet one of the existing categories in ARM 10.16.1115(2) (10.16.3010(2)).

RESPONSE 4: School Districts within Montana are required to apply ARM 10.16.1115 through 10.16.1128 (10.16.3010 through 10.16.3022) to determine whether a student has one of the listed disabilities in 34 CFR 300.7. The criteria for determining whether a student has an IDEA disability does not vary within the State. The fact that a student moves from District A to District B within the state of Montana does not terminate the student's right to receive a free appropriate public education. The receiving district must provide the new student with IDEA services. Before a receiving district can discontinue services to a student qualified for IDEA services by another Montana school district, the receiving district must convene a CST meeting to review existing evaluation data and, if necessary, complete additional evaluations. The CST shall decide whether the student continues to meet the requirements for IDEA services. During the time needed for additional evaluations and the child study team decision, the receiving district must provide IDEA services in accordance with this rule.

COMMENT 5: Sue Paulson commented that nothing in federal regulation identifies the process by which schools are to review and revise a transfer student's IEP. Clarification should be made regarding timelines and that the IEP team makes the decision about what can and cannot be implemented in a student's IEP.

RESPONSE 5: Decisions about services to be provided a student with an IDEA disability must be made by a properly constituted IEP team under 34 CFR 300.344. Any exception to that general requirement must be in federal regulation. Appendix A to 34 CFR Part 300, Notice of Interpretation, Question and Answer #17, addresses the issue of intrastate transfers. The rule is modified to reflect #17.

RULE VIII (10.16.3529) SELECTION OF EXPEDITED DUE PROCESS HEARING OFFICER (1) remains the same as proposed.

(2) The superintendent of public instruction shall appoint Aa qualified due process hearing officer shall be appointed by the superintendent of public instruction from the list without input from the parties involved in the hearing.

AUTH: 20-7-402, MCA

IMP: 20-7-403, MCA

COMMENT 6: Pat Gum commented that it should be clear that the appointment will be made without any input from the parties.

RESPONSE 6: The Office of Public Instruction (OPI) agrees and has made the change.

RULE XI (10.16.3660) EARLY ASSISTANCE PROGRAM

(1) through (3) remain the same as proposed.

(4) As stated in ARM 10.16.3662, prior to or immediately following the filing of a formal administrative complaint as that term is defined in 34 CFR 300.662 (as distinguished from a request for due process), a parent or guardian must allow the office of public instruction 15 business days from the day it receives written notification of the intent to file a complaint to contact the school district and the parent or guardian to attempt to resolve the problem through the early assistance program.

(5) remains the same as proposed.

(6) The services offered under this program shall be at the discretion of the office of public instruction are available in all circumstances where there is a possibility for mutual resolution. If the office of public instruction decides that any attempt to mutually resolve the complaint would be futile, the compliance officer shall proceed as if 15 business days had expired without resolution of the dispute.

AUTH: 20-7-402, MCA

IMP: 20-7-403, MCA

COMMENT 7: Sue Paulson commented that OPI should show commitment to this program as stated in (1) by eliminating (6). Flexibility in implementing the program would be provided by eliminating the specific procedures identified in (2) through (5) and placing them in policy. If these procedures are not eliminated, then the State should clarify timelines and disposition of the concerns, including mutual resolution.

RESPONSE 7: The early assistance program relies on mutual resolution of the dispute between the parties with the assistance of a facilitator from OPI. If a party has filed a complaint with OPI, the first 15 business days after filing shall be used to try to resolve the dispute using the early

assistance program. If resolution has not occurred within 15 business days, OPI begins processing the complaint in accordance with ARM 10.16.1110(5) (10.16.3662(5)).

Subsection (6) was intended to apply only when the facilitator decides that any attempt at mutual resolution of the dispute would be an exercise in futility. The subsection has been amended to more accurately state that intent.

4. The agency has transferred the following rules as proposed:

<u>OLD</u>	<u>NEW</u>	
10.16.113	<u>10.16.3751</u>	Office of Public Instruction Responsibility for Child Count
10.16.1123	<u>10.16.3020</u>	Criteria for Identification of Student as Having Speech-Language Impairment
10.16.1315	<u>10.16.3819</u>	Contested Cases
10.16.2107	<u>10.16.3820</u>	Transportation for Special Education Students with Disabilities
10.16.2204	<u>10.16.3804</u>	General Principles of Special Education Funding
10.16.2209	<u>10.16.3809</u>	Cooperative Boundaries
10.16.2210	<u>10.16.3810</u>	Eligibility to Receive Payment
10.16.2212	<u>10.16.3812</u>	Calculation of Special Education Allowable Cost Payments
10.16.2214	<u>10.16.3814</u>	Advance on Special Education Allowable Cost Payments
10.16.2216	<u>10.16.3815</u>	Special Education Transfers and Payments to Other Districts and Cooperatives
10.16.2217	<u>10.16.3816</u>	Distribution of Special Education Allowable Cost Payments
10.16.2401	<u>10.16.3507</u>	Scope of Rules
10.16.2409	<u>10.16.3515</u>	Scope of Discovery
10.16.2410	<u>10.16.3516</u>	Limitations on Discovery by the Impartial Hearing Officer
10.16.2411	<u>10.16.3517</u>	Sequence and Timing of Discovery
10.16.2413	<u>10.16.3519</u>	Ex-Parte Consultations
10.16.2414	<u>10.16.3520</u>	Powers of the Impartial Hearing Officer
10.16.2415	<u>10.16.3521</u>	Hearing
10.16.2601	<u>10.16.3901</u>	Duration of Cooperative
10.16.2602	<u>10.16.3902</u>	Management Board
10.16.2604	<u>10.16.3903</u>	Non-Participating Districts
10.16.2605	<u>10.16.3904</u>	Procedures for Approval
10.16.2723	<u>10.16.3341</u>	Residential Placement by Public Agency Other Than Local Educational Agency

5. After consideration of the comments received, the agency has transferred and amended the following rules as proposed:

<u>OLD</u>	<u>NEW</u>	
10.16.104	<u>10.16.3121</u>	Office of Public Instruction Responsibility for Free Appropriate Public Education (FAPE)
10.16.105	<u>10.16.3141</u>	Office of Public Instruction Responsibility for Monitoring
10.16.106	<u>10.16.3142</u>	Interagency Agreements
10.16.107	<u>10.16.3132</u>	Interagency Coordination for Part C, IDEA
10.16.108	<u>10.16.3180</u>	Notice of Availability of Federal Funds
10.16.110	<u>10.16.3194</u>	Office of Public Instruction Approval/Disapproval of Applications for Federal Funds
10.16.111	<u>10.16.3196</u>	Office of Public Instruction Disapproval of Federal Funds: Opportunity for Hearing
10.16.115	<u>10.16.3145</u>	Procedures for Recovery of Federal Funds for Misclassified Children
10.16.116	<u>10.16.3146</u>	Failure to Return Federal Funds for Services to Misclassified Children
10.16.117	<u>10.16.3150</u>	State Advisory Panel
10.16.1004	<u>10.16.3560</u>	Special Education Records
10.16.1005	<u>10.16.3571</u>	Parental Consent for Records
10.16.1108	<u>10.16.3661</u>	Opportunity to Present Complaints
10.16.1110	<u>10.16.3662</u>	State Complaint Procedures
10.16.1113	<u>10.16.3321</u>	Comprehensive Educational Evaluation Process
10.16.1116	<u>10.16.3012</u>	Criteria for Identification of a Student as Having Cognitive Delay
10.16.1117	<u>10.16.3013</u>	Criteria for Identification of a Student as Having Deaf-Blindness
10.16.1118	<u>10.16.3014</u>	Criteria for Identification of a Student as Having Deafness
10.16.1119	<u>10.16.3016</u>	Criteria for Identification of a Student as Having Hearing Impairment
10.16.1120	<u>10.16.3017</u>	Criteria for Identification of a Student as Having Orthopedic Impairment
10.16.1124	<u>10.16.3022</u>	Criteria for Identification of a Student as Having Visual Impairment
10.16.1128	<u>10.16.3021</u>	Criteria for Identification of a Student as Having Traumatic Brain Injury
10.16.1201	<u>10.16.3125</u>	Local Educational Agency Child Find Responsibilities
10.16.1213	<u>10.16.3129</u>	Parental Involvement
10.16.1314	<u>10.16.3818</u>	Special Education Tuition Rates
10.16.1902	<u>10.16.3220</u>	Program Narrative
10.16.2203	<u>10.16.3803</u>	Definitions
10.16.2205	<u>10.16.3805</u>	Special Education Allowable Cost Limitations

10.16.2206	<u>10.16.3806</u>	Special Education Allowable Costs-- Instructional Block Grant
10.16.2207	<u>10.16.3807</u>	Special Education Allowable Costs-- Related Services Block Grant
10.16.2208	<u>10.16.3808</u>	Special Education Allowable Costs-- Cooperatives
10.16.2211	<u>10.16.3811</u>	General Principles of the Special Education Allowable Cost Payment Calculation
10.16.2213	<u>10.16.3813</u>	Local Matching Funds
10.16.2218	<u>10.16.3817</u>	Special Education Funding Reversion
10.16.2402	<u>10.16.3508</u>	Initiating Special Education Due Process
10.16.2403	<u>10.16.3509</u>	Special Education Due Process Hearing Procedures
10.16.2404	<u>10.16.3510</u>	Notice of Hearing
10.16.2405	<u>10.16.3511</u>	Conference and Informal Disposition
10.16.2406	<u>10.16.3512</u>	Impartial Hearing Officer's Prehearing - Formulating Issues
10.16.2407	<u>10.16.3513</u>	Discovery
10.16.2408	<u>10.16.3514</u>	Discovery Methods
10.16.2412	<u>10.16.3518</u>	Availability of Cross-Examination or Participation in the Hearing Record
10.16.2416	<u>10.16.3522</u>	Final Order on Special Education Due Process Hearing Decisions
10.16.2417	<u>10.16.3523</u>	Local Educational Agency Responsibility for Students with Disabilities
10.16.2701	<u>10.16.3122</u>	Local Educational Agency Responsibility for Promotion of Students with Disabilities
10.16.2703	<u>10.16.3345</u>	Local Educational Agency Responsibility for Child Count
10.16.2704	<u>10.16.3752</u>	Local Educational Agency Federal Funds Applications
10.16.2705	<u>10.16.3181</u>	Parental Consent
10.16.2708	<u>10.16.3505</u>	Comprehensive System of Personnel Development
10.16.2719	<u>10.16.3135</u>	

10.16.1004 10.16.3560 SPECIAL EDUCATION RECORDS

COMMENT 8: Pat Gum commented that test protocols should not be required in a special education record. They are numerous in number, take up space and are better accessed in the evaluators' files.

RESPONSE 8: If the test protocol contains personally identifiable information that was used by the child study team to determine if the student is qualified for special education services, the protocol is an educational record and its location must be identified in the special education records of the student.

10.16.1120 10.16.3017 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING ORTHOPEDIC IMPAIRMENT

COMMENT 9: Leonard Orth commented that specific examples of adverse impact are helpful and should be reinstated in this rule.

RESPONSE 9: Montana requires that decisions about whether an individual student qualifies for special education services be made at a child study team meeting. The membership of the CST ensures that needed expertise is available on the team. The CST has access to all information on the student. Combining the information and the knowledge of members on the team provides maximum guidance in defining "adversely affects."

10.16.2701 10.16.3122 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR STUDENTS WITH DISABILITIES

COMMENT 10: Sue Paulson commented that the terms "resides" and "lives" are not clear in this rule. When a private school is located many miles from the district of residence, it places undo burden on the district of residence to conduct child find and, if necessary, develop a services plan.

COMMENT 11: Carla Heintz, School Psychologist for Evergreen School District, commented that consideration should be given for additional provisions for service delivery plans within private schools. Clarification needs to be given on funding and format for delivery plan and whether it needs to reflect the current IEP requirements.

RESPONSE 10 & 11: The United States Department of Education is preparing policy guidance on provision of services to private school students when a free appropriate public education is available in the student's resident district. As soon as this guidance is available, OPI will distribute copies to districts, cooperatives, private schools, parents and other interested parties. If the guidelines contradict the adopted rule, the State Superintendent will review the rule for possible changes.

