

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 9

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 proposed )	NOTICE OF PROPOSED
adoption of new rules )	ADOPTION
relating to a specific )	
agricultural chemical ground )	NO PUBLIC HEARING
water management plan )	CONTEMPLATED

TO: All Concerned Persons

1. On June 9, 2001, the Montana Department of Agriculture proposes to adopt the new rules relating to a specific agricultural chemical ground water management plan (SMP).

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 24, 2001, to advise us of the nature of the accommodation that you need. Please contact Mary Bryson at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2944; TDD: (406) 444-4687; Fax: (406) 444-7336; or E-mail: agr@state.mt.us.

3. The proposed new rules provide as follows:

RULE I GENERAL (1) The department hereby establishes rules for a specific agricultural chemical ground water management plan (SMP) regarding the registration and use of imazamethabenz methyl.

(2) The purpose and intent of these rules are to prevent or minimize the presence of imazamethabenz methyl in ground water in the Fairfield bench area as defined in [RULE III], geographical area.

(3) The affected ground water resource is described as the Fairfield bench aquifer, which resides within the Sun River watershed (hydrologic unit code 10030104). The Fairfield bench aquifer is comprised of predominately class I water, suitable for public and private water supply, culinary and food processing purposes, irrigation, drinking water for livestock and wildlife and for commercial and industrial purposes with little or no treatment. As of [the date of this rule adoption], the Fairfield bench aquifer is used for public water supply, community transient/non transient water supply, private domestic water supply, irrigation and stock watering. Public water supplies impacted by this rule include the Fairfield public water supply (public water supply) (PWS #00212), Greenfield elementary school district (PWS #03015) and the Tri-County water district (PWS #02912).

AUTH: 80-15-217, MCA  
IMP: 80-15-214, MCA

REASON: The rules are proposed to adopt a specific agricultural chemical management plan (SMP) for the Fairfield Bench for imazamethabenz methyl to comply with 80-15-212, MCA. The SMP provides a means of addressing documented ground water impairment by the agricultural chemical imazamethabenz methyl, trade name Assert. The rules address the impaired ground water condition and implement measures to mitigate further introduction of imazamethabenz methyl into the aquifer. The department is attempting to match, in development of this SMP, the human health and environmental risk associated with the current, extremely low concentrations of imazamethabenz methyl in ground water. New rule I designates the affected aquifer and provides a description of the aquifer. The rule also identifies the public water supplies impacted by the SMP.

RULE II DEFINITIONS The definitions are intended to supplement all existing rules adopted under the Montana Agricultural Chemical Ground Water Protection Act, Title 80, chapter 15, MCA:

(1) "Best available technology" (BAT) means technology and practices currently available, which can practically and feasibly be implemented in production of agricultural crops.

(a) BATs are based on a best management practice (BMP) premise but need to be individualized to meet the specific needs of each field and the conditions experienced in that field. BATs may change throughout the season and from year to year to reflect changing conditions. BATs may require more initial and ongoing producer input.

(b) Implemented BATs are intended to reduce, eliminate, minimize or mitigate the presence of imazamethabenz methyl in ground water.

(c) BATs adopted by the department may be obtained from the agricultural sciences division, technical services bureau ground water program (Fairfield bench state management plan best available technologies, MDA technical document 00-01).

(2) "Chemical rotation" refers to the practice of alternating herbicides with different modes of action to delay or prevent development of resistance.

(3) "Imazamethabenz methyl" is the common name of the trade name product Assert, a selective postemergence herbicide used for control of wild oat, mustard, and buckwheat in sunflowers and all varieties of barley and wheat.

(4) "Integrated pest management" (IPM) is defined as an effective pest management strategy that integrates biological, cultural and chemical control mechanisms designed to prevent and reduce pest damage to tolerable levels.

(5) "Mode-of-action" (MOA) is all the processes associated with how an herbicide interacts with the plant and includes the absorption and translocation mechanism or site of action and metabolism.

(6) "Standard", as defined in 80-15-102(20), MCA, means

the numerical value expressing the concentration of an agricultural chemical in ground water that, when exceeded, presents a potential human health risk over a lifetime of consumption and that is adopted by rule of the department of environmental quality's board of environmental review as required by 80-15-201, MCA.

AUTH: 80-15-217, MCA  
IMP: 80-15-217, MCA

REASON: A definitions rule is necessary to provide the reader with an understanding of the technical terms used in the rules.

RULE III GEOGRAPHICAL AREA (1) The area subject to the SMP is the Greenfield bench (commonly referred to as the Fairfield bench) located in Teton and Cascade counties. It is the area that resides within 47° 35' N to 47° 42' N and 111° 42' W to 112° 00' W and which encompasses the majority of irrigated acres within the Greenfield irrigation district. The geographical area may also be described as encompassing a block of 9 townships, designated as townships 21, 22 and 23 north and ranges 1, 2, and 3 west.

AUTH: 80-15-217, MCA  
IMP: 80-15-212, MCA

REASON: 80-15-212, MCA requires that all SMPs be specific to a defined geographical area. This rule defines the area subject to the SMP for imazamethabenz methyl and the area where monitoring will be conducted.

RULE IV AGRICULTURAL CHEMICAL (1) Imazamethabenz methyl is the agricultural chemical subject to the SMP.

AUTH: 80-15-217, MCA  
IMP: 80-15-212, MCA

REASON: 80-15-212, MCA requires the department to specify the particular agricultural chemical to which the SMP applies.

RULE V IMAZAMETHABENZ METHYL STANDARD (1) For the purposes of implementing the SMP rules and evaluating analytical results and determining appropriate responses, the department hereby adopts and incorporates by reference the Montana water quality standard of 400 parts per billion (ppb) for imazamethabenz methyl as designated in Circular WQB-7: Montana Numeric Water Quality Standards, September 1999. A copy of this document can be obtained from the Montana Department of Environmental Quality at P.O. Box 200901, Helena, MT 59620-0901.

AUTH: 80-15-217, MCA

IMP: 80-15-201, MCA

REASON: When evaluating monitoring results, a Montana Water Quality Standard is to be used to determine if the conditions specified in 80-15-212, MCA have been met.

RULE VI CONTENTS (1) The SMP for imazamethabenz methyl will be comprised of voluntary use of BATs and an educational program. Both the educational program and BATs may include:

(a) All users should attend SMP training prior to using imazamethabenz methyl on the Fairfield Bench. The educational program will, at a minimum, include:

(i) laws and regulations governing pesticide use and management:

(A) the Montana Pesticide Act, Title 80, chapter 8, MCA;

(B) the Montana Agricultural Chemical Ground Water Protection Act, Title 80, chapter 15, MCA;

(C) BATs as identified in (1)(b); and

(D) other topics as deemed appropriate by the department.

(ii) physical and chemical characteristics of imazamethabenz methyl; and

(iii) hydrology of the Fairfield bench.

(b) The department recommends that all users of imazamethabenz methyl incorporate the use of the following BATs into their crop production operations:

(i) The department recommends that producers maximize the amount of time between pesticide application and initiation of irrigation;

(ii) The department recommends that all users of imazamethabenz methyl work with Montana state university extension service (MSUES) and other relevant professionals to develop and implement a Fairfield bench IPM program. The department further recommends that IPM program include a focus on and/or recommendations specific to imazamethabenz methyl. Any IPM program adopted by a Fairfield bench producer should include scouting, use of economic thresholds, record keeping, sprayer maintenance and calibration, determination of application site characteristics, chemical rotation, irrigation management, application timing and other programmatic elements as identified by the individual producer and/or in conjunction with MSUES and/or a certified crop advisor;

(iii) All users of imazamethabenz methyl must comply with all imazamethabenz methyl label requirements. The department recommends that users of imazamethabenz methyl utilize ancillary, additional and helpful information contained within the label that are applicable to the mitigation, reduction, elimination and prevention of imazamethabenz methyl in ground water. Because application of imazamethabenz methyl in a manner that is inconsistent with the label is a violation of the Montana Pesticide Act, the department strongly recommends that all users review pesticide labels prior to selection of a particular pesticide,

calibration of equipment and actual pesticide application;

(iv) It is recommended that as environmental conditions permit, users of imazamethabenz methyl practice mode-of-action chemical rotation for all herbicides used in small grains and other crops associated with a small grains crop rotation system on a yearly basis. The intent of mode-of-action rotation is to address weed resistance issues and to reduce the total volume of pesticide used thereby reducing potential contaminant introduction into ground water; and

(v) The department recommends that imazamethabenz methyl users calibrate their pesticide applicator equipment a minimum of once a year. Users should conduct routine maintenance of their applicator equipment to assure correct and optimal functioning of equipment components and parts.

AUTH: 80-15-217, MCA

IMP: 80-15-214, MCA

REASON: This rule identifies the practices that should prevent or mitigate the presence of imazamethabenz methyl in ground water. This rule provides impacted persons/entities with specific recommendations and/or instructions pertaining to the implementation of the SMP.

RULE VII PUBLIC NOTIFICATION (1) The department will notify licensed and permitted pesticide applicators within the defined geographical area, by mail, of the SMP and its requirements upon rule adoption and when rule revisions are adopted.

(2) The department will provide notice of the SMP to residents within the defined geographical area through a press release, public service announcements, posting on the department's website, notice through the department's Pesticide Applicator Newsletter, department pesticide applicator recertification program, routine inspections, registrants, pesticide distributors and pesticide dealers, public meetings and through agriculture groups.

(3) As required by 80-15-218, MCA, sellers of agricultural land must notify buyers, in writing, that the property being purchased is subject to a SMP. Notification must include his/her obligations under the plan. A copy of such notification must be forwarded to the department. Notifications should be sent to the Technical Services Bureau Chief, Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201.

AUTH: 80-15-217, MCA

IMP: 80-15-215, 80-15-218, MCA

REASON: Public notification will assure that the impacted persons and community are aware of the development and implementation of SMP for imazamethabenz methyl thereby increasing compliance with the SMP.



RULE VIII RECORD KEEPING (1) The department strongly recommends imazamethabenz methyl users keep records pertaining to the use of imazamethabenz methyl. Records should be written and should be maintained for at least two years.

(2) Records will be used to evaluate voluntary compliance with BATs.

(3) The department recommends maintaining the following information in their records:

(a) for pesticide use:

(i) chemical and trade names of pesticides used;

(ii) date of application;

(iii) rate of application; and

(iv) name of person/business making application.

(b) for irrigation:

(i) type of irrigation;

(ii) dates of irrigation; and

(iii) duration and/or volume of irrigation (for example 24 hours or 1").

(c) date(s) of calibration.

AUTH: 80-15-217, MCA

IMP: 80-15-214, 80-15-217, MCA

REASON: Record keeping will be used as the means of evaluating voluntary compliance with the provisions of the SMP.

RULE IX EVALUATION (1) Monitoring will be conducted to determine if the presence of imazamethabenz methyl in ground water is being mitigated.

(2) Routine inspections in the defined geographical area will be utilized to assess the level of voluntary compliance with the SMP.

(3) Review of the SMP will be conducted within [two years of rule adoption] to determine if the SMP is adequately addressing ground water concerns.

AUTH: 80-15-217, MCA

IMP: 80-15-217, MCA

REASON: Evaluation will be the means of determining whether the SMP is addressing ground water impairment by imazamethabenz methyl.

4. Concerned persons may submit their data, views or arguments concerning this proposed action in writing to Mary Bryson at the Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-7336; or E-mail: agr@state.mt.us no later than June 7, 2001.

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 Mary Bryson at the Montana Department of Agriculture, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-2944; TDD: (406) 444-4687; Fax: (406) 444-7336; or E-mail: agr@state.mt.us. A written request for hearing must be received no later than June 7, 2001.

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 70 persons based on 704 pesticide users.

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 Montana Department of Agriculture, 303 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (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 notice requirements of 2-4-302, MCA do not apply but 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 April 30, 2001.

BEFORE THE BOARD OF OPTOMETRY  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PROPOSED  
amendment of ARM 8.36.601 ) AMENDMENT  
pertaining to continuing )  
education )

NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On June 9, 2001, the Board of Optometry proposes to amend the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Optometry no later than 5:00 p.m., on May 15, 2001, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail complopt@state.mt.us.

