

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 3

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 BOARD OF VETERINARY MEDICINE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF
amendment of ARM 8.64.501 and) PROPOSED AMENDMENT
8.64.505 pertaining to)
application requirements) NO PUBLIC HEARING
and continuing education) CONTEMPLATED

TO: All Concerned Persons

1. On March 17, 2003, the Board of Veterinary Medicine (Board) proposes to amend the above-stated rules relating to veterinary matters.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in the rule making process or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Veterinary Medicine no later than 5:00 p.m., March 7, 2003, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Veterinary Medicine, 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 dlibsdrvvet@state.mt.us.

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

8.64.501 APPLICATION REQUIREMENTS (EXAMINATION) (1) and (2) remain the same.

(3) Foreign veterinary school graduates must either have completed the requirements of the American veterinary medical association's education commission for foreign veterinary graduates (ECFVG) as evidenced by a copy of the ECFVG certificate or must have completed the requirements of the program for the assessment of veterinary education equivalence (PAVE) as evidenced by a copy of the PAVE certificate before an application will be accepted.

(a) remains the same.

(b) For specific information on the requirements of the ECFVG, contact the American Veterinary Medical Association, ECFVG, 1931 North Meacham Road, Suite 100, Schaumburg, IL 60173. For specific information on the requirements of the PAVE, contact the American Association of Veterinary State Boards at 3100 Main Street, Suite 208, Kansas City, MO 64111.

(4) remains the same.

AUTH: Sec. 37-1-131, 37-18-202, MCA

IMP: Sec. 37-18-202, 37-18-302, 37-18-303, MCA

REASON: The Board of Veterinary Medicine (Board) proposes to allow an additional method of evaluating the credentials of foreign veterinary graduates. The current single method of assessing experience and education for this group of veterinarians has been backlogged with candidates waiting for examinations and final certificates for a year or longer. The Board finds that it is reasonable and necessary to propose a rule change to expand the methods of evaluating the training and education of foreign veterinary graduates for licensure. Most of the small number of foreign graduates who have applied for licensure in this state have been Montana natives who attended non-accredited veterinary schools. This change will offer veterinarian graduates of foreign schools an additional vehicle acceptable to the Montana Board of Veterinary Medicine for assessing competence to practice and will ensure that licensure applications for these graduates are not unduly delayed due to the inability to sit for required examinations. The Board anticipates that this change will expedite both the evaluation and licensure process for foreign veterinary graduates who apply for licensure in Montana.

8.64.505 CONTINUING EDUCATION (1) remains the same.

(a) It is the responsibility of the veterinarian to maintain proof of his/her continuing education attendance and to ~~report programs attended~~ certify compliance on the renewal application in the even-numbered years only. During the renewal process in the odd-numbered years, no continuing education is to be ~~reported~~ certified.

(i) through (3) remain the same.

(4) The board will randomly audit 2% of the ~~continuing education reports submitted~~ licensees and all licensees requesting a grace period each continuing education year. Certificates of completion and/or programs must be submitted upon request of the board.

(5) and (6) remain the same.

AUTH: Sec. 37-1-131, 37-1-319, 37-18-202, MCA

IMP: Sec. 37-1-306, 37-18-307, MCA

REASON: It is reasonable and necessary that the Board of Veterinary Medicine propose rule changes to modify the administration of continuing education (CE). This modification is to provide for the attest method of reporting and allows for on-line license renewals. The Department has determined that there are not sufficient website resources to allow typing in courses, sponsors, and other course information required for the full sponsors, and other course information required for the full reporting of CE. This rule change allows licensees to attest to reporting of their CE requirements and provides that the Board will randomly audit 2% of the licensees as well as all licensees who request additional time to obtain their required CE hours. This change to the continuing education process will allow for computer on-line license renewal and will affect all veterinarians renewing their licenses to practice. In addition,

there is reasonable necessity to add a citation to section 37-18-307, MCA, pertaining to continuing education, as ARM 8.64.505 also implements the section.

4. Concerned persons may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdrvvet@state.mt.us and must be received no later than 5:00 p.m., March 14, 2003.

5. If persons who are directly affected by the proposed amendment wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Cheryl Brandt, Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdrvvet@state.mt.us to be received no later than 5:00 p.m., March 14, 2003.

6. If the Board receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the 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 99 persons based on approximately 991 licensees.

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

8. The Board of Veterinary Medicine will meet in May, 2003, to consider the comments made by the public, the proposed responses to those comments, and take final action on the proposed amendments. Members of the public are welcome to attend the meeting and listen to the Board's deliberations, but the Board cannot accept any comments concerning the proposed

amendments beyond the March 14, 2003, deadline.

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

BOARD OF VETERINARY MEDICINE
JEAN LINDLEY, DVM, PRESIDENT

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

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

Certified to the Secretary of State on February 3, 2003.

BEFORE THE OFFICE OF THE WORKERS' COMPENSATION JUDGE
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF PROPOSED AMENDMENT
amendment of ARM 24.5.301,) AND REPEAL
24.5.310, 24.5.318 and)
the repeal of 24.5.312)
regarding procedural rules) NO PUBLIC HEARING CONTEMPLATED
of the Court)

TO: All Concerned Persons

1. On April 14, 2003, the Office of the Workers' Compensation Judge proposes to amend and repeal the above procedural rules of the Court.

2. The Workers' Compensation Court 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 Court no later than 5:00 p.m., on March 13, 2003, to advise us of the nature of the accommodation that you need. Please contact Patricia J. Kessner, Workers' Compensation Court, P.O. Box 537, Helena, MT 59624-0537; telephone (406) 444-7794; FAX (406) 444-7798; e-mail mlindgren@state.mt.us.

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

24.5.301 PETITION FOR TRIAL (1) through (3) remain the same.

(4) Except in cases involving the uninsured employers' fund or involving a request for relief against an employer, the caption of the petition, as well as subsequent pleadings, motions, briefs, and other documents, shall not name the employer. This rule shall not be construed as relieving any employer from its duty to cooperate and assist its insurer, including any duty to assist in responding to discovery.

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

AUTH: Sec. 2-4-201, MCA
IMP: Sec. 2-4-201, 39-71-2901, MCA

RATIONALE: The proposed change will make it clear that the insurer is the real party in interest in workers' compensation cases but also warn employers of their duty to cooperate with their insurers during litigation. The proposed rule allows the naming of employers as respondents in uninsured employers= fund cases and where relief is specifically requested against an employer. Other than to delete the employer from the caption, the proposed rule is consistent with existing practice.

24.5.310 TIME AND PLACE OF TRIAL GENERALLY (1) The court has divided the state into six geographic areas. ~~Except upon~~

~~stipulation of all parties and consent of the court or at the court's own discretion to hold trials elsewhere, Generally, trials will be held in the place designated in subsection (3) except for cases in the Butte venue, which shall be tried in Helena unless the parties specifically request otherwise. Upon agreement of the parties and consent of the court, or upon order of the court, a trial may be held at any time and any place. The court will attempt to accommodate parties' requests for special trial settings; however, the court reserves the discretion to finally determine the time and place of all trials.~~

(2) Unless otherwise ordered, trials will commence on Monday of the week set for trial. The court will convene in each area four times per year unless good cause to cancel a trial term exists. Court will be in session or recess at the convenience of the court. The court will regularly prepare a schedule which sets deadlines, the dates for pretrials and trials and the location of the pretrials or trials in each area. ~~The court will not convene in an area where a petition has not been filed.~~

(3) remains the same.

(4) Upon receipt of a petition regarding a dispute meeting the requirements of these rules, the court will issue a scheduling order fixing deadlines for discovery, the filing of pretrial motions, preparation of a pretrial order, and other pretrial matters, setting the date of the final pretrial conference, and setting a trial at a time that will allow 75 days notice to be given of the trial. The court may, for good cause, hold a trial over to the next regular trial date or specially set the trial for a different time and/or place.

AUTH: Sec. 2-4-201, MCA

IMP: Sec. 2-4-201, 39-71-2901, MCA

RATIONALE: The proposal will change the presumption as to the place of trial for Butte cases from Butte to Helena. Most Butte cases are being tried in Helena at present, so the rule is consistent with current practice. Parties wishing to try their cases in Butte will continue to be able to do so.

The proposal also expressly states the court's current practice of accommodating parties' requests for special trial settings and makes it clear that the court retains discretion to fix time and place of trial.

24.5.318 PRETRIAL CONFERENCE AND ORDER (1) through (3) remain the same.

(4) At the time of the pretrial conference the parties shall present a ~~final~~ proposed pretrial order in the form provided in (5). ~~In the event of a dDisputes as to the content of the final pretrial order, the dispute shall be presented and resolved at the pretrial conference for resolution. The final, signed pretrial order shall be filed and received at the court by the Friday preceding the trial.~~

(5) The pretrial order must be signed by all parties and shall set forth the following:

(a) through (e) remain the same.

(f) the petitioner's and respondent's contentions, including in the case of petitioner all contentions which provide the basis for any claim of unreasonableness on the part of the insurer;

(g) remains the same.

(h) the identity of all witnesses who may be called, including the name, address, and occupation of each witness, and the subject matter of the testimony each witness will ~~be called to give;~~

(i) any unusual legal or evidentiary issues; and

(j) the estimated length of trial; and

(k) a statement as to whether or not the parties will be filing trial briefs and/or proposed findings of fact and conclusions of law.

(6) remains the same.