COMMENT 12: Elizabeth Reed, parent of two special education children, commented that she would like to see schools allow special education students to attend school longer than the age limit when there is nothing in the community to move on to.

RESPONSE 12: Montana statute 20-5-101(3), MCA, leaves the decision of whether to serve students over the age of 18 to the discretion of the local school district board of trustees.

10.16.2703 10.16.3345 LOCAL EDUCATIONAL AGENCY
RESPONSIBILITY FOR PROMOTION OF STUDENTS WITH DISABILITIES

COMMENT 13: Sondra Strong commented that a definition is needed for "non-graded program," especially when districts are using inclusion models for moderate to severe students.

RESPONSE 13: The local educational agency will define the term "non-graded program" to have meaning given the programs offered in the district.

10.16.2708 10.16.3505 PARENTAL CONSENT

COMMENT 14: Pat Gum commented that (3)(c)(ii), should be clarified to state that either party can file for due process hearing.

RESPONSE 14: There is no need for the parent to request a due process hearing to resolve a situation where the issue is the parent refusal to consent.

6. After consideration of the comments received, the agency has transferred and amended the following rules with the changes given below, stricken matter interlined, new matter underlined:

10.16.1104 10.16.3504 SURROGATE PARENTS (1) remains the same as proposed.

(2) A foster parent meeting the requirements of 34 CFR 300.20(b) may act as a parent under Part B of IDEA if the natural parents' authority to make educational decisions on the student's behalf has been extinguished under state law and the foster parent:

(a) has an ongoing, long-term parental relationship with the student;

(b) is willing to make the educational decisions required of parents under IDEA; and

(c) has no interest that would conflict with the interests of the student.

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

AUTH: 20-7-402, MCA

IMP: 20-7-403, 20-7-414, MCA

COMMENT 15: Sue Paulson commented that the State should consider statutory or regulatory changes in the surrogate parent law and regulations to allow for foster parents to act as a parent in certain situations even when the child is a permanent ward of the state.

RESPONSE 15: Montana law does not prohibit a foster parent from acting as a surrogate parent. A foster parent who meets the requirements of federal regulation 34 CFR 300.20(b)

may act as a parent if the conditions of 34 CFR 300.515(a) are fulfilled. The rule has been amended to include this.

~~10.16.1105~~ 10.16.3346 AVERSIVE TREATMENT PROCEDURES

(1) Positive behavioral interventions based on the results of a functional behavioral assessment shall serve as the foundation for any program utilizing aversive procedures to address the behavioral needs of students. Aversive treatment procedures may be appropriate for an individual student who exhibits behaviors which pose a risk of physical harm to the student or others, or a risk of significant damage to property, or significantly disruptive or dangerous behaviors which cannot be modified solely through the use of positive behavioral interventions. Aversive treatment procedures must be designed to address the behavioral needs of an individual student, be approved by the IEP team, and may not be used as punishment, for the convenience of staff, or as a substitute for positive behavioral interventions. ~~Positive behavioral interventions based on the results of a functional behavioral assessment shall serve as the foundation for any program addressing the behavioral needs of students.~~

(2) Aversive treatment procedures are defined as:

~~(a) aversive mists, noxious odors, and unpleasant tastes applied by spray or other means to cause an aversive physical sensation;~~

~~(b) mechanical restraint that physically restricts a student's movement through the use upon the student of any mechanical or restrictive device;~~

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

(3) remains the same as proposed.

(4) The following procedures are prohibited:

(a) remains the same as proposed.

(b) isolation in a locked room or mechanical restraint, except in residential treatment facilities and psychiatric hospitals as defined in 20-7-436, MCA, when prescribed by a physician as part of a treatment plan and when implemented in compliance with relevant federal and state law; and

(c) the withholding of a meal for a period of greater than one hour from its scheduled starting time;

(d) aversive mists, noxious odors, and unpleasant tastes applied by spray or other means to cause an aversive physical sensation; and

(e) mechanical restraint that physically restricts a student's movement through the use upon the student of any mechanical or restrictive device which is not intended for medical reasons.

(5) remains the same as proposed.

(6) IEPs shall may include the use of aversive treatment procedures only when:

(a) through (c) remain the same as proposed.

(7) and (8) remain the same as proposed.

AUTH: 20-7-402, MCA

IMP: 20-7-403, 20-7-414, MCA

COMMENT 16: Barbara Ayres, Associate Professor at Montana State University, Billings, commented that she opposes the use of aversive procedures. She believes aversive procedures are a type of punishment. She questions what best practices are in the application of aversive treatment procedures. Someone knowledgeable about best practices in the use of aversive procedures is an oxymoron.

COMMENT 17: Gail McGregor, Research Associate Professor at the University of Montana, Missoula, commented that OPI should not be fostering the use of expertise in the implementation of aversive procedures. She questioned whether educators should be granted permission to knowingly and purposefully use procedures that, by definition in this document, fall outside of professional standards regarding the use of dehumanizing procedures (mists, noxious odors, mechanical restraints, physical restraints and isolation time out).

COMMENT 18: Andree Larose, Attorney for Montana Advocacy Program, recommended prohibiting the use of aversive mists, noxious odors, unpleasant tastes and mechanical restraints.

RESPONSE 16 - 18: The Office of Public Instruction does not advocate the use of aversive procedures. Positive behavioral interventions must be implemented before an IEP team may include aversive procedures in a student's IEP. Some Montana school districts use aversive procedures and strongly believe they must continue to have that option. A panel consisting of individuals supporting and opposing the use of aversive procedures in educational settings worked with OPI to draft the proposed rule. The rule sets requirements that must be implemented before an IEP team may include aversive procedures.

Aversive mists, noxious odors, unpleasant tastes and mechanical restraints have been added to those procedures which are prohibited procedures. Language has been added to the description of mechanical restraint to differentiate mechanical restraint from the use of similar devices which may be necessary for medical reasons.

COMMENT 19: Gail McGregor asked how long positive behavioral intervention strategies must be tried and how it is determined that they are comprehensive and well conceived efforts. She believes setting a cap of two positive strategies underestimates the effort required to intervene with behaviors that may be well established.

COMMENT 20: Barbara Ayres commented that a positive behavior support plan is made up of many intervention ideas.

RESPONSE 19 & 20: The student's IEP team decides whether the strategies have been tried long enough and whether they are comprehensive and well conceived. The use of two written positive intervention strategies is the minimum required, not a maximum allowed. The IEP team may elect to use additional strategies.

COMMENT 21: Jon Zegg, Behavior Specialist with Flathead County Day Treatment Program and Pat Gum asked how a student is kept in a time-out room, if the door cannot be secured. The student and staff are at risk for injury if the student tries to leave the room.

RESPONSE 21: Subsection (4)(b) prohibits isolation in a locked room. Exit from the time-out room may be prevented through the use of a system which requires the presence of staff to keep the door from opening, but will allow the door to be opened if the staff person is not actively engaging the system.

COMMENT 22: Jon Zegg commented that "programs utilizing aversive treatment procedures" needs to be added to the last sentence in (1), after behavioral. He also questioned who would qualify as the person trained and knowledgeable in (6)(b).

COMMENT 23: Linda Solem, Speech/Language Therapist, and John Rodwick, School Psychologist, both at Flathead Special Education Cooperative, and Sondra Strong commented that the last sentence in (1) should be changed because not all students need functional behavioral assessments to address behavior needs.

RESPONSE 22 & 23: The OPI concludes that Mr. Zegg intended to add an "s" to the word "program" and add "utilizing aversive procedures" before the word "addressing." OPI agrees and has made the change.

The district has an affirmative responsibility to ensure that a person with required training and knowledge is a member of the IEP team. The intent of the rule is to require a functional behavioral assessment before a program utilizing aversive procedures is implemented. The term "shall" requires a functional behavioral assessment be completed prior to the use of aversive procedures.

COMMENT 24: Linda Solem, John Rodwick, and Sondra Strong questioned whether "designated staff person" in (3) means person designated in the IEP or person assigned at the time of implementation. Ms. Solem and Mr. Rodwick recommended that (6) and (7) be moved to the beginning of the rule to define when aversive treatment procedures should be implemented.

RESPONSE 24: As used in this subsection, the term "designated staff person" means the staff person who has been designated to provide direct constant observation of the student during the isolation time-out. The OPI concludes that the rule structure is appropriate.

COMMENT 25: Andree Larose commented that the proposed rule sets standards for the utilization of aversive treatment procedures in school settings that are less protective of children than those imposed on psychiatric treatment facilities under federal and state law. The opposite should be the case.

RESPONSE 25: This comment was considered during development of the rule.

COMMENT 26: Andree Larose commented that the last sentence of (1) should be made the first sentence and followed by "All possible interventions to address the student's behavior shall be attempted or considered before use of an aversive treatment procedure."

RESPONSE 26: The last sentence of section (1) has been made the first sentence. The suggested language would conflict with other sections of the rule.

COMMENT 27: Andree Larose recommended that only clinically trained and competent professionals be authorized to make the determination that "other interventions" have been tried or would be ineffective and that aversive treatment procedures be limited to situations where a student's behavior poses an imminent risk of injury to self or others.

RESPONSE 27: The IEP team makes the decision that positive behavioral intervention strategies have been ineffective.

COMMENT 28: Andree Larose recommended that the sentence in (1) should be revised to "Aversive treatment procedures may be used only when a student's behavior poses an imminent risk of physical harm to the student or others and when the behavior cannot be modified solely through the use of positive behavioral interventions." She recommended the rule include an explicit requirement that staff implementing any type of aversive treatment procedure should receive regular training and refresher courses in safe methods for handling agitated and potentially violent students, including alternative methods of restraint or seclusion and should be focused on methods used with children.

RESPONSE 28: The student's IEP team determines if the implementation of aversive treatment procedures by the local education agency is appropriate for that student.

COMMENT 29: Andree Larose commented that the rule should require that restraint or seclusion may be imposed only by order from a physician or other licensed independent practitioner.

RESPONSE 29: Requiring a physician's or other licensed independent practitioner's order before restraint or seclusion may be imposed could prohibit schools from addressing student behaviors which pose an immediate threat to the physical safety of the student or others because a physician or other licensed independent practitioner was not available.

COMMENT 30: Andree Larose commented that (3) should be revised to include "direct constant visual (face to face) and audio observation."

RESPONSE 30: The OPI believes clarification of the language is not needed.

COMMENT 31: Andree Larose commented that in (6) as currently drafted, the rule could be interpreted to require the use of aversive treatment procedures when the conditions set forth in (a) through (c) are met. The word "shall" should be changed to "may."

RESPONSE 31: OPI agrees and has made the change.

COMMENT 32: Andree Larose commented that the rule should require documentation of incidents of injuries occurring to students during restraint or seclusion and should be submitted to OPI for tracking.

RESPONSE 32: The documentation of individual student medical concerns is an established practice, which is developed by individual districts.

COMMENT 33: Andree Larose commented that the rule should require immediate notification to parents when an aversive treatment procedure is used.

RESPONSE 33: The IEP team, including the student's parent, must approve the use of aversive procedures. IEP teams may establish additional reporting requirements.

COMMENT 34: Andree Larose recommended the rule require the room used for isolation time-out be a safe environment minimizing the risk of physical injury to children.

RESPONSE 34: Information on the design of isolation time-out rooms is available from the OPI.

~~10.16.1112~~ 10.16.3320 REFERRAL (1) A local educational agency shall establish a referral process which includes a method for collecting information to determine whether

comprehensive educational evaluation is necessary and the types of evaluations warranted.

(a) and (b) remain the same as proposed.

(c) If a comprehensive educational evaluation in accordance with 34 CFR 300.531 through 300.536 is warranted, the local educational agency shall obtain consent of the parent before conducting a comprehensive educational evaluation.

(2) remains the same as proposed.