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

8.36.601 REQUIREMENTS (1) Each licensed optometrist shall be required to attend not less than 36 hours ~~biannually~~ biennially of scientific clinics, forums or optometric educational studies as may be provided or approved by the board of optometry as a prerequisite for ~~his/her~~ license renewal. Continuing education will be reported every two years on the renewal form commencing with the 1999 renewal form.

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

~~(4) After attendance at an approved continuing education program the optometrist shall submit a completed continuing education report form.~~ The continuing education requirement shall be waived for the first reporting period of a new licensee who graduated from an accredited school of optometry within one year of approval of licensure by the board.

(5) will remain the same.

Auth: Sec. 37-1-319, 37-10-202, MCA

IMP: Sec. 37-1-306, MCA

REASON: The Board proposes to amend (1) because biannually should have been stricken in a previous notice and amended to biennially to correctly reflect the Board's intent of the two-year time frame. The deletion of text in (4) is proposed to remove the requirement for licensees to submit attendance

forms following each continuing education program. This requirement duplicates the requirement in (5) that the licensees maintain a copy in their own records. This will reduce staff time and storage requirements. The new material added to (4) addresses the problem with the requirement that recent graduates are required to complete the full 36 hours of continuing education prior to the end of their first reporting period, regardless of whether or not it is six months or 20 months away from the date of licensure. These persons have just completed their college education and are viewed to be educated on all of the current procedures and technical knowledge which continuing education is intended to provide to those in practice. Requiring them to complete the 36 hour requirement at this time is viewed to be duplicative of their recent education and a definite time and cost burden on new licensees. For these reasons the Board proposes to grant them a waiver of the continuing education requirement during the first reporting period following graduation.

4. Concerned persons may submit their data, views or arguments concerning the proposed action in writing to the Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to complopt@state.mt.us to be received no later than 5:00 p.m., June 7, 2001.

5. If persons who are directly affected by the proposed action wish to express their data, views or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit the request along with any comments they have to the Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to complopt@state.mt.us to be received no later than 5:00 p.m., June 7, 2001.

6. If the Board receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of those persons who are directly affected by the proposed action, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 27 based on the 267 licensed opticians in Montana.

7. The Board of Optometry 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 Optometry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered

to the Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to complopt@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

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

BOARD OF OPTOMETRY  
CHARLIENE STAFFANSON, 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 30, 2001.

BEFORE THE BOARD OF PSYCHOLOGISTS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 8.52.602, ) ON PROPOSED AMENDMENT  
8.52.604, 8.52.606, 8.52.608 ) AND ADOPTION OF NEW RULES  
and 8.52.616 pertaining to )  
non-resident psychological )  
services, application procedures, )  
required supervised experience, )  
examination and fees )  
and the adoption of new rules I )  
through VIII pertaining to )  
parenting plan evaluations )

TO: All Concerned Persons

1. On June 15, 2001 at 9:00 a.m., a public hearing will be held in the Professional and Occupational Licensing Division conference room #487, 4th Floor, Federal Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption 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 Psychologists no later than 5:00 p.m., on June 1, 2001 to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail cbrandt@state.mt.us.

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

8.52.602 NON-RESIDENT PSYCHOLOGICAL SERVICES (1) will remain the same.

(2) To provide such services and engage in such activities in the state of Montana, a psychologist duly licensed in the state of his residence shall file with the board a completed and notarized form provided by the board, stating the nature, location and duration of said services that exceed 10 days within any calendar year. Notification shall be provided to the board each year non-resident psychological services are rendered.

(3) will remain the same.

Auth: Sec. 37-1-131, 37-17-202, MCA  
IMP: Sec. 37-17-104, MCA

REASON: The proposed rule change will clarify that those psychologists who are not residents of Montana but who are

providing limited consulting services in this state must report to the Board each year that those services are rendered. There have been psychologists who have an ongoing contract to provide limited services in Montana who inform the Board one time and continue to provide services without further notification. The Board has received inquiries from the public on these individuals and is unsure, without current information, whether the non-resident psychologists continue to provide services in Montana under this statutory exemption.

8.52.604 APPLICATION PROCEDURES (1) through (2) will remain the same.

(a) Work samples shall be written examples of recent work (within two years of application date), at least two of which must be psychological evaluations. The evaluations must demonstrate competence in history taking, administration and interpretation of formal tests of intelligence, and administration and interpretation of objective and projective tests of personality. Tests utilized must ~~include, but are not limited to,~~ be those widely recognized and respected in the practice of psychology. Projective testing will include projective techniques, at least one of which is a rorschach or an apperception test. Examples must also demonstrate competence in formulating appropriate diagnoses using the five axes specified in the diagnostic and statistical manual of mental disorders (DSM) as well as making appropriate and recommendations. Work samples do not include newspaper or other similar articles or publications. Questions regarding the work samples may be included in the oral examination and candidates may be requested to present the raw data upon which their work samples were based.

(b) through (5)(a) will remain the same.

(b) When the application file is complete and acceptable, the board shall notify an applicant who is licensed in another state or province and who is now a resident of Montana that the applicant is allowed to practice as a psychologist pursuant to 37-17-104(5), MCA, pending satisfactory completion of the next board oral exam for which the applicant is eligible.

Auth: Sec. 37-1-131, 37-17-202, MCA  
IMP: Sec. 37-17-302, MCA

REASON: The proposed rule change will clarify the type of projective testing to be used in the work samples of those applying for licensure as a psychologist. There has been some confusion as to the specific type of projective testing that is required by the Board to demonstrate competence in this area. The rule change will also identify that the diagnoses in work samples should use the five axes system in the DSM. The rule change will clarify that a completed application must be on file and approved by the Board before an applicant, with a license in another state who has moved to Montana, will be allowed to work as a psychologist. The applicant will be

allowed to work until the applicant either fails the first oral exam for which the applicant is eligible or passes the examination and is licensed.

8.52.606 REQUIRED SUPERVISED EXPERIENCE (1) through (7) will remain the same.

(a) A diary or record of supervisory ~~contracts~~ contacts shall be kept and submitted to the board in support of the experience. The diary shall provide dates of contact and sufficient detail to represent clearly the issues and problems discussed, but no material of a confidential nature shall be included.

(b) through (f) will remain the same.

Auth: Sec. 37-1-131, 37-17-202, MCA  
IMP: Sec. 37-17-302, MCA

REASON: The proposed rule change will correct a typographical error that occurred in a previous rule notice.

8.52.608 EXAMINATION (1) will remain the same.

(2) The board shall determine the subject matter and scope of specialized psychological areas and techniques for the examination. Examinations will be ~~written~~ a computerized national examination and ~~an~~ oral examination. These will be conducted by the board or its duly-constituted representative(s). The ~~written computerized~~ examinations developed by the national licensing program with the support of the ~~American~~ association of state and provincial psychology boards may be given.

(a) The acceptable level of performance on the computerized examination shall be a scaled score of 500.

(b) The acceptable level of performance on the national written examination previously administered by the board shall be 70%.

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

(5) Applicants who fail the ~~written computerized~~ examination will be required to retake both the ~~written computerized~~ and oral examinations. Applicants failing the oral examination once will only be required to retake the oral examination. Applicants who fail the ~~written computerized~~ or oral examinations twice shall, in addition to being retested, file in advance a statement regarding arrangements for securing further professional training and experience.

Auth: Sec. 37-1-131, 37-17-202, MCA  
IMP: Sec. 37-17-303, MCA

REASON: The proposed rule change will reflect that the national psychology examination, which has always been used by the Board, is changing from a written paper and pencil format to a computerized exam. This exam is developed by a national testing entity with the support of the association of state and provincial psychology boards. The change to a



computerized exam will provide ease of scheduling and reduced travel costs to license applicants. The Board is also proposing to adopt the nationally-recommended pass point for this computerized exam as "a scaled score of 500." The Board will continue to conduct an oral exam.

8.52.616 FEE SCHEDULE (1) through (a) will remain the same.

~~(b) Examination fee~~ ~~\_\_\_\_\_~~ ~~375~~

(c) through (e) will remain the same but be renumbered (b) through (d).

Auth: Sec. 37-1-134, 37-17-202, MCA

IMP: Sec. 37-17-302, 37-17-303, 37-17-306, 37-17-307,  
MCA

REASON: The proposed rule change will reflect the fact that the fee for the computerized exam will now be paid by the applicant directly to the national testing agency and will no longer be collected by the Board. The cost for the exam and processing is increasing from \$375 to \$500 per examination and will affect all new licenses. There will be no change in the net amount of revenue generated from the fees collected by the Board.

4. The proposed new rules provide as follows:

NEW RULE I ORIENTING GUIDELINES (1) The purpose of parenting plan evaluation regulations is to protect both the public, who are the consumers of psychological services, and the psychologists, who are the providers of services. These regulations intend to insure competency of the provider and consistency of the procedures in child custody proceedings pursuant to Title 40, chapter 4, MCA, termination of marriage, child custody, support.

(2) The purpose of a parenting plan evaluation is to determine to the extent possible, what is in the best interests of the child. The "fit" between each parent and the child or children is the central issue, not the psychological diagnosis of each parent or of each child. If a parent or child shows any relevant mental, cognitive, physical, or other disorder, the implications of that disorder for the best interest of the child must be addressed.

(3) Two different parents showing very similar personalities and parenting styles might affect two different children in essentially different ways. It cannot be assumed that qualities generally admired by the population at large are necessarily those that make the better parent, or are in the best interests of the child. For example, factors such as which parent has the most money, the most friends, the largest house, is the most religious, the most physically active, has the most education, is home the most, lacks a history of psychological diagnosis or treatment, and so on, may bear on the issue at hand, but are not the determining factors in and

of themselves. How each factor supports the child's needs and well being, or detracts from the child's needs and well being, is a primary consideration. The intention of a parenting plan evaluation is to make a parenting recommendation that will support the child's development along the healthiest lines possible.

Auth: Sec. 37-1-131, 37-1-136, MCA  
IMP: Sec. 37-1-136, 37-17-202, MCA

NEW RULE II ROLE OF THE PSYCHOLOGIST (1) In a parenting plan evaluation, the psychologist shall maintain an unbiased, impartial role. The client is the child, and recommendations must be made which are in the best psychological interests of the child. The psychologist shall clarify with all parties, attorneys, and the court the nature of the psychologist's role as an objective evaluator.

(a) The psychologist shall act as an impartial evaluator of the parties, assessing relevant information, and informing and advising the court and other parties of the relevant factors pertaining to the parenting issue.

(b) The psychologist shall remain impartial, regardless of whether the psychologist is retained by the court or by a party to the proceeding, and regardless of whom is responsible for payment.

(c) If circumstances prevent the psychologist from performing in an impartial role, the psychologist shall attempt to withdraw from the case. (See [NEW RULE III])

(d) If the psychologist is not able to withdraw, the psychologist must reveal any factors that may bias the psychologist's findings and/or compromise the psychologist's objectivity.

(e) Communication with parents or attorneys must be conducted in such a manner as to avoid bias. The psychologist must exercise discretion in informing parties or their attorneys of significant information that is gathered during the course of the evaluation. The psychologist shall not communicate essential information to one party's attorney without also communicating the information to the other party's attorney, and to the guardian ad litem, if one is appointed.

Auth: Sec. 37-1-131, 37-1-136, MCA  
IMP: Sec. 37-1-136, 37-17-202, MCA

NEW RULE III DUAL RELATIONSHIPS (1) The psychologist shall avoid dual relationships and other situations which might produce a conflict of interest when performing parenting plan evaluations.

(a) The psychologist shall not conduct a parenting plan evaluation in a case in which the psychologist has served or can reasonably anticipate serving in a therapeutic role for the child or the child's immediate family, or has had other significant involvement, e.g., social, personal, business, or

professional, that may compromise the psychologist's objectivity.

(b) The psychologist may not accept any of the involved participants in the parenting plan evaluation as therapy clients, either during or after the evaluation.