(7) All exhibits which will be offered at trial shall be provided to the court at the time of the pretrial conference. The exhibits shall be bound or in a three-ring notebook. The exhibits shall be tabbed and numbered consecutively. All pages within an exhibit shall be numbered beginning with 1. Exhibits attached to depositions must also be numbered sequentially.

(8) remains the same.

AUTH: Sec. 2-4-201, MCA

IMP: Sec. 2-4-201, 39-71-2901, MCA

RATIONALE: The proposed change in filing of the pretrial order recognizes current practice of filing of the final pretrial orders after the pretrial conference. The new requirement for a particularization of any claim of unreasonableness of the insurer is the result of rules committee discussion and recognition of the fact that such claims are often not pursued or so ill defined that they take form only at trial. The new requirement is more in step with other full disclosure rules of the court. The requirement that the pretrial order state whether the parties intend to file proposed findings or trial briefs is calculated to avoid surprise. Parties often do not file proposed findings or trial briefs. The new rule will assure that if one party intends to file proposed findings or a trial brief the other party will have notice of that fact and an opportunity to respond in kind. Finally, the requirement for sequential numbering of deposition exhibits will enable the court to cite to page numbers of deposition exhibits.

4. ARM 24.5.312 SETTING TIME AND PLACE OF TRIAL BY STIPULATION OR IN BEST INTERESTS OF THE COURT, the rule proposed to be repealed, is found on page 24-173 of the Administrative Rules of Montana.

AUTH: Sec. 2-4-201, MCA

IMP: Sec. 2-4-201, 39-71-2901, MCA

RATIONALE: With the changes to ARM 24.5.310, this current rule becomes redundant and will therefore be repealed.

5. It is reasonably necessary to amend the rules in order for the Workers' Compensation Court to properly and timely hear and decide cases. In addition, the rules committee of the court has reviewed and agreed to the rule changes.

6. Concerned parties may submit their data, views, or arguments concerning the proposed action in writing to the Workers' Compensation Court, 1625 Eleventh Avenue, P.O. Box 537, Helena, MT 59624-0537. Any comments must be received no later than March 13, 2003.

7. 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 the Workers' Compensation Court, 1625 Eleventh Avenue, P.O. Box 537, Helena, MT 59624-0537, no later than March 13, 2003.

8. If the Workers' Compensation Court receives requests for a public hearing on the proposed action from either 10% or 25 persons, whichever is less, of those 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 another association having no less than 25 members that are 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 more than 25 based on the number of petitions filed in a year.

9. The court maintains lists of interested persons who wish to receive notice of rulemaking actions proposed by the court. 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 Workers' Compensation Court rules. Such written request may be mailed or delivered to the Workers' Compensation Court, 1625 Eleventh Avenue, P.O. Box 537, Helena, MT 59624-0537, faxed to the court at 406-444-7798, or may be made by completing a request form at any rules hearing held by the court.

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

/s/ Mike McCarter
MIKE McCARTER
JUDGE

/s/ Jay Dufrechou
JAY DUFRECHOU
Hearing Examiner - Rule Reviewer

CERTIFIED TO THE SECRETARY OF STATE: January 28, 2003.

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

In the matter of the)
amendment of ARM 37.82.101,)
37.82.417 and 37.82.423 and)
the repeal of ARM 37.82.418)
pertaining to medicaid)
eligibility)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT
AND REPEAL

TO: All Interested Persons

1. On March 5, 2003, at 10:30 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment and repeal of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on February 25, 2003, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

37.82.101 MEDICAL ASSISTANCE, PURPOSE AND INCORPORATION OF POLICY MANUALS (1) remains the same.

(2) The department hereby adopts and incorporates by this reference the state policy manuals governing the administration of the medicaid program effective ~~January 1, 2003~~ February 1, 2003. The Family Medicaid Manual, the SSI Medicaid Manual and the proposed manual updates are available for public viewing at each local office of public assistance or at the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. The proposed manual updates are also available on the department's website at "www.dphhs.state.mt.us".

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-6-101, 53-6-131 and 53-6-141, MCA

37.82.417 TRANSFER OF RESOURCES (1) The following definitions apply to this ~~section~~ subchapter:

- (a) through (i) remain the same.
- (j) "Home" means the client's principal place of

residence, including adjoining land and outbuildings;

(k) "Principal place of residence" means the property on which the individual, the individual's spouse, or a dependent child of the individual (including a dependent adult child) currently resides or has resided within the previous six months and the individual, the individual's spouse, or a dependent child of the individual intends to return to the property to reside within six months of absence in the event of a temporary absence. Only one property may qualify as an individual's principal place of residence.

(2) The client's home is:

(a) is a countable resource; and

(b) will be considered an exempt resource so long as the client or a dependent relative child resides in the home and ownership is retained by the client.

(3) through (9) remain the same.

AUTH: Sec. 53-2-201, 53-2-601 and 53-6-113, MCA

IMP: Sec. 53-2-601, 53-6-101, 53-6-113 and 53-6-143, MCA

37.82.423 CONDITIONAL MEDICAL ASSISTANCE, ELIGIBILITY

(1) remains the same.

(2) To be eligible for conditional assistance an applicant must:

(a) be categorically eligible ~~as being by reason of being:~~

(i) through (e) remain the same.

(f) not have countable liquid resources exceeding three times the appropriate federal supplemental security income monthly benefit payment standard at the time of application; and

~~(g) agree in writing to: make reasonable efforts to sell the resources as defined in (3) within the conditional assistance period specified in (4); and~~

~~(i) sell excess non-liquid resources during the period of conditional assistance; and~~

~~(ii) (h) enter into a written agreement to use the net proceeds of the sale of the excess non-liquid resources to refund to the department conditional medical assistance payments paid on the applicant's behalf.~~

(3) "Reasonable efforts to sell" means:

(a) list the property for sale at market value or less with an agent; or

(b) begin advertising the property for sale at market value or less in at least one of the appropriate local media;

(c) place a "For Sale" sign on the property;

(d) begin conducting "open houses" or otherwise show the property to interested parties on a continuous basis; and

(e) attempt any other appropriate methods of sale.

~~(3)~~ (4) Conditional assistance may be provided to an eligible applicant for up to three months while attempting to dispose of excess personal property, and up to nine months while attempting to dispose of excess real property. An additional three months of conditional assistance may be provided to an applicant when the department determines that the sale of the resource has been prevented by circumstances beyond the

applicant's control.

~~(4)~~ (5) The amount of conditional medical assistance to be refunded to the department is equal to the lesser of:

(a) and (b) remain the same.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101 and 53-6-131, MCA

3. The rule 37.82.418 as proposed to be repealed is on page 37-18389 of the Administrative Rules of Montana.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-131, 53-6-141 and 53-6-142, MCA

4. On January 31, 2003, the Department of Public Health and Human Services filed a notice of the emergency amendment of ARM 37.82.101, 37.82.417 and 37.82.423 and the emergency repeal of ARM 37.82.418 pertaining to Medicaid eligibility. Pursuant to 2-4-303(1), MCA, the emergency rule cannot be effective for more than 120 days. Therefore, the Department is now proposing to make permanent the changes to the rules amended and repealed on an emergency basis.

Medicaid is jointly funded by the State and Federal government. Its purpose is to provide health care benefits to eligible low income persons without other resources. The Montana legislature appropriated a limited amount of State funds to support the Medicaid program for the State Fiscal Year 2003. The Medicaid program, however, has experienced increased caseloads and increased usage. Consequently, the Medicaid appropriation is being exhausted much faster than was originally projected. If Medicaid spending continues at its present rate, even assuming no additional increase in caseloads or usage, the State general fund appropriation would be overspent by approximately \$3.5 million before the end of the fiscal year. Due to this serious budgetary shortfall, it is necessary for Medicaid to reduce spending before all funds appropriated for the Medicaid program are depleted.

The proposed rule amendments are necessary to reduce the number of eligible Medicaid recipients by increasing the Department's ability to recoup benefits paid through conditional assistance through the following changes: a recipient's "principal place of residence" shall be defined to include the ONE home where the individual, the individual's spouse, or the individual's dependent child resides or has resided in the previous six months. However, in cases where the home is not currently occupied by the individual, the individual's spouse, or the individual's dependent child, at least one of these persons must evidence an intent to return to residence in the home within six months and must actually return to residence in the home within six months or the home will no longer constitute a "principal place of residence". If the home is no longer a "principal place of residence", then it may be a countable resource for

purposes of the Medicaid program. This new definition is being added to ARM 37.82.417.

Another change that is necessary to deal with the program's budget crisis is the repeal of ARM 37.82.418. That rule previously permitted eligibility for Medicaid provided a person with excess resources involving real property agreed to attempt to sell the excess real property. This exception to the resource limit is revoked and replaced with a more precise conditional assistance exception. Conditional assistance is described in ARM 37.82.423. That rule is being amended to clarify what actions constitute a "reasonable effort to sell", to clarify the conditional assistance recipient's obligations under the exception, and to ensure that awareness is raised that conditional assistance is conditional and the recipient has an obligation to repay the assistance once the excess resource is sold. Individuals receiving conditional assistance have nine months to sell real property and three months to sell personal property which exceeds the applicable resource limit.

The last change that is necessary in order to manage the program's budget crisis is the incorporation of new policy manual material implementing these changes. Besides the two changes discussed above, the new manual material impacts definitions of "home", "life estate", and "contract for deed". The definitions are clarified so that staff who make eligibility determinations are aware of how to classify these three potential pieces of property and the income that may be generated thereby. The rule is also necessary to clarify that if the resource is excluded, it still must generate any income that could be made available to the applicant/recipient and that income may be required to be applied to cost of care.