AUTH: 20-7-402, MCA

IMP: 20-7-403, 20-7-414, MCA

COMMENT 35: Sondra Strong, Leonard Orth, and Pat Gum commented that with the proposed removal of two interventions from the evaluation for identification as learning disabled, the referral process needs to specify that two interventions be implemented. Sondra Strong continued that general education teachers need the opportunity to work with the pre-referral team to determine what interventions are needed and the opportunity to implement them prior to referral. Removing the two interventions may place undue hardship on districts by increasing the number of referrals.

RESPONSE 35: The necessity of reinstating two interventions is no longer an issue in this rule because language in the rule for Criteria for Identification of Student as Having Specific Learning Disability (ARM 10.16.1122 (10.16.3019)) has been changed to include one or more interventions. Reference to federal regulations pertaining to procedures for evaluation and determination of eligibility has been added to (1)(c) to clarify the rule.

10.16.1114 10.16.3322 COMPOSITION OF A CHILD STUDY TEAM

~~(1) The initial evaluation for determining eligibility~~
The child study team is a group of individuals that determines whether a student with disabilities is eligible for special education and related services. ~~is made by~~ ~~†~~The child study team ~~that~~ includes the following members:

(a) and (b) remain the same as proposed.

(c) At least one special education teacher or, if appropriate, related services at least one special education provider;

(d) remains the same.

(e) At least one teacher or other specialist with knowledge in the area of suspected disability who can interpret the instructional implications of evaluation results. This individual may be a member of the team described in (1)(a) through (f). For specific disabilities, the following specialists or teachers are required for initial evaluation:

(i) through (iii) remain the same.

(f) and (g) remain the same.

(2) remains the same.

AUTH: 20-7-402, MCA
IMP: 20-7-403, 20-7-414, MCA

COMMENT 36: Sue Paulson commented that the rule at (1)(c) allows a child study team meeting to be held with only a related service provider at the meeting. The flexibility of this rule allows an IEP meeting for a student who, for example needs occupational therapy, speech therapy and special education, to be convened with only the occupational therapist at the meeting.

RESPONSE 36: Subsection (1)(c) is changed to ensure a special education teacher or special services provider is at the child study team meeting. Changes are made to the rule to clarify that the rule refers to re-evaluations as well as initial evaluations and that specialists by disability category are only required for initial evaluation.

~~10.16.1115~~ 10.16.3010 CRITERIA FOR IDENTIFICATION OF A CHILD WITH DISABILITIES AGES 3 THROUGH 5 (1) A child student may be identified as being a child with disabilities, without the specific category being identified, if the child student is 3, 4, or 5 years old and meets the criteria for one or more disabilities in ARM 10.16.3011 through 10.16.3022.

(2) At the discretion of the local educational agency, a child student may be identified as being a child with disabilities if the child student experiences a severe delay in development. A severe delay in development means:

(a) the child student functions at a developmental level two or more standard deviations below the norm in any one area of development or 1.5 standard deviations below the norm in two or more areas of development; and

(b) remains the same.

AUTH: 20-7-402, MCA
IMP: 20-7-401, 20-7-403, MCA

COMMENT 37: Carla Heintz and Sondra Strong commented that it should not be left up to schools to decide if they serve a child with a severe delay in development. The discretionary language in (2) should be removed. Inconsistencies between districts will negatively impact services available to children and will create undue confusion/frustration for parents. Carla Heintz also questioned if districts may serve some students past the age of six under this criterion.

RESPONSE 37: The term "child with a disability" for children aged 3 through 9 may, at the discretion of the state and local educational agencies and in accordance with 34 CFR 300.313, include a child who is experiencing developmental delays as defined by the State. The Montana Legislature defines "child with a disability" in 20-7-401(4), MCA, to mean

a child with one or more of the listed IDEA disabilities. That statute states: "A child who is 5 years of age or younger may be identified as a child with a disability without the specific disability being specified." This statute places the upper age limit for using the phrase "child with a disability" at 5 years old. A district may not use the term "child with a disability" to provide services to a student past the age of 6.

A state cannot compel local educational agencies to serve students experiencing development delays. Federal regulations at 34 CFR 300.7(b) retain the local educational agency's discretion to serve students experiencing developmental delays.

For consistency of wording in special education rules, the word "child" in this rule is replaced with "student" except in the term "child with disabilities."

~~10.16.1122~~ 10.16.3019 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING SPECIFIC LEARNING DISABILITY (1) The student may be identified as having a specific learning disability if, when provided learning experiences appropriate to the student's age and ability levels:

(a) remains the same as proposed.

(b) The student has a severe discrepancy between the student's intellectual ability and achievement in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematics calculation, mathematics reasoning.

(i) remains the same as proposed.

(ii) Alternatives to norm referenced tests, such as curriculum-based assessments, shall be utilized to determine severe discrepancy whenever cultural factors, test conditions, size of test item sampling for the student's age, or other factors render standardized assessment results invalid. When utilizing alternative assessment procedures, a determination must still be made that a discrepancy between ability and achievement exists at a level of severity similar in size to the discrepancy that would have otherwise been found in (1)(b)(i).

~~(2) The student may be identified as having a specific learning disability only when:~~ At least one team member other than the student's regular education teacher shall observe the student's academic performance in the regular classroom setting.

~~(a) The student has had opportunities to learn commensurate with the student's age and abilities; and~~ In the case of a student of less than school age or out of school, a team member shall observe the student in an environment appropriate for a student of that age.

~~(b) Educationally relevant medical findings, if any, have been considered.~~

(3) Documentation of the learning disability determination shall:

(a) Meet the requirements for a written report found in 34 CFR 300.543; and

(b) If appropriate, state the basis for concluding that the use of standardized test instruments would not be valid whenever provisions of (1)(b)(ii) are utilized to determine a severe discrepancy;

(c) Include educationally relevant medical findings, if any, that have been considered; and

(d) Include a report of one or more intervention techniques specific to the individual student. Interventions shall not unnecessarily delay appropriate identification.

(4) remains the same.

AUTH: 20-7-402, MCA

IMP: 20-7-401, 20-7-403, 20-7-414, MCA

COMMENT 38: Carla Heintz commented that the new federal statutes recommend using curriculum as a standard for classroom performance. She feels that curriculum-based assessment as an alternative to norm referenced tests when error in test measurement or validity of test measures is in question should be added to (1)(b).

RESPONSE 38: OPI agrees and has made the change.

COMMENT 39: Lisa Wells, Special Education Teacher at Swan River School District, commented that the rule language requiring at least two intervention techniques, which was deleted in the proposed language, should be reinstated. It is important to implement multiple interventions in the regular classroom prior to referring a student in order to rule out possible solutions to a student's learning difficulties.

RESPONSE 39: Requiring two intervention techniques before determining the eligibility of a student under the criteria for specific learning disability may not be appropriate for every student. The CST may determine that additional interventions are necessary. The language of the rule has been amended to require one or more intervention techniques as long as it does not unnecessarily delay the evaluation process and to include language from the federal regulations at 34 CFR 542 pertaining to observations. To simplify the rule duplicative language has been deleted in (2).

COMMENT 40: Andree Larose commented that the rule, even with proposed changes, still seems overly restrictive and excludes children who qualify for services under the federal definition of "specific learning disability." She encourages OPI to convene a special task force to study the issue.

RESPONSE 40: The United States Department of Education is planning a careful and comprehensive review of research,

expert opinion, and practical knowledge of evaluating and identifying children with specific learning disabilities to decide whether changes to the standards and process for identifying children with specific learning disabilities should be proposed. Because of that review, the Department did not modify the final federal regulations (34 CFR 300.540 through 300.543). If changes are made to the federal regulations, the State Superintendent will modify this rule to reflect those changes.

~~10.16.1125~~ 10.16.3011 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING AUTISM (1) The student may be identified as having autism if documentation supports the existence of a developmental disability that was generally evident before the student was three years of age and if the student has a communication ~~disability~~ difficulties in verbal ~~or~~ and nonverbal communication and social interaction.

(2) Assessments shall document the presence of significant delays in verbal and nonverbal communication and social interaction.

(a) Significant delays in verbal communication are manifested by at least one of the following:

(i) remains the same.

(ii) in students with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others;

~~(iii) lack of varied, spontaneous, make-believe play or social imitative play appropriate to developmental level.~~

(b) remains the same as proposed.

(c) Significant delays in social interaction are manifested by at least one of the following:

(i) and (ii) remain the same as proposed.

(iii) lack of social or emotional reciprocity;

(iv) lack of varied, spontaneous, make-believe play or social imitative play appropriate to developmental level.

(3) Other characteristics often associated with autism ~~which may assist but are not required for identification,~~ include restricted, repetitive and stereotyped patterns of behavior, interests and activities, as manifested by one or more of the following:

(a) through (d) remain the same as proposed.

(4) and (5) remain the same as proposed.

AUTH: 20-7-402, MCA

IMP: 20-7-401, 20-7-403, 20-7-414, MCA

COMMENT 41: Pat Gum commented that to make (1) consistent with (2), "verbal or nonverbal" should be changed to "verbal and nonverbal." Lack of spontaneous make-believe play in (2)(a)(iii) should be under social interaction at (2)(c), not verbal communication.

RESPONSE 41: OPI agrees and the changes have been made. To avoid confusion, the word "disability" in (1) has been

changed to "difficulties," and (3) has been amended to remove unnecessary and confusing language.

COMMENT 42: Ginny Haines, Special Services Coordinator for Corvallis School District and representing the case managers and the school psychologists, commented that it is appropriate to drop the exclusionary disorders from the definition of autism. They believe that high functioning autism and Aspergers disorder can significantly impact a student's educational performance.

RESPONSE 42: Conditions that meet the criteria in this rule determine the eligibility of the student under the definition of autism.

10.16.1126 10.16.3015 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING EMOTIONAL DISTURBANCE (1) and (2) remain the same.

(3) The student may be identified as having emotional disturbance when:

(a) The student has been observed in more than one setting within the educational environment ~~which provides a foundation for probable concern for emotional disturbance;~~ and

(b) The local educational agency has planned and implemented one or more positive behavioral interventions specific to the individual student. Interventions shall not unnecessarily delay appropriate identification when it can be shown through a student's social or developmental history, compiled directly from the student's parents or from records when the parents are not available, the existence of characteristics that clearly identify emotional disturbance.

(4) through (6) remain the same as proposed.

AUTH: 20-7-402, MCA

IMP: 20-7-401, 20-7-403, 20-7-414, MCA

COMMENT 43: Christine Bilant, Educational Psychologist with Flathead Special Education Cooperative; Carla Heintz; Jon Zegg; and Sondra Strong commented that the requirement for at least two positive behavioral interventions and the documentation of observations/interventions/social-developmental history should be reinstated. Without this observational data, a student may be placed because of a difficulty between a teacher and the student rather than because the student may have behaviors which indicate emotional disturbance. Christine Bilant and Sondra Strong also commented that two or more observers across two or more separate school settings provide a reliable sampling of the student's behaviors.

RESPONSE 43: An individual teacher may not place a student in special education. The decision to identify a student as having an IDEA disability and being in need of special education is made by the CST. If the CST decides that

additional observations are necessary before identifying the student under IDEA, nothing prevents requiring the observations. Requiring two behavioral interventions, before determining the eligibility of a student under the criteria for emotional disturbance may not be appropriate for every student. Wording has been amended to clarify that more than one intervention may be implemented. For clarification, the wording in (3)(a) has been amended to remove unnecessary language.

10.16.1127 10.16.3018 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING OTHER HEALTH IMPAIRMENT (1) The student may be identified as having other health impairment if:

(a) The student has limited strength, vitality or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as ~~a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, attention deficit disorder or attention deficit hyperactivity disorder, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes~~ asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia or tuberculosis; and

(b) remains the same as proposed.

(2) remains the same as proposed.

AUTH: 20-7-402, MCA

IMP: 20-7-401, 20-7-403, 20-7-414, MCA

COMMENT 44: Ginny Haines commented that it is appropriate to delineate ADD and ADHD in this definition when the disorder significantly impacts educational performance.

COMMENT 45: Jon Zegg commented that HIV and AIDS should be added to the list in (1)(a).

COMMENT 46: Sondra Strong commented that to eliminate confusion about any limitations in the list of health problems in (1)(a) language should be changed to ". . . problems such as, but not limited to, a heart condition . . ."