(c) The psychologist who is asked to testify regarding a therapy client who is involved in a parenting plan case shall be aware of the limitations and possible biases inherent in such a role and the possible impact on the ongoing therapeutic relationship. If required to testify, the psychologist may not give an expert opinion regarding parenting plan issues and shall limit the psychologist's testimony to factual issues.

Auth: Sec. 37-1-131, 37-1-136, MCA  
IMP: Sec. 37-1-136, 37-17-202, MCA

NEW RULE IV COMPETENCY (1) Psychologists performing parenting plan evaluations in Montana shall be licensed to practice in the state of Montana or meet the requirements for consultation in 37-17-104, MCA.

(2) Psychologists performing parenting plan evaluations must comply with the board's rules regarding unprofessional conduct.

(3) Psychologists may only perform parenting plan evaluations if they have acquired specialized training, education, and experience in the areas of psychological assessment of children and adults, child and family development, child and family psychopathology, and the impact of divorce on families. They shall acquire current knowledge regarding diverse populations, especially as it relates to child-rearing issues.

(4) Psychologists may only operate within their areas of competence and shall seek appropriate supervision when necessary.

(5) A psychologist must understand the construction/administration/interpretation of the test procedures the psychologist employs.

(6) Psychologists must maintain current knowledge of scientific, professional, and legal developments within their area of claimed competence and use that knowledge, consistent with accepted clinical and scientific standards, in selecting current data collection methods and procedures for an evaluation.

(7) Psychologists shall use multiple methods of data collection in a parenting plan evaluation.

(8) The psychologist shall be aware of personal and societal biases and engage in nondiscriminatory practice. The psychologist shall be aware of how biases regarding age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, culture and socioeconomic status may interfere with an objective evaluation and recommendations, and shall strive to overcome any such biases or withdraw from the evaluation.

(9) Psychologists shall understand, clarify, and utilize

the concept of the "best interests of the child" guideline as set forth in Title 40, chapter 4, MCA.

(10) Psychologists shall maintain current knowledge of legal standards regarding parenting plans, divorce, and laws regarding abuse, neglect and family violence. Psychologists shall also understand the civil rights of parties in legal proceedings in which they participate, and manage their professional conduct in a manner that does not diminish or threaten those rights.

(11) Psychologists shall recognize and state any limitations of their assessments and reports.

(12) Psychologists shall not render diagnoses or form an expert opinion about any party not personally evaluated and may not make parenting plan recommendations when both parents and children have not been personally evaluated by the psychologist. In situations where all parties cannot be evaluated, psychologists shall limit recommendations and opinions to individuals evaluated and shall avoid making recommendations regarding placement and visitation.

Auth: Sec. 37-1-131, 37-1-136, MCA  
IMP: Sec. 37-1-136, 37-17-202, MCA

NEW RULE V LIMITS OF CONFIDENTIALITY (1) Psychologists shall inform all participants, including parents, children when feasible, other family members, and third party contacts such as teachers, physicians, and child care providers, as to the limits of confidentiality which can be expected with regard to any information they may provide to the psychologist over the course of the evaluation. This includes the limits of confidentiality applicable to the general practice of psychology, such as a duty to warn in instances of possible imminent danger to a participant or to others, or legal obligations to report suspected child or elder abuse, and also exceptions to confidentiality stemming from the specific requirements of a parenting plan evaluation, including:

(a) the potential need to disclose information provided by any participant to other participants, in order to obtain accounts of circumstances pertinent to the issues being evaluated;

(b) the expectation of disclosure of relevant information provided by individual participants to the attorneys involved in the case, to the court, and to the guardian ad litem, if one has been appointed; and

(c) the likely disclosure of the psychologist's findings, professional opinions and recommendations regarding the resolution of contested matters which fall within the scope of the evaluation to parents, their attorneys, the court, and any other party, such as a guardian ad litem.

(2) Psychologists shall obtain written waivers of confidentiality from the parents who are participating in the evaluation, encompassing all disclosures of information to other persons, including other participants in the evaluation, attorneys, and the court.

(3) Psychologists shall take reasonable precautions in their handling of children's disclosures of abuse, neglect or any other circumstances, when such disclosure may place the child at increased risk of physical or emotional harm. Psychologists shall also recognize the right of any person accused of misconduct to respond to such allegations while placing the highest priority on the safety and well being of the child.

(4) Psychologists recognize that disclosures of statements by abused spouses may pose special risks to the safety and well being of persons who claim to be victims of domestic abuse. Prior to disclosure of such allegations to an alleged perpetrator or to other persons who may support, collude with, or otherwise increase the risk of abuse, the psychologist shall inform the alleged victim that the disclosure will take place. If appropriate, information will be provided as to available community resources for protection, planning, and personal assistance, and counseling for victims of domestic abuse.

(5) Psychologists shall provide judges, attorneys and other appropriate parties with access to the results of the evaluation, but make reasonable efforts to avoid the release of notes, test booklets, structured interview protocols and raw test data to persons untrained in their interpretation. If legally required to release such information to untrained persons, psychologists shall first offer alternative steps such as providing the information in the form of a report, or releasing the information to another psychologist who is qualified in the interpretation of the data and who will discuss or provide written interpretations of the data with the person(s) who are seeking the information.

(6) Psychologists shall not agree to requests by participants in a parenting plan evaluation that information shared with the psychologist be concealed. When such requests are made, the psychologist shall clarify the requirements of the evaluation as regards confidentiality, and may advise the participant to consult with the participant's attorney before proceeding with the evaluation. The psychologist must ultimately respect the right of any participant to withhold information from the evaluation. Whether the refusal to provide information should itself be made known to others, must be decided by the psychologist based on the relevance of such refusal to the issues before the court in the particular case at hand.

(7) Psychologists recognize the possibility that the need to disclose information obtained in the evaluation may limit the validity of data acquired during the evaluation by inhibiting the free and complete disclosure of information by participants.

Auth: Sec. 37-1-131, 37-1-136, MCA  
IMP: Sec. 37-1-136, 37-17-202, MCA

NEW RULE VI DISCLOSURE AND INFORMED CONSENT

(1) Psychologists shall obtain informed consents from parents involved in parenting plan evaluations and, to the extent feasible, inform children of significant aspects of the evaluation, prior to conducting interviews, testing or other data-gathering procedures. Disclosure of information to the parents shall include a thorough explanation of all major aspects of the evaluation, including:

(a) a general review of the purpose, nature, methods, scope and limitations of a parenting plan evaluation, and the potential impact of the evaluation on the outcome of litigation;

(b) clarification as to who has requested the evaluation and who will receive verbal or written feedback as to the results and recommendations;

(c) the nature of data to be collected and potential uses to which that data will be put, including data from psychological testing and structured interview protocols;

(d) the methods of assessing and collecting fees for professional services, including specification of who will be financially responsible for the evaluation, expectations as to timing of payments, and policies related to the collection of unpaid fees, and;

(e) the nature and limits of confidentiality, both as generally applicable to psychological services and as required by the nature of the evaluation. (See [NEW RULE V])

(2) Psychologists shall inform the parents of the above elements and offer each parent the opportunity to discuss the proposed evaluation with an attorney before proceeding.

Auth: Sec. 37-1-131, 37-1-136, MCA  
IMP: Sec. 37-1-136, 37-17-202, MCA

NEW RULE VII COLLECTION AND USE OF DATA (1) The psychologist shall use generally accepted standards for the collection and use of data.

(2) In evaluating alternative hypotheses, psychologists shall include data from several different sources and of several different types, such as interviews, testing, observations of interactions, questionnaires, and record reviews. The psychologist shall be prepared to specify the reasons for collecting each kind of data and how it relates to the child's best interests.

(3) As data are collected, the psychologist must keep comprehensive and detailed records. All raw data, which might include test forms, handwritten notes, scribbles in margins, records of telephone conversations, observations of parent-child interaction, observations of parent-parent interaction, consultations with other professionals, any audio or video tapes made, and so on, must be saved and made available for review, if necessary.

(4) Data that are not objective should not be treated as though they are. The psychologist shall attempt to corroborate or rule out allegations that either parent has

behaviors that affect the child detrimentally. If the psychologist is not able to form a clear opinion based on objective data or data verified by multiple sources, the psychologist should state this fact. If appropriate, the psychologist may offer a method by which further data along any dimension might be gathered, for example, recommending that a child meet with a therapist over time, that a parent undergo drug and alcohol assessment, and so on.

(5) If issues affecting what is in the child's best interest arise and cannot be investigated due to the limited scope of the evaluation as imposed by the court or an agency, the psychologist shall report those issues to the parents, their attorneys, and the court. If issues arise that the psychologist does not have the expertise to investigate or form an opinion on, another psychologist or specialist who does have the required expertise should be brought in to address that issue.

Auth: Sec. 37-1-131, 37-1-136, MCA  
IMP: Sec. 37-1-136, 37-17-202, MCA

NEW RULE VIII DOCUMENTATION (1) When psychologists complete a parenting plan evaluation, they shall produce a written report of the findings and recommendations.

(2) Psychologists shall retain all items presented to them or a copy thereof that are used for consideration in formulating a professional opinion (e.g., videos, photos, etc.) as well as a copy of the final report.

(3) Psychologists shall maintain clear and complete records.

(4) Psychologists shall retain all releases of information signed by the parties.

(5) Psychologists shall maintain adequate documentation of their contacts with clients and of the clinically significant information derived from these contacts.

(6) Psychologists shall create and maintain documentation of all data that form the basis for their conclusions, in the detail and quality that would be consistent with reasonable scrutiny in an adjudicative forum.

(7) Psychologists shall make clear, to all parties, that the report may be altered at any time by the psychologist until the final decision of the court is made.

(8) Psychologists shall make a reasonable effort to ensure that the court, attorneys, parents, and guardian ad litem, if any, receive the report at the same time.

(9) Psychologists shall recognize that all items in the case file, other than copies of tests, raw test data, and computer-generated interpretive reports may be brought into the courtroom.

(10) Psychologists shall recognize that all parenting plan evaluations and reports are highly sensitive material and discretion is necessary.

Auth: Sec. 37-1-131, 37-1-136, MCA

IMP: Sec. 37-1-136, 37-17-202, MCA

REASON: The proposed new rules for parenting plan evaluations will outline, for both licensed psychologists and the public, the minimum standards required for evaluations used for the purpose of making child custody recommendations pursuant to Title 40, chapter 4, MCA. A substantial portion of the complaints filed with the Board deal with this subject. If a consumer is unhappy with the outcome of a parenting plan evaluation or unsure of procedures, these regulations will delineate the appropriate role of the psychologist, the competency expectations, the limits of confidentiality, and appropriate data collection and documentation requirements. The Board is proposing these rules to insure competency of the provider and consistency of the procedures in parenting plan evaluations performed by the psychologists in this state.

5. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to cbrandt@state.mt.us and must be received no later than the close of the hearing on June 15, 2001. If comments are submitted in writing, the Board requests that the persons submit six copies of their comments.

6. Lewis Smith, attorney, has been designated to preside over and conduct this hearing.

7. The Board of Psychologists 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 to the board 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 Psychologists administrative rulemaking or other administrative proceedings. Such written request may be mailed or delivered to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to cbrandt@state.mt.us or may be made by completing a request form at any rules hearing held by the agency.

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

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 30, 2001.

BEFORE THE BOARD OF LAND COMMISSIONERS  
AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

In the matter of the )  
amendment of ARM 36.25.110, )  
amending the minimum rental )  
rate for grazing leases under )  
the jurisdiction of the State )  
Board of Land Commissioners )

NOTICE OF PUBLIC  
HEARING ON PROPOSED  
AMENDMENT

TO: All Concerned Persons

1. On June 7, 11, 12, 13, and 14, 2001, at 7:00 p.m., public hearings will be held to consider the amendment of ARM 36.25.110. The hearings will be conducted on the following dates and at the following locations:

June 7 Department of Public Health  
and Human Services, Auditorium  
111 North Sanders  
Helena, MT

June 11 Yogo Inn  
211 East Main  
Lewistown, MT

June 12 Cottonwood Inn  
U.S. Highway 2  
0.5 miles East of Glasgow  
Glasgow, MT

June 13 Miles City Community College  
2715 Dickinson Street  
Room 106  
Miles City, MT

June 14 Lincoln Center Auditorium  
415 North 30th Street  
Billings, MT

2. The agency 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 agency no later than 5:00 p.m. on June 1, 2001, to advise us of the nature of the accommodation that you need. Please contact Kevin Chappell, Agricultural and Grazing Management Bureau Chief, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-2074; FAX (406) 444-2684.