The Department anticipates a general fund savings of approximately \$650,000 for the period beginning February 1, 2003 and ending June 30, 2003. The Department also anticipates that this rule will impact approximately 520 recipients.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on March 13, 2003. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State February 3, 2003.

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

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendment of ARM 37.57.102,	)	ON PROPOSED AMENDMENT
37.57.105, 37.57.106,	)	AND REPEAL
37.57.109, 37.57.110,)	
37.57.111, 37.57.112,)	
37.57.117 and 37.57.118 and)	
the repeal of ARM 37.57.125)	
pertaining to children with)	
special health care needs)	

TO: All Interested Persons

1. On March 5, 2003, at 3:30 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 amendment and repeal of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on February 25, 2003, 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)444-4087; FAX (406)444-1970; Email dphhslegal@state.mt.us.

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

37.57.102 DEFINITIONS Unless otherwise indicated, the following definitions apply throughout this subchapter:

(1) "Advisory committee" means a ~~committee of representative medical providers and consumers appointed by the department director to advise the department on CSHS program operation~~ committee that is composed of health care service providers, public health providers, consumers, and children's special health service (CSHS) program staff and that advises the department about CSHS program operation.

(2) "Applicant" means a ~~person~~ child or youth who has applied ~~for~~ or whose parent or guardian has applied on the child's behalf to receive CSHS benefits from CSHS ~~the department.~~

(3) "Benefits" means payment by ~~CSHS~~ the department for CSHS-authorized medical, corrective, or surgical treatment, including evaluation and transport, ~~for a child or youth eligible for the CSHS program.~~

(4) "Child or youth" means an individual who is under 21 22 years of age.

(5) "CHIP" means the Montana children's health insurance plan administered by the department.

~~(5)~~ (6) "Client" means a CSHS applicant who has been approved by CSHS for child or youth who is eligible to receive CSHS benefits as determined by the department under this subchapter.

~~(6)~~ (7) "Clinic" means a place where a team of health care providers with specialties appropriate to treating handicapped children come together to evaluate and develop a comprehensive plan of care for children with a specific handicap disabilities.

~~(7)~~ (8) "CSHS" means the children's special health services program of the department, authorized by 50-1-202(13), MCA, that serves children with special health care needs.

(9) "CSHCN" means children with special health care needs, the population served by CSHS.

(10) "Department" means the Montana department of public health and human services.

(11) "Disability" or "disabling condition" means a chronic physical, developmental, behavioral or emotional condition requiring health and related services of a type or amount beyond that required by children generally.

(12) "Disabled" means having any physical defect or characteristic, congenital or acquired, that prevents or restricts normal growth or capacity for activity.

(13) "Eligibility year" means the year in which a child or youth receives CSHS benefits, beginning with the date the application for those benefits is received by the department and ending 12 months later.

~~(8)~~ (14) "Evaluation" means the medical examination and testing needed to determine the cause and possible treatment for a suspected or known handicapping condition disability.

(9) remains the same but is renumbered (15).

~~(10)~~ "Handicap" means any physical defect or characteristic, congenital or acquired, which prevents or restricts normal growth or capacity for activity.

~~(11)~~ "High-risk pregnant woman" means a woman who has one or more fetuses in utero and who is subject to circumstances that increase the likelihood of premature delivery, congenital malformations, fetal death, or other potentially handicapping conditions.

(16) "Federal fiscal year" means the period beginning October 1 and ending the following September 30.

(12) remains the same but is renumbered (17).

~~(13)~~ (18) "Initial diagnosis and evaluation" means taking a medical history and performing a physical examination, medical procedures, laboratory tests, hearing tests, or other procedures deemed necessary for the diagnosis of a condition for the purpose of establishing CSHS eligibility.

~~(14)~~ (19) "Medical director advisor" means a physician with expertise in treating children with special health care needs and licensed by the state of Montana who serves as an advisor to CSHS the department.

~~(15)~~ (20) "Poverty income guidelines" means the poverty income guidelines revised annually pursuant to the Omnibus Reconciliation Act of 1981 and published in 2002 in the Federal Register by the U.S. department of health and human services. The department hereby adopts and incorporates by reference the federal poverty guidelines that establish income thresholds according to family unit size for purposes of determining eligibility for government assistance or services and that are published in the February 14, 2002, Federal Register. A copy of the 2002 poverty guidelines may be obtained from the Department of Public Health and Human Services, Children's Special Health Services Program, 1218 East Sixth, Helena, MT 59620, telephone (406)444-3620.

~~(16)~~ (21) "Program" means the department's children's special health services program for handicapped children with special health care needs, authorized by 50-1-202~~(13)~~, MCA.

~~(17)~~ (22) "Provider" means a supplier of medical care or services, a medical appliance appliances, drugs, or prescribed infant formula.

(23) "Services" means assistance other than benefits provided to CSHCN, such as resource and referral information, transition information, specialty clinic services, and care coordination.

~~(18)~~ "SSI" means the supplemental security income program administered by the state department of public health and human services.

~~(19)~~ (24) "Third party" means a public or private agency which that is or may be liable to pay all or part of the medical costs of an applicant or for a client, including, but not limited to, private insurance, CHAMPUS, medicaid, medicare, and trust funds available to the applicant or client for medical care CHIP, the caring program for children, and the early intervention program, part C, of the department's disabilities services division.

~~(20)~~ (25) "Treatment" means medical, corrective, and/or surgical intervention to alleviate a handicapping disabling condition.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202, MCA

37.57.105 GENERAL REQUIREMENTS FOR CSHS ASSISTANCE

(1) In order to receive CSHS financial assistance for a particular service benefit:

(a) a CSHS applicant child or youth must meet the eligibility requirements of ARM 37.57.106; and

(b) have an eligible condition that is listed in ARM 37.57.110;

(c) the service benefit in question must be one of the covered services benefits cited in ARM 37.57.110; and

(d) the service provider must meet the standards of ARM 37.57.117.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202, MCA

37.57.106 APPLICANT ELIGIBILITY FOR BENEFITS (1) With the exception noted in ~~(7)~~ (6) below, ~~an applicant a child or youth~~, to be eligible for CSHS benefits, must be:

~~(a) either a high-risk pregnant woman, a child or youth with either a handicapping disabling physical condition that can be substantially improved or corrected with surgery, or a medical condition/disease which condition or disease that can be either cured, improved, or definitely stabilized with medical treatment, or a child or youth suspected of having a handicapping disabling physical condition or a medical condition/disease condition or disease; a child must also either:~~

~~(i) (b) be under 18 19 years of age or under 22 years of age if the child or youth has a disability for which a final cleft surgery or dental work is necessary; or~~

~~(ii) if older, have a handicap for which a delay in treatment is necessary (e.g. cleft palate repair), prior treatment for which began before s/he was 18 and was paid for by CSHS;~~

~~(b) (c) a resident of the state of Montana, as indicated by a street or rural route address where the applicant has a primary residence that meets the residence standards of 1-1-215, MCA; and either a U.S. citizen or a qualified alien if documentation from the U.S. immigration and naturalization service of qualified alien status is submitted with the application;~~

~~(c) (d) a member of a family whose income, less any out-of-pocket expenses for health insurance for the child or youth applying for CSHS, is at or less than 200% of the federal poverty income guidelines; and~~

~~(d) either (e) one of the following:~~

~~(i) ineligible for medicaid or SSI benefits; or~~

~~(ii) eligible for medicaid or SSI, but in need of treatment that is not covered by available from medicaid or SSI but is covered by CSHS; and or~~

~~(iii) potentially eligible for medicaid from information provided on the application, in which case the family will be referred to the county office of public assistance for medicaid eligibility determination.~~

~~(e) able to prove ineligibility for medicaid by completing a medicaid application and providing the department with a written medicaid denial or written determination of a medicaid incurment, if the applicant has an income meeting the eligibility requirements for medicaid, including the medically needy program, and is requesting CSHS services also covered by medicaid.~~

~~(2) Eligibility for program benefits will be determined on an annual basis after a person desiring CSHS assistance submits an application to the department within 30 days of receipt of the application by the department.~~

~~(3) Eligibility, once determined, is valid for 1 year after the date the application is signed by the applicant or~~

~~his/her parent or legal guardian, if a minor, or earlier on the date of his/her birthday if s/he becomes ineligible during the year due to the circumstances cited in (1)(a) above. continues for 12 months from the date an application is received unless the child's or youth's age precludes them from participation or the child or youth moves from Montana.~~

(4) A new or renewal application for a subsequent year must be submitted to the department in order for the department to determine if eligibility is to continue and must be completed and approved before any CSHS benefits in a subsequent year may be provided.