RESPONSE 44 - 46: The list of health problems in (1)(a) is the same cited in federal regulations at 34 CFR 300.7(c)(9) for other health impairment. This list is not intended to cover all possible health impairments that might satisfy the requirements of 34 CFR 300.7(c)(9). The list of examples in the rule is reordered to correspond with the listing in the federal regulation.

10.16.1713 10.16.3136 SPECIAL EDUCATION PROFESSIONAL STAFF QUALIFICATIONS (1) through (5) remain the same.

(6) A Paraprofessional personnel (e.g., teacher aide or

instructional assistant) shall meet current office of public instruction accreditation standards under ARM 10.55.707.

COMMENT 47: Jude Oberst commented that the same language referring to paraprofessional personnel that is used in ARM 10.16.3135(1)(c)(i) should be used in (6) of this rule.

RESPONSE 47: This rule was proposed for transfer without amendment. The comment provides for more consistent language throughout the rules and does not change the intent of this rule. The change has been made.

7. The agency has repealed ARM 10.16.109, 10.16.112, 10.16.114, 10.16.214, 10.16.1001, 10.16.1102, 10.16.1207, 10.16.1212, 10.16.1301, 10.16.1305, 10.16.1308, 10.16.1310, 10.16.1801, 10.16.1904, 10.16.2106, 10.16.2303, 10.16.2501, 10.16.2503, 10.16.2702, 10.16.2706, 10.16.2707, 10.16.2709, 10.16.2710, 10.16.2711, 10.16.2712, 10.16.2713, 10.16.2714, 10.16.2715, 10.16.2716, 10.16.2717, 10.16.2718, 10.16.2720, 10.16.2721, and 10.16.2722 as proposed.

8. The following general comments that were received and do not result in changes to the rules appear with the Office of Public Instruction's responses:

COMMENT 48: Leonard Orth and Pat Gum commented that the State should revisit special education funding for equitable division of state funds. Leonard Orth went on to state that ARM 10.16.2204 (10.16.3804) does not address this component but thinks the State should look at that because it is having an adverse effect on cooperatives.

RESPONSE 48: The Office of Public Instruction did not address rules pertaining to special education funding during this process. These rules (former subchapter 22, transferred to subchapter 38) were transferred only.

COMMENT 49: Andree Larose commented that OPI should promulgate rules clarifying a school's obligations under 34 CFR 300.529 that allow the reporting of a crime to appropriate authorities and require the school to ensure that copies of the special education records are transmitted to those authorities. Schools must seek the consent of parents in an effort to comply with requirements. Because it is required that schools convene an IEP meeting to review the appropriateness of the plan and placement when certain disciplinary measures are taken, it should be required when the school reports crimes to the appropriate authorities and a child faces law enforcement proceedings.

RESPONSE 49: The State Superintendent lacks authority to restrict reporting of a crime to law enforcement. However, the fact that a crime has been reported to law enforcement does not eliminate or modify the public agency's

responsibilities under IDEA and the Family Educational Rights and Privacy Act (FERPA).

9. The effective date of these administrative rules, as adopted, will be July 1, 2000.

By: /s/ Nancy Keenan
Nancy Keenan
Superintendent
Office of Public Instruction

/s/ Janice Frankino Doggett
Janice Frankino Doggett
Rule Reviewer
Office of Public Instruction

Certified to the Secretary of State April 17, 2000.

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

In the matter of the)
amendment of ARM 12.9.602 and) NOTICE OF
12.9.604 pertaining to the) ADOPTION OF TEMPORARY
pheasant enhancement program) EMERGENCY RULE AMENDMENTS

TO: All Concerned Persons

1. The Department of Fish Wildlife and Parks believes the following reasons constitute action for temporary emergency amendments to ARM 12.9.602 and 12.9.604:

(a) Administrative rule amendments to ARM 12.9.602 and 12.9.604 were adopted under 2-4-302, MCA in violation of 87-1-247(2)(a), MCA which provided pheasant release participants with a \$4 per bird reimbursement amount for the release of 14 week old birds.

(b) That adopting such rule amendments make it unintentionally prohibitive for pheasant release participants to rear pheasants for the 2000 season thus jeopardizing the pheasant release program for this year.

(c) The adoption of emergency rule amendments which would roll back pheasant release participants' reimbursement amount to \$3 per bird for the release of 8 week old birds would prevent the unnecessary economic hardship adverse to the public welfare insofar as the public welfare does benefit from the pheasant release program. Such welfare conditions are an imminent peril.

(d) Therefore, as these conditions cannot be averted or remedied any other way, the department intends to adopt the following temporary emergency amendments. The rules as amended will be mailed to all participants in the pheasant enhancement program and other interested parties and published as a temporary emergency amendment in Issue No. 8 of the 2000 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 this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 1, 2000.

3. The temporary emergency rule amendment will be effective April 5, 2000.

4. The text of the emergency rule amendments is as follows:

12.9.602 REQUIREMENTS OF PROJECTS (1) The department will not authorize participation in the pheasant enhancement program unless the proposed project meets the following requirements:

(a) all birds must be at least ~~14~~ 8 weeks of age at the time of release;

(b) not less than 40% of the birds in a release under this program must be cocks;

(c) all birds must be fully feathered and ~~cocks must have at least 50% of their adult plumage;~~

(d) applications for releases must be postmarked prior to April 1, and all releases must be made between August 1 and September 15;

(e) groups or individuals releasing birds on property they do not own must provide the department with written documentation from the landowner giving permission for the release and acknowledging the requirement of allowing free public hunting and to whom payment should be made;

(f) releases may not be made in Fergus, Richland or Roosevelt counties in order to provide a basis for evaluating the success of the program;

(g) all releases must be on land open to public hunting without the imposition of any monetary charge for such hunting privilege during the year of release. Release sites may be subject to use limitations but no fee may be charged in connection with the privilege to hunt on any release site;

(h) all release sites should contain a minimum of 160 contiguous acres under the ownership of the applicant or the person authorizing release. Release sites as small as 80 contiguous acres will be considered on a case-by-case basis and may be authorized if the acreage involved would provide a viable habitat base for the number of birds authorized to be released;

(i) all release sites must contain at least 10% winter cover, 10% idle cover and 25% food sources to be considered for authorization;

(j) certification of the genetic strain must be available from the commercial source of the eggs or chicks and must be provided, upon request, to the department by the applicant;

(k) all source stock must be purchased from an authorized national poultry improvement plan (NPIP) hatchery;

(l) If the number of applicants, private or commercial, applying to release pheasants cannot be accommodated by program funding, distribution of funds will take place in the following manner:

(i) if funding is insufficient to allow each applicant to release up to 200 pheasants, the department will conduct a random drawing to determine who will receive release permits;

(ii) if funding will allow each individual applicant, private or commercial, to release up to 200 pheasants, the department shall issue a permit to each applicant;

(iii) if there is sufficient funding for each applicant, applicants, by submitting a second application, will be allowed to release up to 200 additional pheasants. This same process will be followed until funding will no longer cover remaining

applicants. At that time, the department will conduct a random drawing for the remaining releases.

(m) no more than 200 birds may be released on any approved site;

(n) banding of birds will be required in specified study areas and will be done by the department prior to release;

(o) all releases must be verified by a department employee at the time of release;

(p) no site may be stocked more than twice in a 5 year period unless unusual environmental conditions warrant reconsideration.

(2) For good cause shown the department may waive any requirement listed in (1).

AUTH: 87-1-249, MCA

IMP: 87-1-248, MCA

12.9.604 PAYMENT BY DEPARTMENT (1) The department will pay authorized projects ~~\$4.00~~ \$3.00 for each bird released in compliance with all the provisions of ARM 12.9.601 through ARM 12.9.603.

AUTH: 87-1-249, MCA

IMP: 87-1-247, MCA

5. The rationale for the temporary emergency rule amendments is as set forth in paragraph one.

6. A standard rulemaking procedure will be undertaken prior to the expiration of this temporary emergency rule amendment.

7. Concerned persons are encouraged to submit their comments during the upcoming standard rulemaking process. If concerned persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to Glenn Erickson, Department of Fish, Wildlife and Parks, P.O. Box 200701, 1420 East 6th Avenue, FAX (406) 444-4952, telephone (406) 442-2612.

8. The Department of Fish, Wildlife and Parks maintains a list of persons interested in both department and commission rulemaking proceedings. Any person wishing to be on the list must make a written request to the department, providing name, mailing address and description of the subject or subjects of interest. Direct the request to Montana Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, Helena, MT 59620-0701.

9. The Environmental Quality Council has been notified of the adoption of these temporary emergency rule amendments.

10. The bill sponsor notification requirements of 2-4-302, MCA do not apply, but the sponsor has been notified as a courtesy.

By: /s/ Patrick J. Graham

PATRICK J. GRAHAM
Commission Secretary

By: /s/ John F. Lynch

JOHN F. LYNCH
Rule Reviewer

Certified to the Secretary of State April 5, 2000

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT AND
of rules 18.8.101, 18.8.414,)	REPEAL
18.8.422, 18.8.504, 18.8.508,)	
18.8.509, 18.8.509A, 18.8.511A,)	
18.8.511B, 18.8.512, 18.8.513,)	
18.8.518, 18.8.519, 18.8.601,)	
18.8.602, and 18.8.801 and the)	
repeal of rules 18.8.418,)	
18.8.501, 18.8.502, 18.8.514)	
and 18.8.515 concerning the)	
Motor Carrier Services)	
regulations for overdimensional)	
vehicles and loads.)	

TO: All Concerned Persons

1. On February 10, 2000, the Department of Transportation published notice of the proposed amendment and repeal of the above-referenced rules concerning the Motor Carrier Services regulations for overdimensional vehicles and loads at page 269 of the 2000 Montana Administrative Register, issue number 3.

2. The Department has amended ARM 18.8.101, 18.8.414, 18.8.422, 18.8.504, 18.8.508, 18.8.509, 18.8.509A, 18.8.511A, 18.8.511B, 18.8.512, 18.8.513, 18.8.518, 18.8.601, 18.8.602 and 18.8.801 exactly as proposed.

3. The Department has amended ARM 18.8.519 as proposed with the following change, new matter underlined:

18.8.519 WRECKERS AND/OR TOW VEHICLE REQUIREMENTS

(1) through (1)(b) same as proposed.

(c) Double and triple saddle mount configurations may be towed from the emergency scene to its place of business or operator's yard if it is within 100 miles of the emergency scene, and if the operator agrees to travel not more than 10 miles per hour below the posted speed limit. If a move exceeds 100 miles, the disabled vehicles may be removed from the emergency scene to the first place where the saddle mount configuration can be safely reduced to a single unit.

(d) through (f) same as proposed.

AUTH: 61-10-155, MCA

IMP: 61-10-121, 61-10-122, 61-10-124 and 61-10-125, MCA

4. The Department has repealed ARM 18.8.418, 18.8.501, 18.8.502, 18.8.514 and 18.8.515 as proposed.

5. Several comments were received which expressed a favorable opinion of the proposed changes. No response is

necessary to the favorable comments. The following comments were received and appear with the Department's responses:

COMMENT 1: There was a question concerning the substances of ARM 18.8.518, and asked for an explanation of the rule.

RESPONSE: The proposed amendment to ARM 18.8.518 is to correct a typographical error. When first adopted, the rule should have referenced December 31, not December 1. That has been corrected, and the correct authority has been added.

COMMENT 2: At the hearing, there was a question concerning the use of the term "saddle mount" in ARM 18.8.519(1)(c).

RESPONSE: It was explained that "saddle mount" had the same meaning as "piggy back," and the question was satisfied.

COMMENT 3: The Highway Patrol and others recommended that ARM 18.8.519(1)(c) be amended to require that the vehicle travel no faster than 10 m.p.h. less than the posted speed limit. It was explained that such emergency situations created inherent safety concerns.

RESPONSE: Because of the need to ensure the safe transporting of the described type of combination, the Department agreed to further amend the rule as requested.