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

36.25.110 MINIMUM RENTAL RATES (1) through (2) remain the same.

(3) The rental rate for all grazing leases and licenses shall be on the basis of the animal-unit-month carrying capacity of the land to be leased or licensed.

(a) For grazing leases issued or renewed prior to before July 1, 1993, until the first date of renewal after July 1, 1993, the minimum rental rate per A.U.M. until the first date of renewal after July 1, 1993, is the weighted average price per pound of beef cattle on the farm in Montana as determined by the Montana agricultural statistics service of the US department of agriculture for the previous year, multiplied by 6.

(b) For grazing leases issued or renewed after June 30, 1993 and for all grazing licenses, between July 1, 1993 and June 30, 2001, until the first date of renewal after July 1, 1993, the minimum rental rate per A.U.M. is, beginning on June 16, 1995, the weighted average price per pound of beef cattle on the farm in Montana as determined by the Montana agricultural statistics service of the US department of agriculture for the previous year, multiplied by 6.71.

(c) For all grazing leases issued or renewed after June 30, 2001, and all grazing licenses, the minimum rental rate per A.U.M. is the weighted average price per pound of beef cattle on the farm in Montana, as determined by the Montana agricultural statistics service of the US department of agriculture for the previous year, multiplied by 7.54.

(d) The department shall appraise and reappraise the classified grazing lands and grazing lands within classified forest lands under its jurisdiction in accordance with 77-6-201, MCA, to determine the carrying capacity and shall maintain records of such appraisals in its files. Such determination shall be made from time to time as the department considers necessary, but at least once during the term of every lease or license.

(4) through (7) remain the same.

AUTH: 77-1-106, 77-1-209, MCA

IMP: 77-1-106, 77-6-202, 77-6-502, 77-6-504, 77-6-507, MCA

REASON: Amendment of the rule is necessary to comply with the direction of Sections 11 through 19 of the State's Enabling Act (The Act of February 22, 1889, 25 Stat. 676) and Article X, Section 11 of the 1972 Montana Constitution which require that the State of Montana obtain the full market value of any property interest in these lands granted by the Board. The amended rule attempts to obtain the full market value for grazing leases issued upon lands under the jurisdiction of the State Board of Land Commissioners. The amended rule attempts to reasonably link the value of the grazing leases to some multiple of the most recent yearly average price of beef cattle on the farm in Montana. The use of this method automatically adjusts the rental rate to meet changing market conditions. The rental rates reflect recommendations received by the Board from a grazing advisory committee. The increase in the minimum grazing

lease rental rate is estimated to result in an increased rental rate for approximately 8,500 state grazing lessees. The cumulative increase in the rental rate for all 8,500 state grazing lessees is estimated to be \$714,000 over a ten-year period.

4. 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 Kevin Chappell, Agricultural and Grazing Management Bureau Chief, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-2074; FAX (406) 444-2684, or e-mailed to kchappell@state.mt.us and must be received no later than 5:00 p.m. on June 18, 2001.

5. Arthur R. Clinch, Director, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601 has been designated to preside over and conduct the hearing.

6. 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 notices and specify that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources or combination thereof. Such written request may be mailed or delivered to Emily Cooper, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601, faxed to the office at (406) 444-2684, 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 LAND COMMISSIONERS

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

By: /s/ Judy Martz  
JUDY MARTZ  
Chair

By: /s/ Ann Bauchman  
ANN BAUCHMAN  
Administrator of  
Centralized Services

By: /s/ Donald D. MacIntyre  
DONALD D. MACINTYRE  
Rule Reviewer

Certified to the Secretary of State April 30, 2001.

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

In the matter of the adoption	)	NOTICE OF PUBLIC HEARING
of new rule I and the	)	ON PROPOSED ADOPTION AND
amendment of ARM 37.86.2401,	)	AMENDMENT
37.86.2402, 37.86.2405,	)	
37.86.2502, 37.86.2505,	)	
37.86.2601, 37.86.2602 and	)	
37.86.2605 pertaining to	)	
medicaid transportation and	)	
ambulance services	)	

TO: All Interested Persons

1. On May 30, 2001, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption 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 site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 23, 2001, 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 adopted provides as follows:

RULE I AMBULANCE SERVICES, COVERAGE AND BILLABLE SERVICES

(1) Except as provided in (2), the base charge specified in the department's fee schedule referred to in ARM 37.86.2605 for both basic life support (BLS) and advanced life support (ALS) ambulance services includes charges for all personnel, reusable supplies and capital equipment. This includes:

- (a) The driver and attendants, including extra attendants;
- (b) Nurse, physician, or nonambulance personnel in ambulance;
- (c) All services provided by the personnel such as:
  - (i) CPR and defibrillation;
  - (ii) monitoring of pulse oximeter;
  - (iii) monitoring of vital signs;
  - (iv) EKG monitoring;
  - (v) IV and drug therapy;
  - (vi) intubation; and
  - (vii) glucometer check.
- (d) ALS director;

- (e) Reusable supplies, including but not limited to:
    - (i) ambu bag (bag valve mask);
    - (ii) anti-shock trousers (mast pants/suits);
    - (iii) cervical collar (neck immobilization item), nondisposable;
    - (iv) CPR board;
    - (v) CPR pocket mask, nondisposable; and
    - (vi) splints, nondisposable.
  - (f) Capital equipment, including but not limited to:
    - (i) heart monitor;
    - (ii) defibrillator;
    - (iii) aspirator (see suction);
    - (iv) back board;
    - (v) pulse oximeter;
    - (vi) IV pumps;
    - (vii) special stretchers such as:
      - (A) scoop stretcher;
      - (B) plastic stretcher;
      - (C) spine board; and
      - (D) flat cot;
    - (viii) suction and suction equipment;
    - (ix) glucometer;
    - (x) compressor; and
    - (xi) nebulizer.
  - (g) Billing charges;
  - (h) Decontamination of ambulance;
  - (i) Emergency charge;
  - (j) Night charge;
  - (k) Transporting of portable EKG to facility or location;
- and

(1) Waiting time.

(2) The following are not included in base rates for BLS and ALS and are separately billable:

(a) Mileage is allowed in addition to the base rate when the patient is transported to the nearest appropriate facility.

(i) charges for mileage must be based on loaded mileage only, i.e., from the pickup of a patient to their arrival destination; and

(ii) air ambulance mileage rate is calculated per actual loaded, patient onboard, miles flown and is expressed in statute miles, not nautical miles.

(b) EKG services (the technical component for obtaining tracing only, no interpretation and report) are reimbursable as a separate service for BLS, ALS and air ambulance. The reimbursement includes all EKG supplies.

(i) this service is allowed one time per transport;

(ii) reimbursement under this code includes the following:

(A) EKG paper;

(B) electrodes; and

(C) quick patch, fast patch, etc.

(c) Defibrillation disposable supplies are for supplies used when a patient is actually defibrillated. Reimbursement includes the following:

(i) lubricant/conduction gel;

- (ii) wet saline gauze;
- (iii) disposable electrodes;
- (iv) all disposable supplies used with defibrillation; and
- (v) quick patch, fast patch, etc.

(d) Routine disposable, nonreusable supplies may be covered and reimbursed separately from the ambulance base rate. A service is allowed as a one time charge per transport and includes the following supplies:

- (i) bandages/dressings;
- (ii) gauze/4x4s, etc.;
- (iii) CPR pocket mask;
- (iv) restraints;
- (v) gloves;
- (vi) linens (disposable);
- (vii) tape;
- (viii) emesis basin;
- (ix) urinal;
- (x) needles and syringes;
- (xi) alcohol wipes;
- (xii) hot/cold packs;
- (xiii) elastic bandages;
- (xiv) splints (disposables);
- (xv) sterile water or saline for irrigation;
- (xvi) chemstrips;
- (xvii) disposable cervical collar;
- (xviii) disposable ambu bag; and
- (xix) disposable suction supplies (NC tube, tubing, canister, etc.).

(e) IV drug therapy disposable supplies may be reimbursed separately only if they are medically necessary as documented in the trip report. No payment will be made for IV supplies when they are provided merely on the basis of ambulance protocol.

(i) This service is allowed one time per transport.

(ii) Reimbursement for this service includes the following:

- (A) all needles/catheters (angiocath, etc.);
- (B) all IV tubing (micro, macro and specialized);
- (C) tape;
- (D) alcohol wipes;
- (E) betadine or other antiseptic agents;
- (F) filters;
- (G) IV start kits;
- (H) needles and syringes; and
- (I) all dressings.

(f) Drugs may be reimbursed separately only if they are medically necessary as documented in the trip report.

(i) Injectable drugs and IV solutions administered in an emergency situation during the course of a covered ambulance trip are covered as nonreusable supplies. The medical necessity of such drugs and IV solutions and the need to administer them during transport must be clearly documented.

(g) Oxygen and oxygen supplies may be reimbursed separately only if they are medically necessary as documented in the trip report. No payment will be made for oxygen or oxygen

supplies when they are provided merely on the basis of ambulance protocol.

(i) This service is allowed per 1/2 hour of oxygen usage per transport.

(ii) Reimbursement includes:

- (A) oxygen;
- (B) disposable oxygen supplies such as:
  - (I) cannulas;
  - (II) masks;
  - (III) tubing (extension, etc.);
  - (IV) humidifier;
  - (V) flow meter; and
  - (VI) nebulizers.

(iii) The administration of oxygen itself does not satisfy the requirement that a patient needs oxygen. If the patient travels for any other reason (e.g., church, grocery store, shopping, etc.) with portable oxygen, then they are not a candidate for ambulance transportation solely because of their oxygen requirement.

(h) Esophageal intubation may be reimbursed when establishing or maintaining an open airway but is not reimbursable for administering oxygen only.

(i) reimbursement for esophageal intubation includes the following:

- (A) ET tube/NT tube;
- (B) tape;
- (C) gloves;
- (D) bite mouthpiece;
- (E) all airways (oral, esophageal, nasal, etc.);
- (F) disposable ambu bag; and
- (G) disposable airway suction equipment (suction catheters, tips, tubing and canister).

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

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

37.86.2401 TRANSPORTATION AND PER DIEM, DEFINITIONS

~~(1) (3) "Transportation service" means travel, furnished by common carrier or private vehicle, to secure medically necessary examination and treatment for a medicaid recipient.~~

(1)(a) remains the same but is renumbered (3)(a).

~~(2) (1) "Per diem" means expenses for a medicaid recipient's cost of meals and lodging enroute to and from, and while receiving medically necessary medical care.~~

(2) "Prior authorization" means the department or its designee's review and approval of the medical necessity and coverage of a service prior to delivery of the service.

AUTH: Sec. 53-6-113, MCA

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



37.86.2402 TRANSPORTATION AND PER DIEM, REQUIREMENTS

(1) through (12) remain the same.

(13) Prior authorization is not a guarantee of payment as the department may subsequently deny payment based on factors other than medical necessity, including but not limited to ineligibility of the individual to whom services were provided or failure to comply with billing requirements set forth in ARM 37.85.406 or with any other medicaid rule or requirement.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101 and 53-6-141, 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 2000 2001 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) remains the same.

(4) Reimbursement for transportation and per diem may not exceed the reimbursement as calculated and specified by the department in the prior authorization ~~for treatment~~.

(5) Mileage for transportation in a personally owned vehicle is reimbursed:

(a) at the rate specified in 2-18-503, MCA, for the first 500 miles in a calendar month; and

(b) at the rate of \$.15 per mile for all miles in excess of 500 miles in a calendar month.