~~(5) Financial eligibility limits will be established annually after consultation with the advisory committee.~~

~~(6)(a) Income includes the following:~~

- ~~(i) monetary compensation for services, including gross income from wages, salary, gratuities, commissions, and fees;~~
- ~~(ii) net income from farm and non-farm self-employment;~~
- ~~(iii) social security benefits;~~
- ~~(iv) dividends or interest on savings or bonds, income from estates or trusts, and net rental income;~~
- ~~(v) public assistance or welfare payments;~~
- ~~(vi) government civilian employee or military retirement, pension, or veteran's payments;~~
- ~~(vii) unemployment compensation;~~
- ~~(viii) private pensions or annuities;~~
- ~~(ix) alimony and/or child support payments;~~
- ~~(x) regular cash contributions from persons not living in the household;~~
- ~~(xi) workers' compensation payments and disability benefits;~~
- ~~(xii) net royalties;~~
- ~~(xiii) strike benefits;~~
- ~~(xiv) payments from the bureau of Indian affairs; and~~
- ~~(xv) other cash income, including, but not limited to, cash amounts received or withdrawn from any source, including savings, investments, proceeds from the sale of property, cash gifts, prizes and awards, inheritances, income tax refunds, and other resources which are readily available to the family.~~

~~(b) Income does not include student financial assistance received from any program funded in whole or in part under Title IV of the Higher Education Act of 1965 or payments received under the Job Training Partnership Act [P.L. 97-300, Sec. 142(b), 29 USC 1552(b)].~~

~~(c) Income for purposes of program eligibility will be calculated by examining all available documentation of all income of the types listed in (a) above that was received in the 3 months prior to the date of application, and using that evidence of current income to project what the subsequent annual income will be.~~

(5) CSHS financial eligibility will be determined in accordance with the financial eligibility guidelines contained in CHIP's ARM 37.79.201, with the following exceptions:

(a) children who are eligible to receive state employee health coverage may be eligible for CSHS benefits;

(b) children may have health insurance coverage and the out-of-pocket expenses for health insurance for the child or youth applying for CSHS are deducted from household income; and

(c) CSHS financial eligibility is at or below 200% of the federal poverty income guidelines.

~~(7) (6) The above financial eligibility limits do not apply to a child or youth who has or is suspected of having a condition covered by CSHS and who wishes to attend a clinic that is specifically for that condition and that is funded entirely by CSHS.~~

~~(8) Effective September 15, 1995, the department hereby adopts and incorporates by reference the 1995 federal poverty income guidelines published by the US department of health and human services in the February 9, 1995, Federal Register [60 FR 7773]. Copies of the federal poverty income guidelines may be obtained from the Family/Maternal and Child Health Services Bureau, CSHS Program, Department of Public Health and Human Services, Cogswell Building, Helena, MT 59620-0901 [phone: (406)444-3617].~~

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202, MCA

37.57.109 APPLICATION PROCEDURE (1) A person who desires CSHS benefits for a child or youth must submit a completed application, along with documentary evidence supporting documents required by the department, to the department on a form it prescribes.

(2) If the department notifies the applicant that the application is incomplete and is not provided with the requested information within 4 six weeks after the date the applicant was notified of the deficiency, the application will be considered inactive. If the requested information is subsequently received and the child or youth is found to be eligible, the eligibility year will begin on the date the additional requested information is received.

(3) ~~If the application is denied~~ the child or youth is found not eligible, the department will send the applicant a notice ~~of denial~~ stating the reasons for ~~denial~~ ineligibility and explaining how an informal reconsideration of its determination may be obtained pursuant to ARM 37.57.112.

(4) If the applicant is ~~found determined~~ eligible for CSHS benefits, the department will send the applicant a notice of that fact ~~that also specifies~~ specifying which ~~condition(s)~~ conditions are eligible for CSHS assistance.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202, MCA

37.57.110 CSHS CONDITIONS, BENEFITS AND SERVICES (1) To the extent CSHS department funding allows, and up to a maximum of \$12,000 per ~~state fiscal~~ eligibility year, ~~(unless the CSHS medical director grants a waiver)~~ the department will pay for the cost of providing the following to an eligible client

~~with a diagnosed condition, subject to the exclusions set out in (3) below and the payment limits set out in ARM 37.57.111: provide benefits as cited in (3) for the eligible conditions listed in (2), subject to the exceptions to benefits and conditions in (4) and (5).~~

~~(2) Eligible conditions are:~~

~~(a) genitourinary conditions requiring surgical correction;~~

~~(b) gastrointestinal conditions requiring surgical correction;~~

~~(c) metabolic disorders;~~

~~(d) neurological disorders;~~

~~(e) orthopedic disorders;~~

~~(f) craniofacial anomalies, including cleft lip and cleft palate;~~

~~(g) ophthalmic conditions requiring surgical correction;~~

~~(h) asthma;~~

~~(i) diabetes;~~

~~(j) fetal alcohol syndrome;~~

~~(k) Down's syndrome;~~

~~(l) cystic fibrosis;~~

~~(m) seizure disorders;~~

~~(n) juvenile rheumatoid arthritis;~~

~~(o) cerebral palsy;~~

~~(p) broncho-pulmonary dysplasia;~~

~~(q) gastrointestinal reflux; and~~

~~(r) neurofibromatosis.~~

~~(a) transport of a high-risk pregnant woman to a hospital for delivery of her baby;~~

~~(b) emergency medical transport of a high-risk newborn under 6 weeks of age from one hospital to another;~~

~~(c) transport to a hospital of a child 6 weeks or more of age for emergency medical treatment of a life-threatening condition otherwise covered by CSHS;~~

~~(d) treatment for cystic fibrosis;~~

~~(e) an initial evaluation and diagnosis to determine if a condition is CSHS-eligible for additional benefits;~~

~~(f) treatment of a handicapping physical deformity that can be substantially improved or corrected surgically;~~

~~(g) treatment of a handicapping condition/disease that can be either cured, improved, or definitely stabilized with medical treatment;~~

~~(h) infant formula or low phenylalanine dietary supplement food that is prescribed by a physician and is not covered by the special supplemental food program for women, infants and children (WIC) or medicaid;~~

~~(i) syringes for children with diabetes or infantile seizures requiring injection of medications within a non-medical environment;~~

~~(j) reagent strips and dipsticks for testing of diabetics;~~

~~(k) tubing for children with gastrostomies;~~

~~(l) rental for up to 1 year of breast pumps for breastfeeding mothers of infants with unrepaired cleft lips or other covered craniofacial anomalies who are unable to suck~~

properly;

~~(m) prosthetic devices;~~

~~(n) catheters for children otherwise eligible for CSHS benefits.~~

~~(2) To the extent CSHS funding allows and up to a maximum of \$12,000 per state fiscal year (unless the CSHS medical director grants a waiver), CSHS will pay for the cost of an initial evaluation and diagnosis of an eligible client in whom a CSHS-covered condition is suspected but not ultimately confirmed, subject to the payment limits set out in ARM 37.57.111.~~

~~(3) Excluded from CSHS benefits are:~~

~~(3) The following are covered benefits that may be provided to a CSHS eligible child or youth:~~

~~(a) evaluation, diagnosis and treatment, including surgical correction;~~

~~(b) evaluation and outcome management of developmental delay by a developmental pediatrician;~~

~~(c) appliances required for correction of a covered condition;~~

~~(d) dietary supplement foods for management of a metabolic disorder, including non-prescriptive supplements for a child with inborn errors of metabolism;~~

~~(e) prosthetic devices, such as orthotics for a covered orthopedic condition;~~

~~(f) occupational, physical and speech therapy for rehabilitation related to a covered service;~~

~~(g) allergy injections on the recommendation of a pediatric allergist after other preventive measures have been exhausted;~~

~~(h) hearing aids, up to a maximum of \$1,500 per ear;~~

~~(i) one dental visit per eligibility year;~~

~~(j) one well child visit per eligibility year;~~

~~(k) breast pump purchase or rental (up to one year) to aid the mother of a newborn with a covered condition;~~

~~(l) eyeglasses for a child with a syndrome-related condition, limited to a single pair of frames per eligibility year up to a maximum of \$175 for frames, lenses and evaluation, plus an additional prescription lens change in six months as needed;~~

~~(m) disposable medical equipment for covered conditions;~~

~~(n) apnea monitor rental for a covered condition (up to one year);~~

~~(o) case management and care coordination; and~~

~~(p) tonsillectomy and adenoidectomy in cases of obstructive sleep apnea or to protect hearing.~~

~~(4) No benefits are available for the following:~~

~~(a) acute care for illness or injury;~~

~~(b) insulin pumps;~~

~~(c) visual training therapy;~~

~~(d) home health and home nursing services for acute cases;~~

~~(e) legal services;~~

~~(f) psychological and psychiatric care and counseling;~~

~~(g) respite care;~~

(h) wheelchairs;

(i) transplants, including follow up care;

(j) transportation;

(k) growth hormone therapy;

(l) services provided outside of Montana, unless the required service is not available in-state or, due to the vast distances within Montana, the requirement to obtain in-state services places an undue hardship on a family;

(m) appliances, with the exception of orthopedic braces, prosthetic devices and appliances required for the correction of an orthodontic condition that affects an otherwise CSHS covered condition, such as that caused by the presence of a cleft palate or another syndrome-caused craniofacial anomaly;

(n) speech, occupational, physical or respiratory therapy for a condition that is not CSHS-eligible;

(o) treatment for cleft/craniofacial conditions that are not planned and recommended by a multi-disciplinary cleft/craniofacial team that meets American cleft palate-craniofacial association parameters.

(5) Conditions that are ineligible for financial assistance are:

(3)(a) remains the same, but is renumbered (5)(a).

(b) behavioral, emotional, and learning disabilities and developmental delays; ~~primary psychiatric diseases covered by numbers 290 through 319 in ICD-9-CM; blood dyscrasias; growing disorders; acute care for injuries and illnesses; and catastrophic diseases, including neoplasms and other cancers.~~

(c) primary psychiatric diseases;

(d) blood dyscrasias;

(e) injuries and illnesses; and

(f) catastrophic diseases, including neoplasms and other cancers.