COMMENT 4: Another party requested that the 100-mile limitation found in ARM 18.8.519(1)(c) be expanded to 250 miles because major repair facilities for new trucks are located in Missoula, Billings and Great Falls, that some saddle mounted trucks do not have engines, that it may require two or more wreckers to tow the saddled trucks, and because Montana is a large, sparsely populated state.

RESPONSE: The Department declined to make the proposed change for the following reasons. The Department is primarily concerned with safety, and the 100-mile limit is the best balance between the danger of leaving a disabled saddle mount along the side of the road, and the danger to other drivers of allowing such combinations to travel long distances. Also, the Department wished to maintain the consistency of the 100-mile limit found in ARM 18.8.519(1)(b). Further, many times the other trucks in the saddle mount can travel on their own, thereby avoiding the inconvenience noted in the comment.

MONTANA DEPARTMENT OF TRANSPORTATION

By: /s/ Marvin Dye

MARVIN DYE, Director

/s/ Lyle Manley _____

Lyle Manley, Rule Reviewer

Certified to the Secretary of State April 14, 2000.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the)
amendment of ARM 20.9.101, 20.9.103,) NOTICE OF AMENDMENT
20.9.106, 20.9.110, 20.9.113,) AND ADOPTION
20.9.115, 20.9.117, 20.9.120,)
20.9.122, and adoption of new)
rules I and II pertaining to Youth)
Placement Committees)

TO: All Concerned Persons

1. On February 24, 2000, the Department of Corrections published notice of the proposed amendment and adoption of the above stated rules at page 617 of the Montana Administrative Register, Issue Number 4.

2. The Department has adopted new Rule I (ARM 20.9.116), and new Rule II (ARM 20.9.121) exactly as proposed.

3. The Department has amended ARM 20.9.106, 20.9.110, 20.9.113, 20.9.115, 20.9.117, 20.9.122, exactly as proposed, and amended ARM 20.9.101, 20.9.103, and 20.9.120 with the following changes, stricken matter interlined, new matter underlined:

20.9.101 DEFINITIONS (1) through (13) remain the same.

AUTH: 53-1-203, MCA
IMP: 41-5-121, 41-5-123, 41-5-125, ~~53-1-202~~, 53-1-203, and 53-21-102, MCA

20.9.103 DUTIES OF THE YOUTH PLACEMENT COMMITTEE

(1) through (1)(h) remain the same.

(i) present to the committee, ~~as the referring worker~~, all juvenile offenders under department care and custody in state correctional facilities whose change of placement is pending as established by 41-5-121, MCA; and

(j) through (6) remain the same.

AUTH: 53-1-203, MCA
IMP: 41-5-121, 41-5-122, and 41-5-123, MCA

20.9.120 RECOMMENDATIONS FOR RESIDENTIAL TREATMENT

(1) through (4)(e) remain the same.

AUTH: 53-1-203, MCA
IMP: 41-5-122 and ~~41-5-1513~~, MCA

4. No comments or testimony were received.

DEPARTMENT OF CORRECTIONS

By: /s/ Rick Day
Rick Day, Director

/s/ Lois Adams
Lois Adams, Rule Reviewer

Certified to the Secretary of State April 17, 2000

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of the Amendment of) NOTICE OF AMENDMENT
a Rule Pertaining to the Definition) TO ARM 38.5.1401
of Customer Under Termination of)
Gas and Electric Service)

TO: All Concerned Persons

1. On February 24, 2000, the Department of Public Service Regulation, Public Service Commission (PSC) published notice of public hearing on the proposed amendment of ARM 38.5.1401 concerning the definition of an existing customer at page 625 of the 2000 Montana Administrative Register, issue number 4.

2. The PSC has amended ARM 38.5.1401 exactly as proposed.

AUTH: 69-3-103, MCA

IMP: 69-3-102, MCA

3. Entities providing comments in support of the rule revision include Montana Consumer Counsel, the Montana Department of Public Health and Human Services, the District XI Human Resource Council of Missoula, the Rocky Mountain Development Council of Helena, and Energy Share of Montana. Montana Power Company (MPC) provided comments against the proposal, which appear below with the PSC's response:

COMMENT 1: Montana Power Company commented the rule change is unnecessary because few customers have complained about MPC's policy of requiring payment of outstanding balances from customers who move to a new location and stated that MPC honors existing payment arrangements with customers who are moving, which allows them to establish service at their new locations with the same arrangements in place. MPC commented that customers are not harmed by its policy and are not denied service during the winter months because MPC will turn on service at a customer's new address even if the customer cannot pay the outstanding balance in full if special circumstances, including cold weather, exist and the customer enters a payment arrangement on the balance. MPC further commented that its ability to require payment of outstanding balances or, in special circumstances, requiring customers who are moving to make payment arrangements as a condition of connecting service at a new address, is a valuable collection tool that will be taken away by adoption of this rule revision. MPC further commented that the proposed rule makes an arbitrary distinction between customers who are moving with no break in service and those who move after a break in service and that it will cause confusion among MPC employees and customers.

RESPONSE: The rule revision is necessary to resolve the policy question that arises when consumers contact the PSC for assistance after MPC requires payment of the relocating

consumer's past due balance as a condition of connecting service to the consumer's new address when there is no break in service, but the consumer is unable to make either full or even partial payment. On those occasions, PSC staff has interpreted the existing PSC rules to require the utility to treat the customer as an existing customer who is transferring service and is not subject to service termination unless and until the utility has followed the appropriate procedures for disconnection which are contained in the PSC's termination rules. MPC representatives have disagreed with PSC staff's interpretation in the absence of a rule provision that specifically addresses these situations. Additionally, customer complaints received by the PSC demonstrate that, had the PSC not intervened on behalf of the customer who was unable to pay, MPC's practice of requiring payment of the customer's past due bill as a condition of connecting service at a new address, rather than addressing delinquencies through standard termination rules, would have resulted in denial of service to the customer at the new address, even in the winter months. Regarding MPC's concern that the rule revision will remove a valuable collection tool, the PSC responds that this rule revision, when paired with the existing PSC termination rules, strikes the appropriate balance between a utility's right to use service termination to collect unpaid bills and the public interest in protecting the health, safety and welfare of Montana citizens. Regarding MPC's comment that the rule revision makes an arbitrary and confusing distinction between customers who move with and without breaks in service, the PSC responds that customers who contact their electric or natural gas utility to request termination of service at one address and connection of service at a known new address in the utility's service territory are existing customers who are transferring their service with no break as contemplated by this rule revision. If a customer is moving from his or her existing location but does not indicate to the utility where or when he or she will be moving to another address, and the customer does not contact the utility for connection to a new address before service is terminated at the existing address, then there is a break in service. The distinction is clear.

/s/ Dave Fisher

Dave Fisher, Chairman

/s/ Robin A. McHugh

Reviewed by Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE APRIL 6, 2000.

ATTORNEY GENERAL
STATE OF MONTANA

Joseph P. Mazurek
Attorney General



Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

March 23, 2000

Mr. Jeffrey A. Noble
Powder River County Attorney
P.O. Box 240
Broadus, MT 59317

Re: 48 Op. Att'y Gen. No. 10

Dear Mr. Noble:

Soon after we issued 48 Op. Att'y Gen. No. 10, dated February 18, 2000, this office became aware of new case law requiring some changes in the opinion. The majority of the additions were made in section III. The holdings remain the same.

The earlier version of 48 Op. Att'y Gen. No. 10 dated February 18, 2000, is therefore withdrawn. Please discard it and replace it with the enclosed, dated March 23.

Sincerely,

/s/ Joseph P. Mazurek

JOSEPH P. MAZUREK
Attorney General

jpm/esb/dm
Enc.

VOLUME NO. 48

OPINION NO. 10

COURTS, DISTRICT - Marriage license application confidentiality;
MARRIAGE AND DIVORCE - Marriage license application confidentiality;
PRIVACY - Marriage license application confidentiality;
PUBLIC RECORDS - Marriage license application confidentiality;
RIGHT TO KNOW - Marriage license application confidentiality;
VITAL STATISTICS - Marriage license application confidentiality;
MONTANA CODE ANNOTATED - Sections 1-2-107, 15-6-201(1)(c), 40-1-107, 50-5-101(23), -101(33), -1103(2), 50-15-101(15), -114, -121, -122, 70-30-102(6), 72-3-606(2), -613, 72-16-331(7);
ADMINISTRATIVE RULES OF MONTANA - Rule 37.8.126;
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 159 (1978);
REVISED CODES OF MONTANA, 1947 - Sections 48-305, 69-4401.

- HELD: 1. Subject to the provisions of Mont. Code Ann. §§ 50-15-121 and -122, applications for marriage licenses should be treated as confidential records once they have been completed and filed with the clerk of the district court.
2. Once a marriage has been reported to the Department of Public Health and Human Services on the form prescribed by the Department, the Department or the clerk of the district court may disclose to the public the names of the bride and groom, the date and place of the marriage, the name of the officiant and whether the ceremony was religious or civil.
3. The clerk of court may not divulge or provide copies of applications for marriage licenses under Mont. Code Ann. § 50-15-121(1) unless the requestor is the applicant, the applicant's spouse, child, parent, or guardian, or an authorized representative. For purposes of this statute, "authorized representative" has the meaning provided in Mont. Code Ann. § 50-5-1103(2).

March 23, 2000

Mr. Jeffrey A. Noble
Powder River County Attorney
P.O. Box 240
Broadus, MT 59317

Dear Mr. Noble:

You have requested my opinion on the following question:

Should Montana applications for marriage licenses be treated as confidential records once they have been completed and filed with the clerk of the district

Montana Administrative Register

8-4/27/00

court, or may such applications be divulged to or open to inspection by any person?

Individuals wishing to obtain a marriage license in the state of Montana must complete an application for marriage license prior to the issuance of the license. You have asked whether the information contained in the application for a marriage license is confidential or open to review by the public.

I.

Marriage license applications contain information known as vital statistics. Vital statistics are "the data derived from certificates or reports of birth, death, fetal death, induced termination of pregnancy, marriage, and dissolution of marriage and related reports." Mont. Code Ann. § 50-15-101(15). See also 37 Op. Att'y Gen. No. 159 at 657 (1978), wherein Attorney General Greely determined that Rev. Codes Mont. 1947 § 69-4401 (predecessor to Mont. Code Ann. § 50-15-101(15)) and Rev. Codes Mont. 1947 § 48-305 (predecessor to Mont. Code Ann. § 40-1-107), authorized the Department of Health and Environmental Sciences (a predecessor of the Department of Public Health and Human Services) to gather vital statistics in marriage license applications. While holding that state agencies had a sufficient interest to justify the accumulation of private information from individuals seeking to marry, that opinion did not address the release to the public of vital statistics information gained from marriage license applications.

Mont. Code Ann. § 50-15-114 states that it is unlawful to disclose records of vital statistics maintained by the Department of Public Health and Human Services ("DPHHS"), local registrars, or county clerks and recorders, except when disclosure is authorized by law. Vital statistics maintained by clerks of court are not mentioned in this statute, although other provisions of law create similar confidentiality requirements for marriage-related vital statistics held by the district court clerks.

"Local registrar" is defined at Mont. Code Ann. § 50-15-101(8) as a person appointed by DPHHS to act as its agent in administering vital statistics in the area set forth in the letter of appointment. District court clerks are not appointed by DPHHS to receive vital statistics. Rather, the legislature has decreed that the district court clerk must accept marriage license applications (Mont. Code Ann. § 40-1-202), issue marriage licenses (Mont. Code Ann. §§ 40-1-201(1) and -202), and report marriage certificates to DPHHS (Mont. Code Ann. § 50-15-301). Thus, a court clerk has some of the same duties and responsibilities as does a local registrar, compare, e.g., Mont. Code Ann. § 50-15-109(2) (local registrars to forward original certificates to DPHHS), and is bound by statutory requirements to retain the confidentiality of the vital statistics in the court clerk's possession. Mont. Code Ann. § 50-15-122.

II.