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

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

37.86.2502 SPECIALIZED NONEMERGENCY MEDICAL TRANSPORTATION, REQUIREMENTS (1) through (3) remain the same.

~~(4) Coverage must be prior authorized by the department or its designee.~~

(5) through (7) remain the same but are renumbered (4) through (6).

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101 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 2000 2001 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

37.86.2601 AMBULANCE SERVICES, DEFINITIONS (1) "Air ambulance services" means ambulance services provided by aircraft. There are two categories of air ambulance services, namely, fixed wing (airplane) and rotary wing (helicopter) aircraft.

(a) Fixed wing air ambulance services are furnished when the recipient's medical condition is such that transport by ground ambulance, in whole or in part, is not appropriate. Generally, transport by fixed wing air ambulance may be necessary because the recipient's condition requires rapid transport to a treatment facility, and either great distances or other obstacles, for example, heavy traffic, preclude such rapid delivery. Transport by fixed wing air ambulance may also be necessary because the recipient is inaccessible by land or water ambulance vehicle.

(b) Rotary wing air ambulance services are furnished when the recipient's medical condition is such that transport by ground ambulance, in whole or in part, is not appropriate. Generally, transport by rotary wing air ambulance may be necessary because the recipient's condition requires rapid transport to a treatment facility, and either great distances or other obstacles, for example, heavy traffic, preclude such rapid delivery. Transport by rotary wing air ambulance may also be necessary because the recipient is inaccessible by land or water ambulance vehicle.

~~(1) (2) "Ambulance" means any motor a vehicle or aircraft that is specially designed, equipped with customary patient care equipment and supplies as required by state or local law and maintained for the medical care and transportation of the sick or injured. that:~~

~~(a) is specifically designed for transporting the sick or injured;~~

~~(b) contains a stretcher, linens, first aid supplies, oxygen equipment, and other lifesaving equipment required by state or local laws; and~~

~~(c) is staffed with personnel trained to provide first aid treatment.~~

~~(2) (3) "Ambulance services" means services provided by a licensed ambulance provider in the ground or air transportation of a sick or injured person in a specially designed and equipped vehicle as defined above, which includes a trained ambulance attendant who is licensed or certified as required by state law. Ambulance services are either basic life support ambulance services or advance life support ambulance services.~~

~~(3) "Basic life support ambulance services" means ambulance services that provide transportation and the equipment and staff needed for basic life support such as control of bleeding, splinting of fractures, treatment for shock, delivery of babies, cardiopulmonary resuscitation, and other basic life~~

~~support services.~~

~~(4) "Advance life support ambulance services" means ambulance services with complex specialized life-sustaining equipment and equipment for radio-telephone contact with a physician or a hospital. Examples of this type of ambulance services are mobile coronary care units and other ambulance vehicles that are appropriately equipped and staffed by personnel trained and authorized to administer intravenous therapy, provide anti-shock trousers, establish and maintain a patient's airway, defibrillate the heart, relieve pneumothorax conditions and perform other advanced life support procedures or services such as cardiac (EKG) monitoring.~~

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

~~(6) "Emergency" means that the patient's medical condition requires immediate transportation by ambulance to an appropriate facility. An emergency does not exist if some other means of transportation would be safe and effective for the patient's medical condition.~~

(5) "Emergency services" means services provided after the sudden onset of a medical condition manifesting itself by acute symptoms of such severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(6) "Ground ambulance services" means ambulance services provided by a vehicle designed to operate on the ground, including both water and land. Ground ambulance services include:

(a) Basic life support (BLS), which includes, when medically necessary, the provision of BLS services as defined in the national EMS education and practice blueprint for the EMT-basic, including other basic life support services;

(b) Basic life support emergency, which is furnished, when medically necessary, as specified above in (6)(a), in response to an emergency as defined in this rule;

(c) Advanced life support, level 1 (ALS1), which includes, when medically necessary, provision of an assessment by an ALS provider trained to the level of the emergency medical technician-intermediate or paramedic as defined in the national EMS education and practice blueprint or the provision of one or more ALS interventions, that is, a procedure beyond the scope of an EMT-basic as defined in the national EMS education and practice blueprint;

(d) Advanced life support, level 1 (ALS1) emergency, which includes, when medically necessary, the provision of ALS1 services specified in (6)(c) above, in response to an emergency as defined in this rule;

(e) Advanced life support, level 2 (ALS2), which includes, when medically necessary, the administration of three or more different medications and the provision of at least one of the following ALS procedures:

(i) manual defibrillation/cardioversion;

(ii) endotracheal intubation;

- (iii) central venous line;
- (iv) cardiac pacing;
- (v) chest decompression;
- (vi) surgical airway;
- (vii) intraosseous line; and

(f) Specialty care transport (SCT), which includes, when medically necessary, for a critically-injured or ill recipient, a level of interfacility service provided beyond the scope of the paramedic. SCT is necessary when a recipient's condition requires ongoing care that must be provided by one of more health professionals in an appropriate specialty area such as nursing, medicine, respiratory care, cardiovascular care or paramedic with additional training.

(7) "Nonemergency" means all scheduled transportation, regardless of origin and destination, that does not meet the above criteria for emergency. By definition, hospital discharge trips, trips to and from end stage renal disease (ESRD) facilities for maintenance dialysis, trips to and from other outpatient facilities for chemotherapy or radiation therapy, and other diagnostic and therapeutic services are scheduled runs and, therefore, are considered to be "nonemergency" services.

AUTH: Sec. 53-6-113, MCA

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

37.86.2602 AMBULANCE SERVICES, REQUIREMENTS (1) through (5)(f) remain the same.

(6) Air ambulance services are covered if:

(a) All coverage requirements for ground ambulance services as specified in this rule are met; and

(b) One of the following conditions is met:

(i) the point of pickup is inaccessible by land vehicle;

or

(ii) great distances or other obstacles are involved, and getting the patient to the nearest hospital with appropriate facilities and emergency admission is essential, for example, a situation where land transportation is available, but the time required to transport the recipient by land rather than air would endanger the recipient's life or health.

(c) Air ambulance services may be covered for the transfer of a patient from one hospital to another if the transferring hospital does not have adequate facilities to provide the specialized medical services needed by the recipient and if the requirements of (6)(a) through (b)(ii) of this rule are met.

(i) Air ambulance services are not covered to transport a recipient from a hospital capable of treating the recipient to another hospital simply because the recipient or his family prefers a specific hospital or physician.

(ii) Mileage is paid only to the nearest appropriate facility.

(7) through (11) remain the same.

(12) Ambulance services are reimbursable only to the extent that such services are medically necessary based on the recipient's condition. Where ambulance services are

reimbursable, payment will be based on the level of services provided rather than being based on the type of vehicle used, regardless of any state or local ordinances or any policies which contain requirements for ambulance staffing or furnishing of ambulance services.

AUTH: Sec. 53-6-113, MCA

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

37.86.2605 AMBULANCE SERVICES, REIMBURSEMENT (1) Except as provided in ~~(3)~~ (4), the department pays the lowest of the following for ambulance services:

(a) through (c) remain the same.

(2) The department hereby adopts and incorporates by reference the department's fee schedule effective July 2000 2001 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) For items and services for which no fee has been set in the department's fee schedule referred to in (2), reimbursement will be based on the by-report method and rate specified in ARM 37.85.212.

(a) The department will review billings for items and services, other than those items for which a specific fee has been set, to determine the total number of times each such item has been billed by all providers in the aggregate within the state fiscal year period.

(b) Upon review of the aggregate billings as provided in (3)(a), the department will establish a fee for each item which has been billed in the following manner:

(i) if medicare sets a fee, the medicare fees are applicable as the medicaid fee; or

(ii) if medicare does not set a fee, the medicaid fees are set by evaluating the fees of similar services; or

(iii) a fee will be calculated based on the by-report percentage of the average charges billed by all providers in the aggregate for such items or services.

~~(3)~~ (4) The department may reimburse providers for ambulance services to transport patients to and from out-of-state facilities at negotiated fees where the department or its designee in its discretion determines that the in-state reimbursement rates are inadequate to assure that the recipient will receive medically necessary services.

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

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

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

4. The Montana Medicaid Program pays for medical services provided to eligible low income individuals. Medicaid also pays for travel expenses necessary to access required medical services, including transportation by private vehicle or common

carrier. Medicaid pays for transportation by ambulance where ambulance services are medically necessary.

The Department proposes to amend ARM 37.86.2401, 37.86.2402, 37.86.2405, 37.86.2502, 37.86.2505, 37.86.2601, 37.86.2602 and 37.86.2605 governing Medicaid transportation and ambulance services to implement changes in reimbursement rates, requirements, and methodologies. The change in reimbursement rates for ambulance services is necessary because the 57th Montana Legislature has authorized an increase of approximately \$330,000 for state fiscal year 2002 for ambulance services. This increase will affect approximately 150 providers of ambulance services.

The Department proposes to adopt most of the Medicare categories of ambulance ground services, namely basic life support; basic life support-emergency; advanced life support, level 1; advanced life support, level one-emergency; advanced life support, level 2; and specialty care transport. The only Medicare category of ambulance ground service which the Department will not be adopting is the paramedic intercept level of care, because under Medicare this level of care is only to be used by the state of New York. The Department is also proposing to adopt the Medicare categories of air ambulance services, namely fixed wing air ambulance (airplane) and rotary wing air ambulance (helicopter).

To implement the new categories of ambulance services ARM 37.86.2601 is being amended to delete definitions which are no longer necessary, such as the definitions of basic life support ambulance services and advance life support ambulance services. Definitions of the new categories are being added.

The Department proposes to establish a new fee schedule for ambulance fees services based in part on the methodology used by Medicare. Medicare's reimbursement methodology for ground ambulance is based on Relative Value Units (RVUs). The RVU is a numerical value assigned to each procedure code based on the estimated effort and expense of providing that particular service as compared to other services. The payment for each type of service is computed by multiplying the RVUs assigned to the procedure code used to describe the service by a dollar amount known as the conversion factor.

The Department is adopting the Medicare categories because using the same Medicare categories will make billing easier for both in-state and out-of-state ambulance providers, especially in view of the fact that Medicare adopted the methodology in January 2001 and many other third party payers may use the Medicare categories. Another advantage of using the Medicare categories is that this will facilitate coordination of benefits in the case of Medicare crossover claims. Claims for Medicaid recipients who are dually eligible for Medicaid and Medicare are submitted by the provider to Medicare first and then crossover

to Medicaid for payment of any additional amount for coinsurance and deductibles. Processing of crossover claims will be easier when Medicaid billing is consistent with Medicare billing in regard to ambulance services. The Department will also use the Medicare relative value unit assigned to the categories of ambulance services in determining Medicaid reimbursement. Using the Medicare RVUs will provide consistency between the Medicare and Medicaid programs which is administratively desirable for providers as well as the department.

New fee schedules are necessary to implement increases in fees due to increased Legislative appropriations and changes in categories of ambulance services used to determine payments. Thus subsection (1) of ARM 37.86.2602 governing ambulance services reimbursement is being amended to provide that reimbursement will be made according to the Department's fee schedule effective July 1, 2001, rather than the previous fee schedule effective July 1, 2000. A new rule, Rule I, is being added to specify what charges are included in the base rate for ambulance services, such as charges for ambulance personnel such as the driver and attendants, and what charges may be billed separately in addition to the base rate, such as mileage. This subject is being addressed in a separate rule because the list of included and excluded items is so lengthy that ARM 37.86.2605 would be unduly long and difficult to read if this material was addressed in it rather than in a separate rule.

In ARM 37.86.2602, regarding requirements for ambulance services, reimbursement is being amended by the addition of subsection (12) which specifies that payment is based on the level of services which was provided and which was medically necessary, regardless of any ordinances or policies requiring a certain level of ambulance staffing or requiring the furnishing of services. This provision is being added to clarify rather than change the Department's policy. Clarification is necessary because in the past some providers have mistakenly believed they were entitled to reimbursement for certain levels of care regardless of medical necessity if that level of care was provided pursuant to an ordinance or policy requiring it.