~~(c) all appliances, with the exception of orthopedic braces, prosthetic devices, and those appliances required for the correction of an orthodontic condition that affects an otherwise CSHS-covered condition, such as that caused by the presence of a cleft palate or another syndrome-caused craniofacial anomaly;~~

~~(d) diseases associated with prematurity, including broncho pulmonary dysplasia;~~

~~(e) medicaid and/or SSI-eligible services, if the client is receiving medicaid and/or SSI benefits;~~

~~(f) any expenses of travel for medical care, with the exception of the emergency medical transports described in (1)(a), (b), and (c) above;~~

~~(g) speech, occupational, physical, or respiratory therapy for a condition that is not CSHS-eligible;~~

~~(h) services provided outside of Montana, unless the required service is not available in-state or, due to the vast distances within Montana, the requirement to obtain in-state services places an undue hardship on the family in question, particularly one that lives on a border with another state or a Canadian province. Exceptions to this rule will be made by the CSHS medical director after reviewing the issue in conjunction~~

~~with an appropriate member of the CSHS advisory committee; and~~
~~(i) treatment for cleft/craniofacial conditions that is not planned and recommended by a multi-disciplinary cleft/craniofacial team that meets American cleft palate-craniofacial association parameters.~~

~~(4) The department hereby adopts and incorporates by reference the World Health Organization's International Classification of Diseases, Clinical Modification, 9th Revision (ICD-9-CM), which systematically classifies and assigns code to diseases and medical conditions for use by medical professionals. Copies of ICD-9-CM may be obtained from ICD-9-CM, PO Box 971, Ann Arbor, Michigan 48106. A volume is also available for examination at the [phone: 444-3622].~~

(6) Standards for services that may be provided by CSHS are the following:

(a) to the extent CSHS funding allows and up to a maximum of \$5,000 per person per federal fiscal year, the following services may be provided by the department to persons diagnosed with a CSHS-covered condition:

(i) resource and referral information;
(ii) transition information; and
(iii) nutritional counseling and management, medical formula or foods, and/or prescriptive or non-prescriptive medications not funded by other sources for a person identified with an inborn error of metabolism;

(b) services provided may not be covered by another payment source; and

(c) a person receiving services must:

(i) be a Montana resident; and
(ii) live in a household that meets CSHS income standards for benefit eligibility.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202, MCA

37.57.111 PAYMENT LIMITS AND REQUIREMENTS (1) The department will be responsible for paying for CSHS-eligible services for a CSHS client only: will provide benefits for a CSHS-eligible child or youth with a covered condition:

(a) if the benefit is not covered by another payment source, with the exception of the Indian health service (IHS), which is a payer of last resort;

(a) (b) if CSHS the department has sufficient federal CSHS funds left to pay for provide the services benefit;

(b) (c) up to a maximum of \$12,000 per eligibility year, unless the CSHS medical director approves a waiver;

(c) (d) up to a maximum of \$600 1,500 each for speech, physical, occupational, or respiratory therapy related to a covered condition. , unless the CSHS medical director approves a waiver For children under age three, CSHS will pay after the early intervention program, part C, of the disabilities services division; and

(d) if a third party is responsible for all or part of the medical bills and the provider bills the client directly, if the

~~client submits the claim in turn to the third party within 6 weeks after receiving the bill from the provider;~~

~~(e) after all third parties, if any, have paid the provider, in which case CSHS the department pays any balance remaining for services not covered by another payment source, within CSHS limits ~~for the services in question.~~~~

~~(2) CSHS will not reimburse clients for medical expenses; rather, it will pay directly to the provider for services rendered. The department will pay providers directly for CSHS-eligible care and will not reimburse clients.~~

~~(3) CSHS The department will pay eligible providers only: after the department receives a signed authorization form and documentation that the care has been provided.~~

~~(a) after all third-party carriers have paid or denied payment on CSHS-authorized care; and~~

~~(b) after CSHS receives documentation that the service has already been provided, including a completed authorization form obtained from the department.~~

~~(4) A provider, family, or individual who erroneously or improperly is paid by CSHS the department must promptly refund that payment to CSHS the department.~~

~~(5) If a provider provides CSHS-eligible services to a CSHS client and accepts the CSHS-approved level of payment for those services from CSHS and/or an insurance company, the provider must refrain from seeking additional payment from the CSHS client or his/her family. A provider who accepts the CSHS level of payment for covered benefits may not seek additional payment from a CSHS client or their family.~~

~~(6) CSHS The department will pay up to the following limits for orthodontia care:~~

~~(a) Orthodontia Payment for orthodontia for CSHS recipients clients who have cleft lip/palate ~~and/or or~~ craniofacial anomalies or malocclusions caused by birth outcome or genetic predisposition will be reimbursed at 85% of the provider's usual and customary charge, conditions requiring orthodontia due to a medical condition with orthodontic implications will be subject to the maximum allowable charge published in the department's orthodontic coverage and reimbursement guidelines updated through December 1999.~~

~~(b) Payment will be based ~~upon~~ on a treatment plan submitted by the provider that meets the requirements of the department's orthodontic coverage and reimbursement guidelines and that includes, at a minimum, a description of the plan of treatment, the provider's estimated usual and customary charge, and a time line for treatment. The department will reimburse 40% of the CSHS allowed amount ~~up front for the application of appliances~~ upon initial billing for each phase of treatment, the remainder being paid in monthly installments as determined by the time line established in the provider's treatment plan for completing orthodontic care.~~

~~(c) Recipients are A client is limited to:~~

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

~~(7) For his/her services to a CSHS client, with the exception of multiple surgeries, a provider will be paid 85% of~~

the actual submitted charge for the approved services.

(8) ~~For the following types of multiple surgeries, CSHS the department will pay at the following rates noted:~~

(a) remains the same.

(b) For multiple surgeries performed on the same day, under the same anesthesia:

(i) involving a single surgical field or single surgical incision, regardless of how many organ systems are involved, performed by one or two surgeons:

(A) 85% of the actual charge for the first procedure; and

(B) ~~42.5~~ 75% of the actual charge for the second procedure.

~~(C) 21.25% of the actual charge for the third procedure;~~

~~(D) 8.5% of the actual charge for the fourth procedure;~~

~~(E) 4.25% of the actual charge for the fifth procedure.~~

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

(10) ~~Dentists will be paid only for dental extractions related to active or anticipated orthodontia treatment, at the rate of \$22 per unit (as rounded up to the nearest whole unit) identified in the American Dental Association's Code on Dental Procedures and Nomenclature 85% of billed charges for an annual dental exam and dental extractions related to active or anticipated orthodontia treatment.~~

(11) In addition to the above, CSHS the department will pay:

(a) the lesser of either the actual charge for drugs and other prescribed ~~materials~~ supplies, or the price cited in the ~~Annual Pharmacists' Reference 1994 Redbook~~ 2002 Drug Topics Redbook Pharmacy's Fundamental Reference, plus a \$4 dispensing fee and any minor adjustments deemed reasonable by the department to reflect market changes.

(b) 85% of the cost of orthotics and prosthetic devices (orthopedic only) ~~+~~.

~~(c) for ambulance services, at the following rates:~~

~~(i) ground transport base rate:~~

~~basic life support nonemergent \$165~~

~~basic life support emergent 235~~

~~advanced life support nonemergent 250~~

~~advanced life support emergent 310~~

~~(ii) mileage at a rate of \$5.30 per mile.~~

~~(d) 85% of the actual submitted approved charge for all air transports and ancillary charges.~~

~~(e) (c) 100% of the cost of infant specialized formula or low phenylalanine dietary supplement food that is prescribed by a physician and foods and prescriptive or non-prescriptive medications prescribed by a physician for inborn errors of metabolism.~~

~~(f) (d) 100% of the cost of syringes, reagent strips, dipsticks, gastrostomy tubing, catheters, and breast pump rental and disposable medical equipment for the treatment of covered conditions.~~

~~(e) rental or purchase of durable medical equipment authorized by CSHS professional staff.~~

(12) The Clinic services provided at a clinic funded

entirely or supported by CSHS the department must be are provided free of charge, regardless of the client's household income.

~~(13) An individual utilizing a clinic supported in part by CSHS may not be billed for the clinic operating expenses funded by CSHS, but may be billed by the clinic for services provided that CSHS does not pay for.~~

(14) (13) The department hereby adopts and incorporates by reference the American Dental Association's Code on Dental Procedures and Nomenclature, which assigns units of value to the various dental procedures; and the Annual Pharmacist's Reference 1994 Redbook 2002 Drug Topics Redbook Pharmacy's Fundamental Reference, which suggests prices for drugs. Anyone wishing to examine any of the above references may do so by contacting the department's CSHS Program, Cogswell Building, 1400 Broadway, P.O. Box 202951 1218 East Sixth Avenue, Helena, Montana 59620-2951 59601, [phone: 444-3622 (406)444-3620].

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

37.57.112 INFORMAL RECONSIDERATION PROCEDURE (1) An applicant A child or youth who has been denied participation in the children's special health services program eligibility for (CSHS), a provider who has been denied reimbursement for CSHS-eligible services or covered benefits, or anyone who is otherwise adversely affected by an action taken by CSHS the department may have an informal reconsideration before the department by requesting such a reconsideration within 60 days after notice of the adverse action in question has been placed in the mail or otherwise communicated to the aggrieved party.

(2) A request for a reconsideration, in order to be effective considered, must be in writing, include refutation of the department's findings, and be postmarked at least by no later than the 60th day after notice of the adverse action referred to in (1) above was given.