The 1995 legislature provided that vital statistics constitute confidential information which should not be disseminated to the public absent statutory or regulatory authorization, or court order:

It is the policy of the state to protect the integrity of vital records and vital reports, to ensure their proper use, and to ensure the efficient and proper administration of the system of vital statistics. In furtherance of the policy, it is unlawful for any person to permit inspection of or to disclose information contained in vital records or in vital reports or to copy or issue a copy of all or a part of a record or report unless authorized by this chapter, by administrative rule, or by order of a court of competent jurisdiction. Rules adopted under this chapter must provide for adequate standards of security and confidentiality of vital records.

Mont. Code Ann. § 50-15-122(1).

Mont. Admin. R. 37.8.126 establishes to whom vital statistics may be given and under what circumstances. The rule does not generally allow the public dissemination of this information unless all identifying information is removed, or disclosure is otherwise authorized by law.

Pursuant to these laws, neither the clerk of the district court nor DPHHS may disseminate marriage license applications to the public unless authorized to do so by some other provision of law. Mont. Code Ann. § 50-15-122(5) provides that "immediately upon the filing of a record with [DPHHS], . . . a record of marriage . . . may be released to the public without restriction." The phrase "record of marriage" is not defined, but in my opinion the interpretation that best gives effect to all the provisions of these laws is that the term refers to the information relating to the marriage filed by the district court clerks with DPHHS on prescribed forms.

According to Mont. Code Ann. § 50-15-301, district court clerks are to report marriage certificates filed with them for the preceding calendar month to DPHHS. The reports must be "on forms and contain information provided by the department." Id. From information provided by DPHHS, it is my understanding that the marriage certificate itself is not customarily filed with DPHHS. Rather, DPHHS has prescribed a "yellow copy" of the top portion of the marriage license application to be sent to its Vital Statistics Bureau. The "yellow copy," read from top to bottom, contains two sections providing detailed background information about the bride and groom. The bottom portion of the "yellow copy" includes the information about the marriage itself: a record of the date and place of the marriage, the

officiant, a statement of whether the marriage ceremony was religious or civil, and the name of the local official submitting the form and date of its submission. Vital Statistics Bureau personnel enter the names of the bride and groom, the date the marriage took place, and the county where the marriage occurred into an index, then either file or microfiche the "yellow copy." People seeking marriage information from DPHHS are given the indexed information and advised to direct further inquiries to the county where the marriage occurred.

Clearly, not all of the "yellow copy" can fairly be said to be a "record of marriage." The background information in the top two portions of the form relates to the bride and groom, but also includes information that exists independent of whether they actually go forward with the wedding. Those portions of the form record nothing about the marriage itself beyond the names of the bride and groom. The bottom portion, in contrast, sets forth the record of the wedding--the date and place, the name of the officiant, and the type of ceremony. In my opinion, this information, taken together with the names of the bride and groom, constitutes the "record of marriage" that may be released to the public under Mont. Code Ann. § 50-15-122(5).

This interpretation is most consistent with the overall intent of the legislature in dealing with vital records. The legislature recognized that vital records include information of a personal nature that affects the privacy interest of the person to whom the information relates. The general scheme of Mont. Code Ann. § 50-15-122 is that information can be released if (1) the personally identifiable information is removed, Mont. Code Ann. § 50-15-122(3); (2) the information is released to a government agency having need for it for official business, Mont. Code Ann. § 50-15-122(6) and (7); (3) the information is released to a private researcher who enters into a written agreement to maintain the confidentiality of personally identifiable information, Mont. Code Ann. § 50-15-122(2); or (4) the information only contains the limited facts set forth in subsection (5) discussed above.

An interpretation that would release all of the detailed background information found in the marriage license application--the birthplace and family background of the bride and groom, whether either had been married before and to whom, and the circumstances surrounding termination of a prior marriage--would be a marked contrast to the other provisions of the law which jealously safeguard the privacy of persons providing the information. In my opinion, the most likely legislative intent was to provide general information about the fact of the marriage, while protecting the privacy interests of the bride and groom by not allowing release of this detailed background information.

These statutes were enacted in 1995, and they are hardly a model

of clarity. The legislature has the power to revise them to clearly state its intention if it differs from my interpretation. In the meantime, I believe the better course is to adopt the interpretation most consistent with the overall structure of the statute and most protective of individual privacy. I must emphasize, finally, that this opinion addresses only the question presented, concerning disclosure of information contained in a marriage license application form and not the question whether the marriage license itself is available for public disclosure as a "record of marriage."

III.

Mont. Code Ann. § 50-15-121(1) allows either DPHHS or a local clerk and recorder to provide copies of vital records "to the registrant, the registrant's spouse, children, parents, or guardian, or an authorized representative. Other individuals may obtain certified copies when the individual demonstrates that the record is needed for the determination or protection of the individual's personal or property rights." Mont. Code Ann. § 50-15-121. Thus, DPHHS and clerks and recorders may provide copies of the marriage license application to the named individuals, but to no other requestor unless it is determined that the document is required to determine or protect the requestor's personal or property rights. As I have previously found a district court clerk's duties to be similar to that of a clerk and recorder with respect to vital records, the district court clerk may also release the marriage license application under the above-stated circumstances.

The term "authorized representative" is not defined in title 50, part 15 of the Montana Code Annotated. DPHHS, while authorized to issue regulations further defining persons entitled to disclosure under § 50-15-121(1), has not done so. "Authorized representative" also is not defined elsewhere in the Montana Code Annotated for use other than in specific sections not including title 50, chapter 15. It is defined, however, for purposes of the Montana Long-Term Care Residents' Bill of Rights, Mont. Code Ann. §§ 50-5-1101 to -1107, as follows:

- (2) "Authorized representative" means:
 - (a) a person who has a general power of attorney for a resident;
 - (b) a person appointed by a court to manage the personal or financial affairs of a resident;
 - (c) a representative payee;
 - (d) a next of kin; or
 - (e) a sponsoring agency.

Id. § 50-5-1103(2). Prior to the Supreme Court's decision in Richter v. Rose, 1998 MT 165, ¶¶ 17-21, 289 Mont. 379, 962 P.2d 583, I would have been bound to adhere to this definition by virtue of Mont. Code Ann. § 1-2-107, which states that "[w]henver the meaning of a word or phrase is defined in any

part of this code, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention appears." In Richter, the Court deemed a district court's reliance on the definition of "farm" in Mont. Code Ann. § 72-16-331(7) improper where the issue was whether a lot was a "farm" for eminent domain purposes under Mont. Code Ann. § 70-30-102(6) because the definitions in § 72-16-331 were preceded by the introductory phrase "[a]s used in 72-16-331 through 72-16-349, the following definitions apply." It reasoned that "[t]he legislature having clearly expressed its intention that the definition of 'farm' contained in § 72-16-331(7), MCA, applies only to certain sections within the Montana Probate Code, that definition cannot properly be applied in the context of § 70-30-102, MCA." Richter, ¶ 18; accord Billings Firefighters Local 521 v. City of Billings, 1999 MT 6, ¶ 19, 293 Mont. 41, 973 P.2d 222. Richter appears to conflict with Department of Revenue v. Gallatin County, 234 Mont. 425, 763 P.2d 1128 (1988), where the Court held a health care facility was an "outpatient facility" and not a "hospital" and therefore was not entitled to a "hospital" tax exemption from personal property taxes under Mont. Code Ann. § 15-6-201(1)(c). In so concluding, it applied the definitions of "hospital" and "outpatient facility" appearing, respectively, in Mont. Code Ann. § 50-5-101(23) and -101(33) and rejected an argument identical to the analysis found in Richter:

The use by the legislature in § 50-5-101, MCA, of the phrase "as used in parts 1 through 4 of this chapter" does not show the legislature's plain intent that the definitions were only to be applied in those parts of the code. Those words only indicate that the legislature intended the particular application of the definitions in those parts of the code, without limitation to the general use of the definitions in other parts of the code, pursuant to § 1-2-107, MCA.

234 Mont. at 430, 763 P.2d at 1131; accord SJL of Mt. Assoc. Ltd. Partnership v. City of Billings, 263 Mont. 142, 147, 867 P.2d 1084, 1087 (1993). The Richter opinion did not refer to the decision in Department of Revenue.

Even if it is assumed that Richter overruled Department of Revenue sub silentio, I am not precluded from viewing the definition of "authorized representative" in § 50-5-1103(2) as a manifestation of legislative intent concerning the meaning of the same term in § 50-15-121(1). Cf. Newman v. Wittmer, 277 Mont. 1, 7, 917 P.2d 926, 930 (1996) ("agree[ing] that statutory definitions provide guidance in interpreting the ordinary and popular meaning of undefined terms in a restrictive covenant"). I choose that course here because the definition in § 50-5-1103(2) adequately addresses the range of representatives who possess the requisitely clear authority to act in the stead of a living registrant for purposes of securing a vital record. My reliance on § 50-5-1103(2) in this respect does not limit the

ability of a deceased registrant's estate by operation of law to request a vital record through the estate's personal representative for probate administration use. See Mont. Code Ann. §§ 72-3-606(2), -613.

I must observe, finally, that genealogists are not entitled to copies of vital records unless they otherwise qualify for such entitlement under § 50-15-121(1) or one of the other statutory exceptions to the nondisclosure obligation applies. The question whether genealogists, as a class, should be given access to vital records or statistics should be addressed to the legislature.

IV.

I express no opinion with respect to any questions regarding the constitutionality of the statutes cited in this opinion. Such issues are beyond the scope of your request and would not, in any event, be appropriate for resolution through an Attorney General's Opinion.

THEREFORE, IT IS MY OPINION:

1. Subject to the provisions of Mont. Code Ann. § 50-15-121 and -122, applications for marriage licenses should be treated as confidential records once they have been completed and filed with the clerk of the district court.
2. Once the marriage has been reported to the Department of Public Health and Human Services on the form prescribed by the Department, the Department or the clerk of the district court may disclose to the public the names of the bride and groom, the date and place of the marriage, the name of the officiant and whether the ceremony was religious or civil.
3. The clerk of court may not divulge or provide copies of applications for marriage licenses under Mont. Code Ann. § 50-15-121(1) unless the requestor is the applicant, the applicant's spouse, child, parent, or guardian, or an authorized representative. For purposes of this statute, "authorized representative" has the meaning provided in Mont. Code Ann. § 50-5-1103(2).

Sincerely,

/s/ Joseph P. Mazurek

JOSEPH P. MAZUREK
Attorney General

jpm/mas/dm

BEFORE THE BOARD OF NURSING
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the petition)
for declaratory ruling on the) NOTICE OF PETITION FOR
management of continuous infusion) DECLARATORY RULING
of epidural catheter for analgesia)
in the obstetric setting)

TO: All Concerned Persons:

1. On July 20, 2000 at 8:00 a.m., in the conference room of the Professional and Occupational Licensing Bureau, 111 North Jackson, Arcade Building, Lower Level, Helena, Montana, the Board of Nursing will consider a petition for declaratory ruling on whether it is within the scope and practice of a registered nurse to monitor a continuous infusion of an epidural analgesia in a pregnant patient.

2. The statute upon which the declaratory ruling is requested is 37-8-102(5)(b), MCA, which provides:

(b) "Practice of professional nursing" means the performance for compensation of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the prevention, case finding, and management of illness, injury, or infirmity; and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered.

3. The Board of Nursing is being asked to issue a declaratory ruling declaring that it is within the scope and practice of a registered nurse to monitor a continuous infusion of an epidural analgesia in a pregnant patient.

4. The Board of Nursing identified the following as other interested persons:

Community Medical Center
2827 Fort Missoula Road
Missoula, MT 59804

Sweet Grass Anesthesia, PC
P. O. Box 496
Havre, MT 59501

Northern Montana Hospital
Administrator
P.O. Box 1231
Havre, MT 59501

Sami Butler, RN, CCRN
Montana Nurses Association
P.O. Box 5718
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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 the Board of Nursing, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513, to be received no later than 5:00 p.m. on July 20, 2000.

6. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in the 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 July 1, 2000, to advise us of the nature of the accommodation that you need. Please contact Jill Caldwell, Board of Nursing, 111 North Jackson, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 444-7762; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 444-7759.