Similarly, in ARM 37.86.2402, subsection (13) is being added to specifically state that the granting of prior authorization for transportation services does not necessarily guarantee that a provider will be paid. Although the granting of prior authorization means that the services have been determined to be medically necessary, reimbursement may ultimately be denied for reasons unrelated to medical necessity. For example, the provider cannot be reimbursed if the recipient is not eligible for Medicaid in the month when the transportation occurs. This provision is being added to clarify rather than change the Department's policy because some providers have indicated that they believed prior authorization to be a guarantee of payment. A definition of the term "prior authorization" is also being added to ARM 37.86.2401, the transportation definitions rule.

In ARM 37.86.2401(1) the words "to secure medically necessary examination and treatment for a medicaid recipient" in the definition of "transportation" is being deleted because it is redundant and not appropriate in a definitions rule. ARM 37.86.2402(2) addresses the requirements for transportation and states that transportation is covered only for necessary medical services covered by the Medicaid program.

Similarly, in ARM 37.86.2405, in subsection (4) the words "for treatment" after "prior authorization" are being deleted because they are unnecessary. In ARM 37.86.2405, subsection (5) is being added to specify that mileage for transportation by personally owned vehicles will be paid for the first 500 miles per month at the same rate as specified in section 2-18-503, MCA, for state employees using personal vehicles for state business. It has been the department's longstanding policy to pay Medicaid recipients for mileage at the same rate as state employees. This policy was adopted because it provides a reasonable basis to reimburse Medicaid recipients at the same rate as state employees. This policy guarantees that Medicaid recipients will benefit when the mileage rate for state employees increases. This is now being stated in ARM 37.86.2405 for the first time so that the Department's policy will be manifest in its rules. This year the mileage rate for state employees is increasing 2 cents per mile, which will benefit approximately 6,500 Medicaid recipients per year who use personal vehicles for transportation.

In ARM 37.86.2502, subsection (4) which requires prior authorization for specialized nonemergency medical transportation is being deleted. At one time prior authorization for such services was required, but the requirement for prior authorization was dropped some time ago because requiring prior authorization was not cost-effective in this case. The amendment of this rule is now necessary to make the rule consistent with the policy which the Department is already applying.

In ARM 37.86.2505 pertaining to reimbursement for specialized nonemergency medical transportation, subsection (2) is being amended to provide that reimbursement will be made according to the Department's fee schedule effective July 1, 2001, rather than the previous fee schedule effective July 1, 2000.

In ARM 37.86.2605 pertaining to reimbursement for ambulance services, subsection (3) is being added to address payment for ambulance services for which no fee is set in the Department's fee schedule. The Department has not established fees for certain types of ambulance services which are new to the Medicaid program or where there is insufficient data to calculate fees. However, the Department is adding subsection (3) so that a method for reimbursing such services will be specified in the ambulance rules in the event that such services are billed to the Montana Medicaid program in the future.



Subsection (3) states that services for which no fee has been set will be paid using the "by-report" methodology and describe that methodology.

Also in ARM 37.86.2605, subsection (3) is being renumbered (4) due to the addition of the new subsection (3) and is being amended to specify that the Department will reimburse providers for ambulance services to transport recipients from as well as to out-of-state facilities in some cases. This subsection currently provides that the Department will pay for ambulance services to out-of-state facilities but does not state that payment may be made for services to transport a recipient from an out-of-state facility. The omission of the words "and from" in the current rule was an oversight. The Department never intended to exclude reimbursement for ambulance services to transport a recipient who is being returned from an out-of-state facility in appropriate cases.

5. The Department proposes to apply these amendments retroactive to July 1, 2001, because it is easier to implement changes in reimbursement on the first day of the month rather than in the middle of the month. The Department was not able to file this notice of proposed amendments on April 16, 2001, in order to have it prospectively effective on July 1, 2001, due to the high volume of rules which the Department was filing on April 16 and because the general appropriations bill, House Bill 2, authorizing the increased funding was not passed until April 21, 2001. However, Medicaid recipients and providers will benefit from the July 1 effective date since mileage fees and provider fees are being increased.

6. 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 June 7, 2001. 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.

7. 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/ Gail Gray  
Director, Public Health and  
Human Services

Certified to the Secretary of State April 30, 2001.

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 16.32.302	)	AMENDMENT
pertaining to health care	)	
licensure	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On June 9, 2001, 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. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 30, 2001, 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.

16.32.302 MINIMUM STANDARDS OF CONSTRUCTION FOR A LICENSED HEALTH CARE FACILITY: -- ADDITION, ALTERATION, OR NEW CONSTRUCTION: -- GENERAL REQUIREMENTS (1) Except as may otherwise be provided in (2) of this rule, a health care facility and the construction of, alteration, or addition to a facility shall comply with:

(a) all standards set forth in:

(i) the 1996- through 1997 Guidelines for Design and Construction of Hospitals and Health Care Facilities and NFPA 101, "Life Safety Code", ~~1994~~ 2000 edition," except that a facility already licensed under an earlier edition of the "Life Safety Code" published by the national fire protection association, is not required to comply with later editions of the "Life Safety Code". Copies of the cited editions are available at the Department of Public Health and Human Services, Quality Assurance Division, Licensing Bureau, ~~Cogswell Building,~~ P.O. Box ~~202951~~ 202953, Helena, Montana, 59620-~~2951~~ 2953.

(ii) through (4)(f) remain the same.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103, 50-5-201 and 50-5-204, MCA

3. The proposed change to ARM 16.32.302 is necessary because the National Fire Protection Association (NFPA) 101, "Life Safety Code", 1994 edition is out of date. The Life

Safety Code is updated every three years to reflect the changes in building technology and fire safety design. There have been two updated editions of the Life Safety Code since the 1994 edition. The proposed change to ARM 16.32.302 aims to regulate construction of licensed health care facilities using the updated 2000 edition of the Life Safety Code. The Joint Commission on Hospital Accreditation has endorsed the 2000 edition of the Life Safety Code.

This proposed amendment to ARM 16.32.302 was previously proposed for amendment as MAR Notice No. 37-180 on page 163 of the 2001 Montana Administrative Register, Issue number 2 and adopted as proposed on page 675 in issue number 8. However, because the notice was not sent to persons on the department's interested parties list, the proposed amendment is being republished for amendment in this notice. This republication will allow the department to send the proposed amendment to members of the interested parties list in order to comply with the Montana Administrative Procedure Act.

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 June 7, 2001. 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 June 7, 2001.

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 recipients of health care facility licenses based on the 250 licensed health care facilities affected by this proposed rule change.

/s/ Dawn Sliva  
Rule Reviewer

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

Certified to the Secretary of State April 30, 2001.

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

In the Matter of the Proposed ) NOTICE OF PUBLIC HEARING  
Adoption of a Rule Pertaining ) ON PROPOSED ADOPTION  
to Unauthorized Change of a ) OF NEW RULE I  
Telecommunications Provider )

TO: All Concerned Persons

1. On July 2, 2001, at 1:30 p.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the adoption of new Rule I.

2. The PSC 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 PSC no later than 5:00 p.m. on June 25, 2001, to advise us of the nature of the accommodation that you need. Please contact Rhonda Simmons, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618.

3. The proposed new rule provides as follows:

RULE I. TRUE AND COMPLETE CARRIER COMMUNICATIONS  
PERTAINING TO CUSTOMER AUTHORIZATION FOR CHANGE OF CARRIERS

(1) When soliciting, obtaining, or verifying a customer's authorization for a change of telecommunications carriers, neither the carrier, its agent, nor the independent third party verifier may make false, misleading, or deceptive statements or fail to disclose material information.

(2) If complaints regarding changes of telecommunications carriers indicate a carrier or its agent may be using telemarketing sales methods that violate (1), the commission or its staff may require the carrier to record its sales calls. When investigating a complaint concerning an unauthorized change of carriers by a carrier required to record its calls, the commission or its staff may require the carrier to submit the recordings, in addition to other information, including the documentation required by ARM 38.5.3803. If the commission or its staff determines the carrier has violated (1), or if the carrier fails to provide the requested information, the carrier change will be deemed invalid. A carrier required to record its calls shall continue to do so until notified by the commission or commission staff that recording is no longer necessary.

AUTH: 69-3-1304, MCA  
IMP: 69-3-1303, MCA

4. The new rule is reasonably necessary to more completely

implement the purpose of related statutes (e.g., 69-3-1303, MCA) and strengthen and support related rules (e.g., ARM 38.5.3801) through providing a means through which the PSC can verify and ensure that all carrier or carrier agent communications with a customer pertaining to changes in a provider are both truthful and complete.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and 10 copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than July 2, 2001, or may be submitted to the PSC through the PSC's web-based comment form at <http://psc.state.mt.us/PublicComment/PublicComment.htm> no later than July 2, 2001. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-01.4.1-RUL")

6. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

7. The Montana Consumer Counsel, 616 Helena Avenue, P.O. Box 201703, Helena, Montana 59620-1703, phone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

8. The PSC maintains a list of persons who wish to receive notices of rulemaking actions proposed by the PSC. 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: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines, motor carriers, rail carriers, and administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Rhonda Simmons at (406) 444-7618, or may be made by completing a request form at any rules hearing held by the PSC.

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

/s/ Gary Feland  
Gary Feland, Chairman

/s/ Robin A. McHugh  
Reviewed by Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE APRIL 30, 2001.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
adoption of New Rules I and II) ON PROPOSED ADOPTION  
relating to in-state breweries)

TO: All Concerned Persons

1. On June 8, 2001, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, in Helena, Montana, to consider the adoption of New Rules I and II relating to in-state breweries.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Room 455, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., May 29, 2001, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

3. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I DETERMINATION OF SUITABILITY FOR IN-STATE BREWERY PREMISES (1) A party applying for a new in-state brewery license or approval of an alteration to an in-state brewery premises must provide the department with evidence of the suitability of the premises for the intended use as a small brewery.

(2) The premises will be considered suitable if:

(a) It meets the standards of the following departments or their delegated representatives:

(i) department of public health and human services;

(ii) department of commerce, building codes bureau; and

(iii) department of justice, fire prevention and investigation bureau, state fire marshal's office;

(b) The requirements of Title 49, MCA, regarding the Americans with Disabilities Act (ADA) as adopted by Montana have been met;

(c) The department of justice investigator can easily ascertain the type of alcoholic beverages business that is being conducted on the premises due to indoor and outdoor advertising, signage and/or the general layout and atmosphere of the premises to be licensed;

(d) The layout of the premises allows for licensee and/or employee only control over the preparation, sale, service and distribution of the alcoholic beverages;



(e) The investigator can verify to the department that the dimensions shown on the floor plan accurately represent the physical layout of the premises and the proposed use;

(f) The applicant has demonstrated adequate safeguards are in place to prevent the sale of alcoholic beverages to minors and intoxicated persons;

(g) The sample room to be used for the consumption of alcoholic beverages is physically separated from the brewery area of the business by four permanent walls. The walls must be floor to ceiling but do not need to be of solid wood construction. The walls may allow for viewing of the brewing system by the patrons. The walls cannot be moved without department approval of alterations to the premises pursuant to [NEW RULE II];

(h) The brewing area must be separated by a doorway no larger than six feet wide with a door or doors that can be closed and locked from public access; and

(i) The provisions of (3) below are not violated.

(3) The premises cannot be considered suitable if:

(a) Local government zoning restrictions or ordinances prohibit the sale and/or consumption of alcohol at the location of the premises;

(b) The location is off regular police beats and cannot be properly policed by local authorities; or

(c) The service of alcohol in the sample room is handled by the customer without the direct involvement of the licensee or their employees such as:

(i) alcoholic beverages provided the customer through automatic dispensing or vending machines; or

(ii) self-service beer tap.