(3) remains the same.

(4) An informal reconsideration will be conducted in accordance with the procedures prescribed for informal reconsideration in ARM 37.5.305 37.5.311, with the exceptions noted in (1) and (5). Such informal reconsideration is not subject to the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, MCA, or, except as provided in this rule, the provisions of ARM 37.5.304, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.116 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334 and 37.5.337.

(5) and (6) remain the same.

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

37.57.117 CSHS PROVIDER REQUIREMENTS (1) In order to receive CSHS payment for his/her services to be a CSHS provider for a CSHS client, a provider must meet whichever of the

following requirements are ~~applicable to him/her~~:

(a) A physician or surgeon must:

(i) be ~~either~~ currently licensed by the state of Montana pursuant to Title 37, chapter 3, MCA, to practice medicine as defined by state law if a Montana resident, or currently licensed to practice medicine in the state in which ~~s/he resides~~ they reside;

(ii) be board-eligible or board-certified in the specialty for the condition being treated, or working in cooperation with a physician who is, unless the provider submits a curriculum vitae to the department and the CSHS medical advisor approves the provider as a specialty provider;

(iii) provide the department, upon request by ~~the department~~, with adequate documentation of credentials needed to prove program eligibility ~~on a form provided by the department~~.

(b) An orthodontist must:

(i) be currently licensed as a dentist in the state of Montana or the state ~~in which she or he resides~~, of residence;

(ii) have completed 2 two years of graduate or post-graduate orthodontic training recognized by the council of dental education of the American dental association or the American orthodontic association; and

(iii) limit ~~his/her~~ their practice to the area of orthodontics.

(c) A pediatric dentist may treat children a child or youth under the age of 10 for orthodontia and must:

(i) be currently licensed as a dentist by the state of Montana or the state ~~in which s/he resides~~ of residence; and

(ii) and (d) remain the same.

(e) Any provider other than those listed in (1)(a) through (d) ~~above~~ must:

(i) be certified and/or licensed by the appropriate Montana authority, or if Montana has no certification or licensure requirements for the provider, be certified by a nationally recognized professional organization in ~~their~~ the provider's area of expertise; and

(ii) remains the same.

~~(f)~~ (2) A provider must immediately supply CSHS the department with requested reports ~~requested by the latter~~ in order to permit effective evaluation of payment claims.

~~(2)~~ A provider, in order to be eligible to receive CSHS payment for his/her services to a CSHS client, must refrain from seeking additional payment from the client or those financially responsible for the client for services for which CSHS provides reimbursement.

AUTH: Sec. 50-1-202, MCA

IMP: Sec. 50-1-202, MCA

37.57.118 PROGRAM RECORDS (1) CSHS The department shall retain records of CSHS services provided for a client for a period of 5 five years ~~from the date on which the last service was provided unless the records are required for litigation or audit before the 5 years are up, in which case they must be~~

~~retained until the litigation or audit is completed or until the end of the regular 5-year period, whichever is later after the child reaches the age of 18.~~

(2) ~~Prior to destroying records over 5 years old, CSHS the department shall advertise the availability of that the records to the program clients or their legal guardians may be obtained by those to whom they pertain by publishing a notice in Montana's major newspapers once per week for 3 three consecutive weeks.~~

(3) Records remaining unclaimed for 3 three months after the public notice described in (2) ~~above~~ is completed will be destroyed after the department receives the approval of the state records committee required by 2-6-212, MCA.

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

3. The rule 37.57.125 as proposed to be repealed is on page 37-12601 of the Administrative Rules of Montana.

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

4. The proposed amendments include minor editorial and grammatical changes to conform the rules to current rule drafting style, to make the rules more readable, and to eliminate duplication. These changes do not alter the meaning of the rules. As for substantive amendments, one alternative to the proposed amendments would be to leave the rules as they stand. This alternative was rejected because, during the span of time since the rules were last amended, occasions have arisen where the current rules are ineffective and outdated.

Substantive changes and why they are necessary are noted below.

ARM 37.57.102

The definition of "advisory committee" needs to be amended in order to be more specific about who qualifies to advise the children's special health service (CSHS) program.

The definition of "applicant" needed to be amended to include reflection of the fact that most individuals receiving CSHS services are still minors whose CSHS applications are made for them by the adults responsible for them, rather than by they themselves.

"Benefits" no longer include transport, because most other treatment payment sources cover transportation, eliminating the need for CSHS to do so as well.

"Handicap" is an out-of-date and out of favor term that is replaced by "disabled", with a parallel definition for "disabled" and "disabling condition" added.

A definition of "eligibility year" was added as necessary to define precisely the time frame during which a child or youth can receive CSHS benefits.

The definition of "high-risk pregnant woman" was deleted because the proposed rule changes no longer include that phrase.

The definition of "federal fiscal year" needed to be added since the proposed rule changes now include a reference to it.

"Medical advisor" was amended to add the specific qualifications necessary in a medical advisor for the CSHS program.

The definition of "poverty income guidelines" was amended to include the guidelines established by the federal Department of Health and Human Services in a specific year, because, since the rules are updated annually, the current definition leaves the rules unclear about which year's guidelines apply.

In the definition of "program", the reference to "handicapped children" is proposed to be amended to "children with special health care needs" in order to eliminate use of the word "handicap", for the reasons noted previously.

A definition of "services" is added because the rules now differentiate between "benefits" and "services", necessitating separate definitions.

In the definition of "third party", trust funds are no longer considered third parties in order to more closely align with children's health insurance plan (CHIP) eligibility standards, for reasons noted below. CHIP does not require an applicant to exhaust trust funds to receive assistance. The other categories being added as third parties are there because they have become available in recent years.

ARM 37.57.105

The amendments to this rule are necessary to conform to the changes in the rest of the rules.

ARM 37.57.106

High-risk pregnant women are no longer eligible for CSHS services because most are already covered under Medicaid or other sources of financial assistance and because the Department and its advisory committee felt that the CSHS resources available should be concentrated on assistance to children and youth. The maximum age of an eligible child or youth has been raised to 19 from 18 in order to align the program's eligibility more closely with the CHIP program. The proposed amendment also provides for children up to 22 years old to receive final cleft surgery in the event necessary surgery is not complete by the

person's 19th birthday. U.S. citizenship and alien status is addressed in the amended rules to better define the eligible population and to more closely align with CHIP eligibility requirements, which are stipulated by federal law. Children and youth no longer have to show they are ineligible for SSI benefits as well as Medicaid, because eligibility for the two programs is basically the same. The proposed amendments also allow a child to be CSHS-eligible if they are "potentially eligible for Medicaid", because the Department felt that it was not fair to exclude a child simply because his or her family had not been able to complete the whole Medicaid eligibility determination process yet. If Medicaid is ultimately denied, CSHS will pay for services, and if Medicaid is approved, the children get services paid for by Medicaid.

Additional eligibility changes are necessary to align most eligibility standards with those of CHIP, in order to eliminate some of the confusion on the part of beneficiaries of more than one public program that is inherent if eligibility standards among programs differ widely. Incorporating the CHIP standards has the additional advantage of avoiding the necessity to set out a long list of eligibility standards. These standards also implement recommendations of the advisory committee in order to cover as many children as CSHS financing allowed. Therefore, as exceptions, children up to 200% of the federal poverty level are to be served, dependents of state employees may be eligible, and the CSHS program can be an additional resource for children who have other health insurance coverage.

The 30-day deadline for eligibility determinations by the department is needed in order to ensure relatively quick access by children to the CSHS program. The change in the eligibility beginning date, from date of signature on the application to the date of receipt by the program, is necessary to ensure the Department actually knows about an application before being responsible for providing CSHS benefits, given the fact that occasionally there is a long delay between the time a family signs an application and the date the department receives it, as when additional documentation has to be found.

Clinics for specific conditions no longer have to be funded entirely by CSHS in order for a child or youth to use them without being subject to financial eligibility limits because the Department and its advisory committee felt that the funding source for the clinic was of little importance compared to ensuring the clients' access to valuable specialty clinics.

ARM 37.57.109

An applicant is being given more time to complete an application since the Department felt that, from experience, the six-week time frame was more reasonable. The language added to (2) was needed to establish an eligibility year in the situation where the additional information came in late.

ARM 37.57.110

Changes to the rule describing what coverage is available under the CSHS program are necessary to redefine and differentiate benefits received by children and youth eligible for the CSHS program from services offered by the program, and to describe the medical conditions that must be present in order for benefits or services to be provided. The list of covered benefits and eligible conditions was developed from the recommendations of the CSHS advisory committee and represent those benefits and conditions considered the most important use of the available CSHS funds. Transportation is no longer a benefit because transportation is now a benefit covered by most payment sources. Neither are benefits for high-risk pregnant women for the reasons noted in ARM 37.57.106.

References to the medical advisory using discretion to grant waivers and coverage were deleted until standards for exercise of that discretion may be developed some time in the future.

ARM 37.57.111

Payment limits and requirements are changed to provide that the Department makes no payments for benefits or services for which another payment source exists, enabling the program to make more effective use of available resources. Once again, as noted above, the medical advisor is no longer allowed to grant a higher payment limit because there are no standards yet for such exercise of discretion. Provider reimbursement rates are changed to reflect standard procedure reimbursement rates; adopting rates that vary from those standard rates would be confusing and difficult to justify.

The proposed amendments will not increase or decrease a monetary amount that a person pays or receives, with the exception of the transportation benefit that was eliminated, for the reason noted above. The number of persons affected is estimated to be fewer than ten per year, the annual cumulative monetary amount is unknown.