BOARD OF NURSING
KIM POWELL, RN, CHAIRPERSON

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, CHIEF COUNSEL
DEPARTMENT OF COMMERCE

BY: /s/ Annie M. Bartos
ANNIE M. BARTOS, RULE REVIEWER

Certified to the Secretary of State, April 17, 2000.

BEFORE THE DEPARTMENT
OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the Matter of Shelby Gas) DECLARATORY RULING
Association, Inc. Petition)
for Declaratory Ruling on)
Status as a Regulated Utility)

DECLARATORY RULING

Discussion

On January 5, 2000, Shelby Gas Association (SGA) filed before the Public Service Commission (PSC) a Petition for Declaratory Ruling. In its petition SGA requests that the PSC declare that SGA is not a public utility within the meaning of that term as used in § 69-3-101, MCA, and therefore is not subject to PSC regulation as a public utility.

On February 22, 2000, the PSC issued a Notice of Petition for Declaratory Ruling. The notice set forth the facts and the question of law presented and provided an opportunity for all interested persons to submit comments or requests for hearing by March 23, 2000. No comments or requests for hearing have been received by the PSC.

SGA is a general cooperative association providing natural gas services to SGA members in the Shelby, Montana, service area. SGA serves only SGA members. SGA's natural gas service operations are governed by a board of directors elected by SGA members. SGA's operations are non-profit. SGA's natural gas operations have been regulated by the PSC in the past.

Cooperatives providing utility services (e.g., electricity) to their members are commonly not subject to regulation by the PSC in Montana. In regard to some cooperatives providing utility services there are specific statutory exemptions from PSC authority. See e.g., § 35-18-104, MCA (electric and telephone cooperatives transacting business in accordance with Montana laws pertaining to rural cooperatives are exempt from regulation by the PSC). The PSC is aware of no specific Montana statute exempting cooperatives providing natural gas services from PSC regulation. However, Montana case law generally supports a conclusion that associations providing utility services to members only are not public utilities subject to regulation by the PSC. See, *Lockwood Water Users Association v. Anderson*, 168 Mont. 303, 542 P.2d 1217 (1975). *Lockwood* squarely addresses the definition of public utility and cites with approval to the concept that an organization or group confining its services to its own members is not ordinarily considered a public utility. *Id.*, 542 P.2d at 1220. In addition, the definition of public utility in Montana includes a provision that the production, delivery, or furnishing of the

utility service must be for or to others. § 69-3-101(1), MCA. In the case of cooperatives, serving members only, this aspect of the definition of public utility (i.e., service to others) is normally not present.

Ruling

The Montana Public Service Commission hereby declares that Shelby Gas Association, a general cooperative association providing natural gas services to its members only and being governed by a board of directors elected by its members, is not a public utility within the meaning of that term in § 69-3-101, MCA, and therefore is not subject to PSC regulation as a public utility.

/s/ Dave Fisher
Dave Fisher, Chairman

/s/ Robin A. McHugh
Reviewed by Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE APRIL 6, 2000.

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.

Business and Labor 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 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, Justice, and Indian Affairs Interim Committee:

- ▶ Department of Corrections; and
- ▶ Department of Justice.

Revenue and Taxation Interim Committee:

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

State Administration, Public Retirement Systems, 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
Subject
Matter | 1. Consult ARM topical index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute
Number and
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 which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 1999. This table includes those rules adopted during the period January 1, 2000 through March 31, 2000 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 December 31, 1999, 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 1999 and 2000 Montana Administrative Registers.

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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 March 2000, appear. Vacancies scheduled to appear from May 1, 2000, through July 31, 2000, 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 April 4, 2000.

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 MARCH, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Air Pollution Control Advisory Council (Environmental Quality) Dr. Linda J. Dworak Hamilton Qualifications (if required): veterinarian	Governor	Peretti	3/16/2000 0/0/0
Ms. Kathryn J. Harris Helena Qualifications (if required): urban planning consultant	Governor	Harris	3/16/2000 0/0/0
Board of Architects (Commerce) Mr. John W. Peterson Kalispell Qualifications (if required): registered architect	Governor	not listed	3/27/2000 3/27/2003
Board of Dentistry (Commerce) Dr. Paul Sims Butte Qualifications (if required): dentist	Governor	Langford	3/29/2000 3/29/2005
Board of Optometry (Commerce) Dr. Douglas McBride Billings Qualifications (if required): optometrist	Governor	not listed	3/16/2000 4/3/2004
Children's Trust Fund Board (Public Health and Human Services) Ms. Ann (Punky) Bullis Crow Agency Qualifications (if required): public member	Governor	reappointed	3/2/2000 1/1/2003
Ms. Kathleen Perez Harlem Qualifications (if required): public member	Governor	Gorneau	3/2/2000 1/1/2003

BOARD AND COUNCIL APPOINTEES FROM MARCH, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services)			
Ms. Jannis Conselyea Helena	Governor	Driggers	3/7/2000 1/1/2003
Qualifications (if required): Department of Public Health and Human Services representative			
Family Support Services Advisory Council (Public Health and Human Services)			
Ms. Julianne Abraham Belgrade	Governor	LaFond Smith	3/27/2000 9/14/2000
Qualifications (if required): representing region IV as a parent representative			
Ms. Lucy Hart-Paulson Missoula	Governor	Botten	3/27/2000 9/14/2000
Qualifications (if required): representing physical occupational speech therapists			
Ms. Lynda Korth Helena	Governor	not listed	3/27/2000 9/14/2000
Qualifications (if required): representing Child and Family Services Division			
Ms. Sandy McGennis Great Falls	Governor	Gutschenritter	3/27/2000 9/14/2000
Qualifications (if required): representing services to children with sensory impairments			
Governor's Council on Organ Donor Awareness (Public Health and Human Services)			
Mr. Lowell Bartels East Helena	Governor	reappointed	3/23/2000 3/23/2002
Qualifications (if required): representative of business			
Mr. Paul Buck Missoula	Governor	reappointed	3/23/2000 3/23/2002
Qualifications (if required): ex-officio member			

BOARD AND COUNCIL APPOINTEES FROM MARCH, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Governor's Council on Organ Donor Awareness (Public Health and Human Services) cont.			
Mr. Ron Davis	Governor	reappointed	3/23/2000
Butte			3/23/2002
Qualifications (if required):	representative of the media		
Ms. Nancy Ellery	Governor	reappointed	3/23/2000
Helena			3/23/2002
Qualifications (if required):	representative of the Department of Public Health and Human Services		
Ms. Carole Erickson	Governor	reappointed	3/23/2000
Missoula			3/23/2002
Qualifications (if required):	public member		
Ms. Mary Hainlin	Governor	reappointed	3/23/2000
Helena			3/23/2002
Qualifications (if required):	representative of organ donor families		
Ms. Jan Hendricks	Governor	reappointed	3/23/2000
Kalispell			3/23/2002
Qualifications (if required):	ex-officio member		
Ms. Joyce Kramer	Governor	reappointed	3/23/2000
Billings			3/23/2002
Qualifications (if required):	ex-officio member		
Mr. Ted Marchion	Governor	reappointed	3/23/2000
Anaconda			3/23/2002
Qualifications (if required):	representative of donor recipients		
Lt. Governor Judy Martz	Governor	reappointed	3/23/2000
Helena			3/23/2002
Qualifications (if required):	representative of state government and donor families		

BOARD AND COUNCIL APPOINTEES FROM MARCH, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Governor's Council on Organ Donor Awareness (Public Health and Human Services) cont. Rev. Ken Matrum Kalispell Qualifications (if required): clergy	Governor	not listed	3/23/2000 3/23/2002
Mr. Dean Roberts Helena Qualifications (if required): representative of the Department of Justice	Governor	reappointed	3/23/2000 3/23/2002
Ms. Sandi Stroot Superior Qualifications (if required): ex-officio member	Governor	reappointed	3/23/2000 3/23/2002
Governor's Standing Committee for Inmate Projections (Corrections) Mr. Ted Clack Helena Qualifications (if required): representing the judiciary	Governor	not listed	3/2/2000 3/2/2002
Sen. Vicki Cocchiarella Missoula Qualifications (if required): representing the Montana Legislature	Governor	not listed	3/2/2000 3/2/2002
Ms. Christine Cooke Hardin Qualifications (if required): representing county prosecutors	Governor	not listed	3/2/2000 3/2/2002
Mr. Don Crabbe Helena Qualifications (if required): representing the Board of Crime Control	Governor	not listed	3/2/2000 3/2/2002
Ms. Mary Fay Helena Qualifications (if required): representing the Department of Corrections	Governor	not listed	3/2/2000 3/2/2002

BOARD AND COUNCIL APPOINTEES FROM MARCH, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Governor's Standing Committee for Inmate Projections (Corrections) cont.			
Mr. Bill Furois	Governor	not listed	3/2/2000
East Helena			3/2/2002
Qualifications (if required):	representing the public at large		
Mr. Rudy Gideon	Governor	not listed	3/2/2000
Missoula			3/2/2002
Qualifications (if required):	representing the University System		
Ms. Melissa Harrison	Governor	not listed	3/2/2000
Missoula			3/2/2002
Qualifications (if required):	representing the University System		
Ms. Mary LaFond	Governor	not listed	3/2/2000
Helena			3/2/2002
Qualifications (if required):	representing the Governor's Budget Office		
Mr. Marko Lucich	Governor	not listed	3/2/2000
Butte			3/2/2002
Qualifications (if required):	representing juvenile probation		
Rep. Daniel W. McGee	Governor	not listed	3/2/2000
Laurel			3/2/2002
Qualifications (if required):	representing the Montana Legislature		
Mr. Troy W. McGee	Governor	not listed	3/2/2000
Helena			3/2/2002
Qualifications (if required):	representing law enforcement		
Mr. Jeff Rosky	Governor	not listed	3/2/2000
Helena			3/2/2002
Qualifications (if required):	representing the Department of Corrections		

BOARD AND COUNCIL APPOINTEES FROM MARCH, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Governor's Standing Committee for Inmate Projections (Corrections) cont.			
Mr. John Strandell	Governor	not listed	3/2/2000
Great Falls			3/2/2002
Qualifications (if required):	representing law enforcement		
Mr. Craig Thomas	Governor	not listed	3/2/2000
Deer Lodge			3/2/2002
Qualifications (if required):	representing the Board of Pardons and Parole		
Martin Luther King Holiday Commemorative Commission (Community Services)			
Mr. Donald Louie Clayborn	Governor	not listed	3/23/2000
Helena			3/23/2002
Qualifications (if required):	Director of Indian Affairs		
Ms. Angelina Vallejo Cormier	Governor	not listed	3/23/2000
Billings			3/23/2002
Qualifications (if required):	public member		
Ms. Kathy Day	Governor	not listed	3/23/2000
Great Falls			3/23/2002
Qualifications (if required):	public member		
Ms. Lindley Dupree	Governor	not listed	3/23/2000
Kalispell			3/23/2002
Qualifications (if required):	public member		
Mr. Robert Fourstar	Governor	not listed	3/23/2000
Wolf Point			3/23/2002
Qualifications (if required):	public member		
Mr. William Jones	Governor	not listed	3/23/2000
Great Falls			3/23/2002
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM MARCH, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Martin Luther King Holiday Commemorative Commission (Community Services) cont.			
Ms. Kay Maloney	Governor	not listed	3/23/2000
Great Falls			3/23/2002
Qualifications (if required):	public member		
Mr. Hilton McClendon	Governor	not listed	3/23/2000
Billings			3/23/2002
Qualifications (if required):	public member		
Ms. Betty McCoy	Governor	not listed	3/23/2000
Bozeman			3/23/2002
Qualifications (if required):	public member		
Ms. Cristina Medina	Governor	not listed	3/23/2000
Helena			3/23/2002
Qualifications (if required):	public member		
Ms. Carol Murray	Governor	not listed	3/23/2000
Browning			3/23/2002
Qualifications (if required):	public member		
Mr. Brian Schnitzer	Governor	not listed	3/23/2000
Billings			3/23/2002
Qualifications (if required):	public member		
Mr. Alan Thompson	Governor	not listed	3/23/2000
Helena			3/23/2002
Qualifications (if required):	public member		
Ms. Michelle Wilkerson	Governor	not listed	3/23/2000
Great Falls			3/23/2002
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM MARCH, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Abstinence Education Advisory Council (Public Health and Human Services)			
Ms. Tara Andrews	Governor	not listed	3/14/2000
Miles City			3/14/2002
Qualifications (if required):	public member		
Ms. Helen Beausoleil	Governor	not listed	3/14/2000
Helena			3/14/2002
Qualifications (if required):	public member		
Ms. Elaine Collins	Governor	not listed	3/14/2000
Dillon			3/14/2002
Qualifications (if required):	public member		
Ms. Jill Flynn	Governor	not listed	3/14/2000
Townsend			3/14/2002
Qualifications (if required):	public member		
Mr. Jason Gleason	Governor	not listed	3/14/2000
Butte			3/14/2002
Qualifications (if required):	public member		
Mr. Jim Good	Governor	not listed	3/14/2000
Bozeman			3/14/2002
Qualifications (if required):	public member		
Sen. Duane Grimes	Governor	not listed	3/14/2000
Clancy			3/14/2002
Qualifications (if required):	public member		
Mr. Bill Hodges	Governor	not listed	3/14/2000
Hardin			3/14/2002
Qualifications (if required):	public member		