(4) Premises currently licensed that do not meet the suitability standards would be required to meet the above standards upon department approval of completed alterations of the existing licensed premises in accordance with 16-3-311, MCA.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-4-213, 16-4-214, 16-4-402, and 16-4-404, MCA

REASONABLE NECESSITY: There is reasonable necessity to adopt New Rule I because there appears to be some confusion about what constitutes a suitable premise for in-state breweries. It is imperative that a distinction between a manufacturing operation and a retail license establishment be determined. The location of a sample room, based on the floor plan provided by the applicant and filed with the department at the time of the application, will assist the department and its agents in determining the suitability of this area which is used for public consumption of beer.

NEW RULE II CHANGE OR ALTERATION FOR IN-STATE BREWERY

(1) An in-state brewery may not change or alter the premises licensed thereby affecting the suitability of the licensed premises without first obtaining department approval.

AUTH: Sec. 16-1-303, MCA

IMP: Sec. 16-3-213, 16-3-214, 16-4-402, and 16-4-404, MCA

REASONABLE NECESSITY: There is reasonable necessity to adopt New Rule II because the present alteration rule, ARM 42.13.106, addresses only premises licensed for the sale of alcoholic beverages, not manufacturers. The new rule addresses changes and alterations to licensed in-state breweries.

4. 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:

Cleo Anderson  
Department of Revenue  
Director's Office  
P.O. Box 5805  
Helena, Montana 59604-5805

and must be received no later than June 15, 2001.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. The Department of Revenue 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 particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

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

Certified to Secretary of State April 30, 2001

BEFORE THE BOARD OF HEARING AID DISPENSERS  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 8.20.402, 8.20.407, )  
8.20.412 and 8.20.418 pertaining )  
to fees, record retention, )  
minimum testing and recording )  
procedures and transactional )  
document requirements - form )  
and content )

TO: All Concerned Persons

1. On December 21, 2001, the Board of Hearing Aid Dispensers published a notice of proposed amendment of the above-stated rules at page 3485, 2000 Montana Administrative Register, issue number 24.

2. The Board has amended ARM 8.20.412 exactly as proposed.

3. The Board has amended ARM 8.20.402, 8.20.407 and 8.20.418 as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

8.20.402 FEES (1) through (1)(h) will remain as proposed.

(i) Penalty for late renewal paid in addition to renewal fee (active or inactive) 100  
(2) will remain as proposed.

8.20.407 RECORD RETENTION (1) through (1)(d) will remain as proposed.

(e) a copy of the sale contract, purchase agreement or bill of sale, including a three-day cancellation notice, where applicable, signed and dated by the parties, the original delivered to the patient;

(f) through (3) will remain as proposed.

8.20.418 TRANSACTIONAL DOCUMENT REQUIREMENTS - FORM AND CONTENT (1) In addition to the requirements of 37-16-303, MCA, all bills of sale, including a three-day cancellation notice, where applicable, contracts and purchase agreements, or other written memorialization of the sale, shall be on a form no smaller than 8 1/2 x 11 inches and conform to the terms set forth in this rule.

(2) through (5) will remain as proposed.

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

COMMENTS NO. 1 and 2: Two commentors asked for clarification of the inclusion of the three-day cancellation notice on the

sales contract. One commentor stated that it was his understanding that the three-day cancellation notice applies because of the Door-to-Door Sales Act and would be appropriate only in the case where the hearing aids are sold in a party's home.

RESPONSE: The Board concurred with the comments and stated that the purpose for the three-day cancellation notice is to adhere to 30-14-501, MCA and ARM 8.20.418 which deal with the cooling down period for consumers under pressure from high pressure sales. The Board amended the proposed language to add "where applicable" following "including a three-day cancellation notice" in both ARM 8.20.407 and 8.20.418.

BOARD OF HEARING AID DISPENSERS  
DAVID KING, 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 30, 2001.

BEFORE THE BOARD OF PHARMACY  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 8.40.406, 8.40.415, )  
8.40.702, 8.40.902, 8.40.904 )  
and 8.40.1603 pertaining to )  
labeling for prescriptions, )  
unprofessional conduct, )  
definitions, preceptor )  
requirements and conditions of )  
registration )

TO: All Concerned Persons

1. On January 25, 2001, the Board of Pharmacy published a notice of proposed amendment of the above-stated rules at page 136, 2001 Montana Administrative Register, issue number 2. The hearing was held February 26, 2001.
2. The Board has amended ARM 8.40.406, 8.40.415, 8.40.702, 8.40.902 and 8.40.1603 exactly as proposed.
3. The Board has amended ARM 8.40.904 as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

8.40.904 PRECEPTOR REQUIREMENTS (1) and (2) will remain as proposed.

(3) A preceptor may supervise one intern or one extern and one pharmacy technician at any time. A pharmacist preceptor may, however, supervise two students at a time if the students are completing a clerkship experience through attending an approved school of pharmacy.

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

COMMENT NO. 1: Gayle Cochran, Pharm.D., on behalf of the Department of Pharmacy Practice, University of Montana, submitted a written comment stating that the language in ARM 8.40.904(3) was confusing and would open the door for anyone precepting a student in internship, externship or clerkship to precept two students at a time. Ms. Cochran recommended that the final sentence of (3) be restored to its original form.

RESPONSE: The Board acknowledged the comment and following discussion concurred with Ms. Cochran's comment and adopted ARM 8.40.904 with the amendment to the last sentence of (3) to return it to the original language.

COMMENT NO. 2: One commentor stated that he was concerned that the proposed amendment to ARM 8.40.406 would require the name, address and phone number of the dispensing pharmacist and not the pharmacy.

RESPONSE: The Board acknowledged the comment and following discussion stated that they did not see this as a potential problem as most labels are customized for each pharmacy.

BOARD OF PHARMACY  
JOHN POUCH, R.Ph., 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 30, 2001.

BEFORE THE BOARD OF REALTY REGULATION  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 8.58.301, 8.58.415A, ) AND ADOPTION  
8.58.415B, 8.58.419, and )  
8.58.714 pertaining to )  
definitions, continuing )  
education course approval, )  
grounds for license discipline )  
of property management )  
licensees and the adoption of )  
new rule I pertaining to )  
internet advertising rules )

TO: All Concerned Persons

1. On February 22, 2001, the Board of Realty Regulation published a notice of proposed amendment and adoption of the above-stated rules at page 319, 2001 Montana Administrative Register, issue number 4. The hearing was held April 12, 2001.

2. The Board has amended ARM 8.58.415B, 8.58.419 and 8.58.714 exactly as proposed.

3. The Board has amended ARM 8.58.301 and 8.58.415A as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

8.58.301 DEFINITIONS The terms used in this chapter shall have their common meaning as used in the real estate industry, and, unless the context otherwise requires, the following meanings shall also apply:

(1) will remain as proposed.

(2) "advertising" means information in whatever form used to promote real property for sale, lease, rent, exchange or purchase or to promote the brokerage or sales services of a licensee, except that the dissemination of property data to an individual prospective buyer at the individual's request shall not be deemed advertising for the purpose of this rule;

(3) through (13) will remain as proposed.

(14) "licensee identification" as used in this chapter means a written disclosure ~~that includes the licensee's name, the name of the firm with which the licensee is affiliated as reflected on the licensee's license, and that the licensee is either a licensed broker or salesperson, as is applicable of~~ the licensee's name or brokerage company and that the advertisement is made by a real estate licensee;

(15) through (20) will remain as proposed.

8.58.415A CONTINUING REAL ESTATE EDUCATION (1) will remain as proposed.

(2) The licensee must attend ~~100%~~ 90% of each hour of

the approved course time in order to receive credit for attendance.

(3) and (4) will remain as proposed.

(5) No more than six hours of elective topics may be carried over. No mandatory hours may be carried over to any other year except as elective credits. ~~Beginning January 1, 2003, excess continuing education hours, above the 12 required hours, will not be carried over to the next year.~~

(6) through (17) will remain as proposed.

4. The Board adopted NEW RULE I (ARM 8.58.427) INTERNET ADVERTISING RULES as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

8.58.427 INTERNET ADVERTISING RULES (1) through (3) will remain as proposed.

(4) A licensee's internet advertising may include real properties on which neither the licensee nor his brokerage company is the listing agent so long as the listing agent has offered cooperation and has consented to internet advertising by the licensee engaging in the internet advertising and the owners of the property have consented to the same. The offer of cooperation and consent to internet advertising may arise pursuant to the rules and regulations of a multiple listing service in which the listing agent and the licensee, engaging in the internet advertising, are both participating (provided the multiple listing system gives the listing agent the option of prohibiting internet advertising of some or all of his listings by some or all of the participants on that multiple listing system) or by specific written agreement between them. The owner's consent may be included in the listing agreement and need not identify the specific licensee to whom consent to internet advertising is given. A licensee's internet advertising of real properties, on which neither he nor his brokerage company is the listing agent, must set forth as part of the property information, a statement that the subject property is listed with another licensee or brokerage company and shall identify the listing agent, including the listing agent's office mailing address ~~and telephone number~~ or e-mail address. The content of any listing property data obtained from another listing agent or multiple listing system may not be changed in whole or in part. However, such listing property data may be formatted differently and be condensed and further advertised if the advertisement contains the following statement: "The foregoing material was abstracted from another source and does not contain all of the information available at the source site. Please request further information when considering this property." No licensee shall be responsible for errors or misrepresentations of others, who reproduce or further disseminate the information concerning the licensee's listings, unless the licensee originated the error or misrepresentation.

(5) will remain as proposed.



5. The Board received 14 written comments and six persons testified at the hearing. The comments received and the Board's response are as follows:

COMMENTS NO. 1-13: Nine commentors submitted written statements and four persons testified in opposition to the elimination of carry over hours for CE.

RESPONSE: The Board acknowledged the comments and following discussion did not adopt the proposed amendment to ARM 8.58.415A(5).

COMMENTS NO. 14-23: Four commentors submitted written statements and six persons testified in connection with the 100% attendance requirement for CE. The commentors felt that requiring 100% attendance eliminated any discretion for emergencies or unusual circumstances.

RESPONSE: The Board acknowledged the comments and following discussion stated that it was not the Board's intention to eliminate the discretion of the sponsor or instructor, but to give guidance to course providers. The Board voted to amend the rule to require that the licensees must attend 90% of the course in order to receive CE credit.

COMMENTS NO. 24-34: Six commentors submitted written statements and five persons testified at the hearing regarding the proposed internet and advertising rules. Comments encouraged amendments to advertising to allow agents to share information with their clients and customers on property listed by another agent without disclosing all of the listing agent's contact information. Other comments included the amount of information required in the licensee identification and that the requirement to update internet information promptly may be too vague.

RESPONSE: The Board concurred with the comments and voted to amend the 8.58.301(2) to add, "except that the dissemination of property data to an individual prospective buyer at the individual's request shall not be deemed advertising for the purpose of this rule."

The Board amended (4) to provide that the written disclosure only require that the licensee disclose his/her name or brokerage company and identify that the advertisement is made by a real estate licensee.

The Board amended (4) of New Rule I to provide that when advertising property not listed by the advertiser, only the listing agent's office mailing address or e-mail address need be included and changed the reference from "listing" to "property" in the fourth and fifth sentences of (4).

BOARD OF REALTY REGULATION  
JOHN BEAGLE, 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 30, 2001.

BEFORE THE BOARD OF REALTY REGULATION  
DEPARTMENT OF COMMERCE  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 8.58.705 and 8.58.709 )  
pertaining to pre-licensure )  
course requirements and )  
continuing property management )  
education )

TO: All Concerned Persons

1. On February 22, 2001, the Board of Realty Regulation published a notice of proposed amendment of the above-stated rules at page 327, 2001 Montana Administrative Register, issue number 4. The hearing was held April 12, 2001.

2. The Board has amended ARM 8.58.705 and 8.58.709 as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

8.58.705 PRE-LICENSURE COURSE REQUIREMENTS (1) A property management application must provide evidence of successfully completing a minimum of ~~40~~ 30 hours of pre-licensure education approved by the board.

(2) will remain as proposed.

(3) The effective date of the amendments to this rule will be January 1, 2002.

8.58.709 CONTINUING PROPERTY MANAGEMENT EDUCATION

(1) through (6) will remain as proposed.

(7) The effective date of the amendments to this rule will be January 1, 2002.