ARM 37.57.112

Changes to this rule are necessary to conform to amendments to other changes to the rules and to correct incorrect internal citations to applicable procedural rules.

ARM 37.57.117

At the request of the advisory committee, more flexibility has been allowed in the rules for the medical advisor to approve a specialty provider. Section (2), precluding a provider from charging a CSHS client additionally, was deleted as redundant, since ARM 37.57.111 already contains the prohibition.

ARM 37.57.118

The rule for retaining CSHS records has been simplified in order to be more comprehensible and easier to comply with.

Alternatives to amendments

In clearly defining and describing benefits, conditions and services, the Department considered and rejected other alternatives. They included eliminating the lists of eligible conditions and benefits in the rules, but allowing the advisory committee to approve those conditions and benefits, a device that was determined to be legally impermissible, and not including the "services" component, which would not allow flexibility to serve children in specialty clinics and other situations. The Department chose to include specific lists in the rules of the covered benefits and conditions, after the CSHS advisory committee spent considerable time developing those that they felt would provide the most important assistance to children with special health care needs.

The option to not require providers to submit claims to other payment sources was rejected as an inefficient use of available resources. Alternatives of higher or lower reimbursement rates for the second surgical procedure and for reimbursement for dental services were rejected because the rates indicated are the standard rates for subsequent procedures and reimbursement for dental services.

Alternatives other than having an interested provider who is not board-eligible or board-certified submit a curriculum vitae were not identified. The Department considered other options for records retention and disposal, but rejected all except the accepted standard for the medical records specifications.

ARM 37.57.125 is being repealed because it is not necessary to list advisory committees in department rules. It is the intention of the Department, however, to continue using the children's health services advisory committee.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on March 13, 2003. Data, views or arguments may also be submitted by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State February 3, 2003.

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 Rules I through IX and the	)	ON PROPOSED ADOPTION,
amendment of ARM 37.27.102	)	AMENDMENT AND REPEAL
and the repeal of ARM)	
37.86.2213 pertaining to)	
chemical dependency and abuse)	
treatment services)	

TO: All Interested Persons

1. On March 5, 2003, 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, amendment and repeal of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on February 25, 2003, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The rules as proposed to be adopted provide as follows:

RULE I CHEMICAL DEPENDENCY AND ABUSE TREATMENT SERVICES: REHABILITATION OPTION 32 (1) Subject to the limitations and requirements in [Rules II through VI] medicaid substance dependency and abuse treatment services include the following services:

- (a) assessment;
- (b) individual therapy;
- (c) group therapy;
- (d) family therapy;
- (e) multiple-family group therapy;
- (f) liaison/case management service;
- (g) inpatient free standing treatment (non-hospital based); and
- (h) inpatient free standing day treatment (non-hospital based).

AUTH: Sec. 53-6-113, 53-24-204, 53-24-208, 53-24-209 and 53-24-215, MCA

IMP: Sec. 53-6-101, 53-24-204, 53-24-208, 53-24-209 and 53-24-215, MCA

RULE II CHEMICAL DEPENDENCY AND ABUSE TREATMENT SERVICES:
GENERAL REQUIREMENTS

(1) The services listed in [Rule I] must be determined medically necessary by a licensed addiction counselor based upon the Patient Placement Criteria (PPC-2R) guidelines for placement, continued stay and discharge of patients with alcohol and other drug problems published by the American society of addiction medicine (ASAM) dated April 2001, which is hereby adopted and incorporated by reference. Copies of the PPC-2R guidelines may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905.

(2) All services except assessment must be based upon a treatment plan established with the client.

(3) All services must be delivered by facilities or programs approved by the department.

AUTH: Sec. 53-6-113, 53-24-204, 53-24-208, 53-24-209 and 53-24-215, MCA

IMP: Sec. 53-6-101, 53-24-204, 53-24-208, 53-24-209 and 53-24-215, MCA

RULE III CHEMICAL DEPENDENCY AND ABUSE TREATMENT SERVICES:
INPATIENT FREE STANDING TREATMENT, REQUIREMENTS

(1) Inpatient free standing treatment is limited to persons 20 years of age or younger with a diagnosis of substance dependency utilizing the diagnostic standards published in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (1994) (DSM-IV), which is hereby adopted and incorporated by reference. Copies of applicable portions of the DSM-IV may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905.

(2) All inpatient free standing treatment must have prior written approval of the utilization reviewer.

(a) A provider of substance dependency treatment services must submit a referral to the utilization reviewer before providing inpatient free standing treatment.

(b) A referral for inpatient free standing treatment must be in the form specified by the department. Referral forms may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905.

(3) Medicaid inpatient free standing treatment services are available to youth who have a diagnosis of substance dependency.

AUTH: Sec. 53-6-113, 53-24-204, 53-24-208, 53-24-209 and 53-24-215, MCA

IMP: Sec. 53-6-101, 53-24-204, 53-24-208, 53-24-209 and 53-24-215, MCA

RULE IV CHEMICAL DEPENDENCY AND ABUSE TREATMENT SERVICES:
OUTPATIENT TREATMENT, REQUIREMENTS

(1) Outpatient chemical

dependency treatment may include:

- (a) intensive outpatient treatment; and
- (b) basic outpatient treatment.

(2) Outpatient chemical dependency treatment must be determined appropriate by a certified chemical dependency counselor.

AUTH: Sec. 53-6-113, 53-24-204, 53-24-208, 53-24-209 and 53-24-215, MCA

IMP: Sec. 53-6-101, 53-24-204, 53-24-208, 53-24-209 and 53-24-215, MCA

RULE V CHEMICAL DEPENDENCY AND ABUSE TREATMENT SERVICES: DAY TREATMENT, REQUIREMENTS (1) Delivery of day treatment services is limited to providers of inpatient free standing treatment.

(2) All day treatment services must have prior written approval from the utilization reviewer.

(a) An inpatient free standing treatment provider must submit a written request for approval to the utilization reviewer before providing day treatment services.

(b) A request for approval of day treatment services must be submitted on the request form specified by the department. Request forms may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905.

AUTH: Sec. 53-6-113, 53-24-204, 53-24-208, 53-24-209 and 53-24-215, MCA

IMP: Sec. 53-6-101, 53-24-204, 53-24-208, 53-24-209 and 53-24-215, MCA

RULE VI CHEMICAL DEPENDENCY AND ABUSE TREATMENT SERVICES: CERTAIN OUTPATIENT SERVICES, REQUIREMENTS (1) Medicaid outpatient services other than case management, individual, family, group and case management are available to all medicaid recipients who meet the following diagnostic requirements for their respective age group:

(a) persons 20 years of age or younger must have a diagnosis of substance dependency or abuse; and

(b) persons over the age of 20 must have a diagnosis of substance dependency.

(2) Outpatient chemical dependency treatment must be delivered by facilities or programs approved by the department.

AUTH: Sec. 53-6-113, 53-24-204, 53-24-208, 53-24-209 and 53-24-215, MCA

IMP: Sec. 53-6-101, 53-24-204, 53-24-208, 53-24-209 and 53-24-215, MCA

RULE VII CHEMICAL DEPENDENCY AND ABUSE TREATMENT SERVICES: BILLING PROCEDURE FOR CONSULTATIONS WITH PARENTS

(1) Consultation by a certified chemical dependency counselor with a parent or legal guardian as part of the child's

treatment must be billed to medicaid under the child's name and medicaid number.

(2) The provider must indicate on the claim that the child is the patient, must state the child's diagnosis and must indicate the service was consultation with a parent or legal guardian.

AUTH: Sec. 53-6-113, 53-24-204, 53-24-208, 53-24-209 and 53-24-215, MCA

IMP: Sec. 53-6-101, 53-24-204, 53-24-208, 53-24-209 and 53-24-215, MCA

RULE VIII ENROLLMENT OF MEDICAID PROVIDERS OF SUBSTANCE DEPENDENCY AND ABUSE TREATMENT SERVICES

(1) An inpatient free standing, intensive outpatient or intermediate care provider may apply for enrollment as a medicaid provider of substance dependency and abuse treatment services.

(2) The enrollment standards and procedures set forth in the chemical dependency bureau manual entitled: "Explanation of CD Medicaid and State-Paid Services, Instructions for Determining Eligibility for Services and Billing Under Bureau Contracts" dated September 2002, are hereby adopted and incorporated by reference. A copy may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905.

(3) To be enrolled, a provider must be approved and must be under contract with the chemical dependency bureau to provide substance dependency and abuse services.

AUTH: Sec. 53-6-113, 53-24-204, 53-24-208, 53-24-209 and 53-24-215, MCA

IMP: Sec. 53-6-101, 53-24-204, 53-24-208, 53-24-209 and 53-24-215, MCA

RULE IX CHEMICAL DEPENDENCY BUREAU MEDICAID SUBSTANCE DEPENDENCY AND ABUSE TREATMENT SERVICES: REHABILITATION OPTION 32, FINANCIAL ELIGIBILITY

(1) Financial eligibility for chemical dependency bureau medicaid substance dependency and abuse treatment is based on the household's monthly gross income.

(2) An applicant for medicaid substance dependency and abuse treatment shall complete a financial application using a form provided by the department. Applications may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905.