BOARD AND COUNCIL APPOINTEES FROM MARCH, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Abstinence Education Advisory Council (Public Health and Human Services) cont. Ms. Traci Hronek Great Falls Qualifications (if required): public member	Governor	not listed	3/14/2000 3/14/2002
Ms. Janet Meissner Belt Qualifications (if required): public member	Governor	not listed	3/14/2000 3/14/2002
Ms. Cassie Rice Helena Qualifications (if required): public member	Governor	not listed	3/14/2000 3/14/2002
Ms. Julie Rossignol Wolf Point Qualifications (if required): public member	Governor	not listed	3/14/2000 3/14/2002
Mr. Bryce Skjervem Helena Qualifications (if required): public member	Governor	not listed	3/14/2000 3/14/2002
Ms. Karen S. Sloan Havre Qualifications (if required): public member	Governor	not listed	3/14/2000 3/14/2002
Mr. Russ Smith Missoula Qualifications (if required): public member	Governor	not listed	3/14/2000 3/14/2002
Ms. Joleen Spang Lame Deer Qualifications (if required): public member	Governor	not listed	3/14/2000 3/14/2002

BOARD AND COUNCIL APPOINTEES FROM MARCH, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Abstinence Education Advisory Council (Public Health and Human Services) cont. Ms. Jessie Stinger Polson Qualifications (if required): public member	Governor	not listed	3/14/2000 3/14/2002
Mr. Gary Swant Deer Lodge Qualifications (if required): public member	Governor	not listed	3/14/2000 3/14/2002
Montana Arts Council (Education) Mr. Monte Dolack Missoula Qualifications (if required): public member	Governor	reappointed	3/13/2000 2/1/2005
Ms. Jennifer Earle Seifert Troy Qualifications (if required): public member	Governor	reappointed	3/13/2000 2/1/2005
Mr. Bill Frazier Livingston Qualifications (if required): public member	Governor	reappointed	3/13/2000 2/1/2005
Ms. Marilyn Olson Sidney Qualifications (if required): public member	Governor	reappointed	3/13/2000 2/1/2005
Ms. Linda Reed Helena Qualifications (if required): public member	Governor	Doeden	3/13/2000 2/1/2005

BOARD AND COUNCIL APPOINTEES FROM MARCH, 2000

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Health Facility Authority (Commerce) Mr. John Bartos Corvallis Qualifications (if required): public member	Governor	Hayden	3/21/2000 1/1/2003
State Electrical Board (Commerce) Mr. Tony Martel Bozeman Qualifications (if required): public member	Governor	Kolstad	3/16/2000 7/1/2001
Vocational Rehabilitation Advisory Council (Public Health and Human Services) Mr. Stu Lekander Black Eagle Qualifications (if required): none specified	Director	not listed	3/20/2000 3/20/2002
Water Pollution Control Advisory Council (Environmental Quality) Mr. Don Halverson Missoula Qualifications (if required): labor representative	Governor	Greenlie	3/23/2000 0/0/0

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2000 through JULY 31, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Advisory Council on Community Service (Governor) Ms. Nancy Coopersmith, Helena Qualifications (if required): representing K-12 education	Governor	7/1/2000
Ms. Gertrude Downey, Butte Qualifications (if required): representing private citizens	Governor	7/1/2000
Mr. George Dennison, Missoula Qualifications (if required): representing higher education	Governor	7/1/2000
Mr. Joseph Lovelady, Helena Qualifications (if required): representing volunteer organizations	Governor	7/1/2000
Major Joel Cusker, Helena Qualifications (if required): representing Department of Military Affairs	Governor	7/1/2000
Ms. Kathy Ramirez, Helena Qualifications (if required): representing private citizens	Governor	7/1/2000
Aging Advisory Council (Public Health and Human Services) Mr. Dwight MacKay, Billings Qualifications (if required): public member from Region II	Governor	7/18/2000
Ms. Roberta Feller, Stockett Qualifications (if required): public member from Region X	Governor	7/18/2000
Ms. Eloise England, Dupuyer Qualifications (if required): public member from Region VII	Governor	7/18/2000
Board of Funeral Services (Commerce) Mr. John Michelotti, Billings Qualifications (if required): mortician	Governor	7/1/2000

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2000 through JULY 31, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Hearing Aid Dispensers (Commerce) Mr. Dudley Anderson, Missoula Qualifications (if required): licensed hearing aid dispenser	Governor	7/1/2000
Board of Landscape Architects (Commerce) Mr. Jim Foley, Billings Qualifications (if required): licensed landscape architect	Governor	7/1/2000
Board of Nursing (Commerce) Ms. Jean E. Ballantyne, Billings Qualifications (if required): registered nurse with teaching experience	Governor	7/1/2000
Board of Nursing Home Administrators (Commerce) Ms. Donna Kay Jennings, Missoula Qualifications (if required): nursing home administrator	Governor	5/28/2000
Board of Pharmacy (Commerce) Mr. Wayne Hedman, Hamilton Qualifications (if required): pharmacist	Governor	7/1/2000
Board of Physical Therapy Examiners (Commerce) Ms. Christine Jensen, Clinton Qualifications (if required): public member	Governor	7/1/2000
Board of Radiologic Technologists (Governor) Ms. Jane Christman, Dutton Qualifications (if required): radiologic technologist	Governor	7/1/2000
Board of Real Estate Appraisers (Commerce) Mr. A. Farrell Rose, Helena Qualifications (if required): certified real estate appraiser	Governor	5/1/2000

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2000 through JULY 31, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Real Estate Appraisers (Commerce) cont. Ms. Jeannie Flechsenhar, Cascade Qualifications (if required): public member	Governor	5/1/2000
Board of Research and Commercialization Technology (Commerce) Mr. Gary Buchanan, Billings Qualifications (if required): none specified	President of the Senate	7/1/2000
Board of Sanitarians (Commerce) Ms. Denise Moldroski, Superior Qualifications (if required): registered sanitarian	Governor	7/1/2000
Board of Veterans' Affairs (Military Affairs) Mr. Ruben McKinney, Havre Qualifications (if required): veteran	Governor	5/18/2000
Board of Veterinary Medicine (Commerce) Dr. Deborah Yarborough, Kalispell Qualifications (if required): veterinarian	Governor	7/31/2000
Ms. Mary Hinebauch, Rosebud Qualifications (if required): public member	Governor	7/31/2000
Committee on Telecommunications Access Services for Disabled (Public Health and Human Services) Mr. Eric Eck, Helena Qualifications (if required): representing the Montana Public Service Commission	Governor	7/1/2000
Mr. Norman Eck, Helena Qualifications (if required): representing senior citizens and is not handicapped	Governor	7/1/2000

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2000 through JULY 31, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Committee on Telecommunications Access Services for Disabled (Public Health and Human Services) cont. Ms. Sheri Devlin, Billings Qualifications (if required): representing the Department of Public Health and Human Services	Governor	7/1/2000
Ms. Barbara Ranf, Helena Qualifications (if required): representing the largest exchange carrier in Montana	Governor	7/1/2000
Family Education Savings Program Oversight Committee (Commissioner of Higher Education) Ms. Lois A. Menzies, Helena Qualifications (if required): state treasurer	Governor	7/1/2000
Historical Society Board of Trustees (Historical Society) Mr. John Burke, Butte Qualifications (if required): public member	Governor	7/1/2000
Ms. Ana Brenden, Scobey Qualifications (if required): public member	Governor	7/1/2000
Mr. Jack Hayne, Dupuyer Qualifications (if required): public member	Governor	7/1/2000
Microbusiness Advisory Council (Commerce) Mr. David T. Bond, Whitefish Qualifications (if required): microbusiness owner	Governor	6/30/2000
Montana Heritage Preservation and Development Commission (Montana Historical Society) Mr. F. W. Howell, West Yellowstone Qualifications (if required): managing a facility catering to tourists	Governor	5/23/2000

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2000 through JULY 31, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Mint Committee (Agriculture) Mr. Philip Clarke, Columbia Falls Qualifications (if required): mint grower	Governor	7/1/2000
Mr. Bruce Tutvedt, Kalispell Qualifications (if required): mint grower	Governor	7/1/2000
Montana Source Water Assessment Program Advisory Council (Environmental Quality) Rep. Roger DeBruycker, Floweree Qualifications (if required): none specified	Director	5/20/2000
Mr. Pat Graham, Helena Qualifications (if required): none specified	Director	5/20/2000
Mr. Robert E. Willems, Harlowton Qualifications (if required): none specified	Director	5/20/2000
Mr. Bruce Farling, Missoula Qualifications (if required): none specified	Director	5/20/2000
Mr. Douglas Parker, Missoula Qualifications (if required): none specified	Director	5/20/2000
Montana Special Education Advisory Panel (Office of Public Instruction) Sen. Debbie Shea, Butte Qualifications (if required): legislator and parent of a child with disabilities	Director	6/30/2000
Ms. Mary Ann Akers, Helena Qualifications (if required): state agency	Director	6/30/2000
Mr. Wallace Melcher, Helena Qualifications (if required): parent with a child with disabilities	Director	6/30/2000

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2000 through JULY 31, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Special Education Advisory Panel (Office of Public Instruction) cont. Ms. Judith Oberst, Helena Qualifications (if required): parent of a child with disabilities	Director	6/30/2000
Montana Y2K Readiness Council (Administration) Mr. Jim Ereaux, Pablo Qualifications (if required): representing the Montana Native American community	Governor	6/30/2000
Mr. Michael Strand, Helena Qualifications (if required): representing telecommunications co-ops	Governor	6/30/2000
Mr. Gordon Morris, Helena Qualifications (if required): representing Montana Association of Counties	Governor	6/30/2000
Mr. Jim Greene, Helena Qualifications (if required): representing the Disaster and Emergency Services Division	Governor	6/30/2000
Lt. Governor Judy Martz, Helena Qualifications (if required): representing the State of Montana	Governor	6/30/2000
Mr. Bob Anderson, Helena Qualifications (if required): representing the Montana Public Service Commission	Governor	6/30/2000
Petroleum Tank Release Compensation Board (Environmental Quality) Ms. Mary Ann Sharon, Dillon Qualifications (if required): public member	Governor	6/30/2000
State Banking Board (Commerce) Ms. Barbara Skelton, Butte Qualifications (if required): public member	Governor	7/1/2000

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2000 through JULY 31, 2000

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Tourism Advisory Council (Commerce) Mr. Ed Henrich, Anaconda Qualifications (if required): representing Gold West Country	Governor	7/1/2000
Mr. Tim Prather, Red Lodge Qualifications (if required): representing Yellowstone Country	Governor	7/1/2000
Ms. Donna Madson, West Yellowstone Qualifications (if required): representing Yellowstone Country	Governor	7/1/2000
Western Interstate Commission on Higher Education (Education) Mr. Francis J. Kerins, Helena Qualifications (if required): public member	Governor	6/19/2000