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

COMMENT NO. 1: One commentor suggested that the board require a minimum of 30 hours of pre-licensure course requirements instead of 40 hours and suggested that the board consider implementing a 10 hour post-licensing course for all new property managers which he felt would be more effective from a learning and understanding standpoint.

COMMENT NO. 2: The Montana Association of Realtors suggested that there be an increase in pre-licensing hours, post-education requirements and that there be an increase in the number of mandatory and elective hours for continuing education.

COMMENT NO. 3: One commentor was in favor of the proposed rule changes but stated there was a need for more continuing education opportunities specifically for property managers and

questioned if it was the job of the board to assure that there are classes for CE available.

COMMENT NO. 4: One commentor submitted a commentary stating that it supported the change requested for ARM 8.58.705, but felt that the board should not increase the education requirements of one group based upon the complaint data presented and suggested that they felt it more appropriate to make additional education remedial and as "violation specific" as possible. The commentor also felt that it would be appropriate to require all individuals who manage property or who intend to be property managers to take the pre-licensure education course. The commentor did not believe that continuing education should be weighted toward elective subjects, but should be weighted to address the professionals' line of work.

RESPONSE: The Board considered the comments and concurred with the recommendation to amend the proposed rule notice to set the pre-licensing education at a minimum of 30 hours to allow the board flexibility in establishing exact course specifications. The Board also stated that it is committed to offering CE geared toward the property manager and will be addressing this issue in the upcoming education request for proposal. The property management profession requires a good deal of annual updates to stay current with all aspects of the industry and they felt it is appropriate to establish requirements similar to those of real estate licensees. The Board amended both rules to provide for an effective date of January 1, 2002.

BOARD OF REALTY REGULATION  
JOHN BEAGLE, 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 30, 2001.

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

In the matter of the adoption )  
of the temporary emergency )  
amendment of ARM 37.86.2207, )  
37.86.3001 and 37.88.1106 )  
pertaining to medicaid mental )  
health services )

NOTICE OF ADOPTION OF  
TEMPORARY EMERGENCY  
RULES

TO: All Interested Persons

1. The Department of Public Health and Human Services is adopting the following temporary emergency rule amendments to prevent imminent harm to the public health, safety and welfare. An order of the Montana First Judicial District Court, Lewis and Clark County entered February 26, 2001 in cause number BDV-01-18 required the Department to make new rules totally eliminating the sub-acute partial hospitalization program or revising the rate of reimbursement for that service. The court's order required the new rules to be effective within 60 days of the date of the order. The temporary emergency rules adopt new temporary emergency rates for sub-acute partial hospitalization and intensive day treatment effective April 27, 2001.

Under the court's order, the reimbursement rate for sub-acute partial hospitalization services would expire April 27, 2001. Without the emergency rule amendments, the Department would no longer have authority to make Medicaid and Mental Health Services Plan (MHSP) reimbursement to providers for services provided to low income children with severe emotional disturbances in sub-acute partial hospitalization programs and intensive day treatment programs. Many providers would not be financially able to continue to provide those services, and would have had to take measures to terminate treatment. Such measures would have left a significant number of seriously emotionally disturbed children without treatment. Without adequate and appropriate treatment, seriously emotionally disturbed children would have suffered exacerbation of their symptoms and a deterioration in their ability to function within the community, posing an imminent risk of harm to the health and safety of those individuals, as well as to the safety of their families and communities.

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. If you request an accommodation, contact the department no later than 5:00 p.m. on May 18, 2001, 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 text of the temporary emergency rules is as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.86.2207 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT SERVICES (EPSDT), REIMBURSEMENT (1) through (1)(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 2000~~ April 27, 2001. A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Medicaid Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) through (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

37.86.3001 OUTPATIENT HOSPITAL SERVICES, DEFINITIONS (1) through (4) remain the same.

(5) "Partial hospitalization services" means an active treatment program that offers therapeutically intensive, coordinated, structured clinical services provided only to individuals who are determined to have a serious emotional disturbance or severe disabling mental illness. Partial hospitalization services are time-limited and provided within either an acute level program or a sub-acute level program. Partial hospitalization services include day, evening, night and weekend treatment programs that employ an integrated, comprehensive and complementary schedule of recognized treatment or therapeutic activities.

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

(d) Sub-acute level partial hospitalization is reimbursed ~~at 75% of the rate established for acute level partial hospitalization~~ as provided in ARM 37.86.3022.

(6) and (7) 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

37.88.1106 INPATIENT PSYCHIATRIC SERVICES, REIMBURSEMENT

(1) through (9)(b) remain the same.

(10) Reimbursement will be made to a residential treatment facility provider for intensive day treatment in the amount specified in the department's medicaid mental health fee schedule adopted at ARM 37.86.2207. The per diem rates specified in the department's medicaid mental health fee schedule are bundled prospective per diem rates for full-day programs and half-day programs as defined in ARM 37.88.1101.

(10) through (13) remain the same in text but are renumbered (11) through (14).

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

3. The temporary emergency amendment is necessary to comply with an order of the Montana First Judicial District Court, Lewis and Clark County entered February 26, 2001 in cause number BDV-01-18 requiring the Department to make new rules totally eliminating the sub-acute partial hospitalization program or revising the rate of reimbursement for that service. The Department considered and rejected the option of eliminating the service. The temporary emergency rules will allow the Department to continue Medicaid implementation of reimbursement of sub-acute partial hospitalization (SAP) and intensive day treatment (IDT) services for children with serious emotional disturbances. The Department finds that those services are necessary to maintain the health and safety of eligible children with serious emotional disturbances.

The Department is adopting a temporary emergency rate for SAP and IDT services of \$93.37 per full day or \$70.03 per half day. The Department developed this rate in consultation with providers of SAP services and potential providers of IDT services. Proposed rules are currently pending to allow reimbursement of IDT services that would be similar to SAP services but would be provided under a residential treatment facility license rather than a hospital license. Reimbursement rates will be the same for either service.

The Department gathered cost data from three providers and adapted cost data from Montana State Hospital. It provided the cost data to a work group made up of two members of the public from the statutorily established Mental Health Oversight Advisory Council, one Department staff member from another division who is experienced in Medicaid rate setting for hospitals, and a representative of the department's Office of Legal Affairs. The work group recommended the rate adopted in the temporary emergency rule. The temporary emergency rate adopted in this notice is based on the assumption that the average facility would be able to serve up to 20 children simultaneously. The rate was computed to allow for a 90% occupancy rate, 250 days per year.

Current and potential providers of SAP services were notified of the Department's intention to adopt the rate recommended by the work group. The providers were invited to comment on the proposal. Only one provider offered any comments.

The commentor suggested the 15% allowance for administrative overhead was too low. The Department does not agree. The 15% overhead allowance exceeds the Department's experience at Montana State Hospital and typical federal grant allowances.

The commentor argued that transportation costs should be included in the reimbursement rate. The Department is not aware of any other rate for reimbursement of Medicaid services which includes an allowance for transportation of consumers. Transportation is reimbursed separately. The commentor argued that the practice of reimbursing Medicaid recipients for transportation costs was impractical or impossibly difficult. The Department does not find special circumstances that would justify reimbursement of SAP and IDT providers for transportation costs outside the normal practices of Medicaid.

The commentor also argued that educational expenses should be included in the rate computation, because the Department's rule requires SAP and IDT providers to offer appropriate education to consumers. The Department does not agree. IDT and SAP services are not intended to substitute for long-term treatment of chronic emotional disturbances. The Department does not find any special circumstances that would justify deviation from the general principle that schools are primarily responsible for education costs. The commentor stated that its negotiations with school districts have been difficult and time consuming. While the Department is sympathetic to the difficulty experienced by providers in obtaining school funding, it does not agree that difficulty alone would justify a characterization of education expenses as a medical cost.

The Department estimates the temporary emergency rules will reduce Medicaid and MHSP reimbursement to all SAP and IDT providers by a total of \$113,940 annually. The number of persons potentially affected would include approximately 30 seriously emotionally disturbed children and two providers.

4. The temporary emergency amendment will be effective April 27, 2001.

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



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

/s/ Dawn Sliva  
Rule Reviewer

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

Certified to the Secretary of State April 27, 2001.

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

IN THE MATTER OF MOUNTAIN WATER )       DECLARATORY RULING  
COMPANY, Petition for Declaratory )  
Ruling Pertaining to Rate Base    )  
Treatment of an Acquisition of     )  
Missoula Water Works and          )  
City of Missoula Properties        )

On December 1, 2000, Mountain Water Company (Mountain Water), a public utility providing water services to customers within service areas in and near Missoula, Montana, filed a Petition for Declaratory Ruling before the Public Service Commission (PSC). In the petition Mountain Water advises the PSC that it has agreed, subject to PSC approval, to acquire all title and operating rights pertaining to water supply and distribution facilities held in part by Water Resources, Inc., dba Missoula Water Works (MWW), and in part by the City of Missoula (City). These facilities are used to provide water services in the Missoula areas of North Reserve Street and lower Grant Creek. Mountain Water requests that the PSC issue a declaratory ruling that the proposed acquisition of the facilities is in the public interest and that the full purchase price of the facilities will be included in Mountain Water's rate base in subsequent ratemaking proceedings before the PSC.

On December 22, 2000, the PSC publicly noticed the petition through a Notice of Petition for Declaratory Ruling, thereby inviting public participation in the matter. The Montana Consumer Counsel (MCC) requested participation. No other person responded to the notice. On March 26, 2001, having conducted an audit or investigation and discovery on the matter, MCC informed the PSC that it does not oppose the acquisition.

Mountain Water's petition is accompanied by a copy of the acquisition agreement entered by Mountain Water, MWW, and the City. The agreement demonstrates that Mountain Water, MWW, and the City believe the acquisition to be in the public interest and that Mountain Water should be allowed to include the purchase price of the facilities in its rate base for ratemaking purposes. MCC's statement that it does not oppose the acquisition can be viewed as an indication that MCC, like the other participants in the proceeding, also believes the acquisition is in the public interest and Mountain Water should be allowed to include the purchase price in its rate base. No person has appeared in this proceeding to question or oppose the ruling requested by Mountain Water.

The PSC agrees that the acquisition is in the public interest. Generally, smaller water companies, like MWW, are not in as favorable a financial position as a larger water company, like Mountain Water, to provide ongoing maintenance of

facilities or capital improvements that might become necessary from time to time. Sources of supply or capacity to deliver the supply to accommodate growth in customer base, seasonal increased usage, compliance with federal or state regulations, or emergency requirements are likely to be more readily and timely made available to consumers through a larger water company. The existing customer base of MWW will see benefits in this regard. Small water companies, even with inherent shortcomings, may have facilities that will benefit the customers of a larger utility. In the Mountain Water acquisition of MWW and City facilities Mountain Water and its customers will be benefiting from additional supply sources. The unification of the Mountain Water system and the MWW and City system will produce benefits for all customers, and the administration of a unified system, in regard to utility, municipality, and customer interests and relationships, is likely to be easier (and better) as a result of unifying ownership and operations of the separate systems.

Under the circumstances the purchase price for the MWW and City facilities has been arrived at in a reasonable and acceptable manner, essentially through an inventory of the facilities, a determination of construction costs for equivalent facilities, and applying depreciation based on actual or estimated age. Other means of valuation would require records that are not available. The PSC has reviewed the petition, the agreement, audit results, and responses to discovery in the proceeding and determines that the acquisition should be declared to be in the public interest and the purchase price should be declared to be properly includable in Mountain Water's rate base.

IT IS HEREBY ORDERED that the petition by Mountain Water is granted. Mountain Water's acquisition of the facilities owned by MWW and the City is in the public interest and the full purchase price paid by Mountain Water will be included in Mountain Water's rate base.

/s/ Gary Feland

Gary Feland, Chairman

/s/ Robin A. McHugh

Reviewed by Robin A. McHugh

CERTIFIED TO THE SECRETARY OF STATE APRIL 30, 2001.

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2000. This table includes those rules adopted during the period January 1, 2001 through March 31, 2001 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2000, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 2000 and 2001 Montana Administrative Registers.

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