(3) An applicant may be determined eligible for chemical dependency bureau medicaid substance dependency and abuse treatment services if the person:

(a) has a total gross family income at or below 200% of the most recently published federal poverty level (FPL);

(b) is a medicaid recipient in accordance with the eligibility standards in ARM Title 37, chapter 82; or

(c) is a children's health insurance plan (CHIP) beneficiary in accordance with the program eligibility standards in ARM Title 37, chapter 79.

AUTH: Sec. 53-6-113, 53-24-204, 53-24-208, 53-24-209 and 53-24-215, MCA

IMP: Sec. 53-6-101, 53-24-204, 53-24-208, 53-24-209 and 53-24-215, MCA

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

37.27.102 DEFINITIONS In addition to the terms defined in 53-24-103, MCA:

(1) "ADIS" means the alcohol and drug information system.

(2) "Administrator" means the person in charge, care or control of the treatment program and responsible for the operation of the program.

(3) "Aftercare" means counseling services provided to a client, who has completed inpatient or intensive outpatient care, to enhance the chances of recovery. This service is provided at least once weekly (generally group) for a period of at least 12 weeks.

~~(4)~~ (5) "Biopsychosocial assessment" means a comprehensive assessment which includes a history of the use of alcohol and other drugs, physical, emotional, social and spiritual needs. This assessment corresponds to the checklist of dimensional admission criteria utilized in patient placement.

~~(5)~~ (8) "Client" means a person being treated for a chemical dependency related problem who is formally admitted to the program within the admission criteria set by the program.

~~(6)~~ (7) "Chemical dependency counselor" means an individual licensed as a licensed addiction counselor pursuant to 37-35-202, MCA, and as described in ARM 8.11.101 through 8.11.120.

~~(a) "Certified counselor" means an individual meeting standards pursuant to 53-24-204, MCA, and corresponding rules and regulations described in ARM 20.3.401 through 20.3.416.~~

~~(b) "Eligible counselor" means an individual who meets eligibility requirements as set forth in 53-24-215, MCA.~~

~~(7)~~ (9) Counseling:

(a) "Family" means face-to-face interaction between a certified or eligible chemical dependency counselor and family member or members for a specific therapeutic purpose.

(b) "Group" means face-to-face interaction between two or more clients and a certified or eligible chemical dependency counselor for a specific therapeutic purpose.

(c) "Individual" means a face-to-face interaction between a certified or eligible chemical dependency counselor and an individual client for a specific therapeutic purpose.

~~(8)~~ (10) "Day treatment care component" means services for persons requiring a more intensive treatment experience than intensive outpatient but who do not require inpatient treatment.

This level of care provides at least 5 five hours of contact time per day for at least 4 four days per week. This service is generally provided within an inpatient setting and requirements for services are the same with the exception of residential.

(9) (11) "Detoxification (emergency care) component" means the services required for the treatment of persons intoxicated or incapacitated by alcohol and/or drugs. Detoxification involves clearing the system of alcohol and/or drugs and enabling individual recovery from the effects of intoxication. These services include screening of intoxicated persons, counseling of clients to obtain further treatment, and referral of detoxified persons to other appropriate treatment programs. Medical detoxification refers to short term treatment in a licensed medical hospital. Non-medical detoxification refers to short term treatment in a social setting with 24 hour supervision.

(10) (15) "Facility" means the physical area (grounds, buildings or portions thereof) where program functions take place under the direct administrative control of a program administrator.

(11) (17) "Follow-up" means the process of providing continued contact with a discharged client to support and increase gains made to date in the recovery process and to gather relevant data.

(12) (19) "Governing body" means the individual or group which is legally responsible for the conduct of the program.

(13) (21) "Inpatient-hospital care component" means treatment for persons requiring 24-hour supervision in a licensed hospital or suitably equipped medical setting licensed by the department of health under 50-5-201, MCA. Services include medical evaluation and health supervision; chemical dependency education; organized individual, group and family counseling; discharge referral to necessary supportive services; and a client follow-up program after discharge.

(14) (20) "Inpatient-free standing care component" means treatment for persons requiring 24 hour supervision in a community based residential setting. Services include a physical exam signed by a licensed physician; chemical dependency education; organized individual, group and family counseling; discharge referral to necessary supportive services and a client follow-up program after discharge.

(15) (22) "Intensive outpatient care component" means treatment for persons requiring a structured outpatient program providing at least 10 to 30 hours of counseling and chemical dependency education services per week for a duration of 4 four to 6 six weeks. Services shall include assessment, group, individual, and family counseling, chemical dependency education, referral and discharge.

(16) (23) "Intermediate care (transitional living) component" means a non-medical residential facility in a community-based setting. These facilities provide a transitional phase for individuals who have recently received chemical dependency inpatient care services and require a moderately structured living arrangement. Services provided

include counseling services (individual and group), chemical dependency education and social and recreational activities. These individuals are encouraged to seek vocational rehabilitation, occupational training, education and/or employment as soon as possible.

~~(17)~~ (25) "Limited approval" means a status of state approval granted to chemical dependency treatment programs which are requesting approval for the first time and who have not attained substantial compliance specified in these rules. Limited approval is granted to provide them with time to comply with standards. Limited approval shall not be issued for more than a 6 ~~six~~ month period.

(26) "Medicaid provider of substance dependency and abuse treatment services" means a state approved inpatient free standing, intensive outpatient, outpatient, or intermediate care provider of chemical dependency treatment services. The provider must be enrolled in the substance dependency/abuse medicaid rehabilitation option 32 set forth in [Rule I]. To be enrolled the provider must meet the standards and follow the procedures adopted and incorporated by reference in [Rule VIII].

~~(18)~~ (27) "Outpatient care component" means services provided on a regularly scheduled basis to clients residing outside a program. Services include crisis intervention; counseling; chemical dependency education; referral services; and a client follow-up program after discharge.

~~(19)~~ (28) "Outreach" means the process of reaching into a community systematically for the purpose of identifying persons in need of services, alerting persons and their families to the availability of services, locating other needed services, and enabling persons to enter and accept those services.

~~(20)~~ (31) "Person(s)" means an individual or a group of individuals, association, partnership or corporation.

~~(21)~~ (32) "Physician" means a medical doctor licensed by the state of Montana.

~~(22)~~ (33) "Program" means the general term for an organized system of services designed to address the treatment needs of clients.

~~(23)~~ (34) "Program effectiveness" means utilization of measurable indicators to demonstrate effectiveness.

~~(24)~~ (35) "Quality assurance" means a program and/or efforts designed to enhance quality care through an ongoing objective assessment of important aspects of client care and the correction of identified problems.

~~(25)~~ (38) "Residential" means a facility providing 24 hour care, room and board.

~~(26)~~ (39) "Restricted approval" means a status of state approval granted to an approved chemical dependency treatment program, which has failed to maintain substantial compliance. Restricted status is issued for a maximum of 90 days in order to allow programs to meet substantial compliance. This approval cannot be renewed.

~~(27)~~ (40) "Revoke" means invalidation of approval of a chemical dependency program.

~~(28)~~ (44) "Substantial compliance" means conformity with

at least 70% of the rules and regulations for each applicable service component as described in this chapter.

~~(29)~~ (45) "Suspension" means invalidation of approval of a chemical dependency treatment program for any period less than 1 ~~one~~ year or until the department has determined substantial compliance and notifies the program of reinstatement.

~~(30)~~ (46) "Trainee/intern privileges" means authorization by a certified counselor to allow a trainee or intern to provide counseling services on a progressive basis which are closely monitored and supervised within well described limits and are based on their training, experience, demonstrated competency, ability and judgment.

~~(31)~~ (48) "Volunteers" means a person or persons who offer their services free of charge.

(a) "Active volunteer" means an individual who has 50 hours per year of volunteer time.

~~(32)~~ (18) "Full-time equivalent (FTE)" means an individual employed 40 hours per week in an accepted program (a half time FTE equals 20 hours per week).

~~(33)~~ (12) "~~Document(able)(ed)~~ Documentable or documented" means a person who by position is found credible by the department (e.g., a program director, personnel manager, program board officer) and will sign a form attesting the dates, hours, and job titles reported for salaried employment or annual clock hours of service per year for volunteers, etc., as required. For academic work this would be an official transcript. For workshop, it would be a record of the training or affidavit.

~~(34)~~ (43) "State accepted approved program" means a program reviewed and accepted by the department to provide ~~chemical~~ substance dependency services.

~~(35)~~ (36) "Registry" means the list on which applicants for certification are placed.

~~(36)~~ (13) "Duplication" means counting the same point earning activity in more than one point category.

~~(37)~~ (47) "Training day" means a training day is 6 ~~six~~ to 10 hours of continuous training. When dates and hours are available, credit will be granted.

~~(38)~~ (4) "Approved list" means the listing of the department approved workshops relevant to chemical dependency personnel and trainers who possess the qualifications to train such personnel.

~~(39)~~ (16) "Field" means all persons currently employed in a state accepted program, serving as a board member of such a program, serving on any state level advisory board for the department, or employed directly or on contract by the department.

~~(40)~~ (24) "Judges" means persons rating work performance tapes.

~~(41)~~ (29) "Panel" means the group of three persons who conduct oral examinations for an endorsement area.

~~(42)~~ (30) "Panelist" means a person serving on an oral examination panel.

~~(43)~~ (42) "Rounding" means that if totaling and averaging

(e.g., with FTEs) result in fractional points, these will be rounded down to reflect amounts clearly earned.

~~(44)~~ (6) "Capacity grace period" means if, through lack of capability or other reason, the department is unable to accommodate an applicant for testing, a grace period will be granted to operate on registration alone until the applicant can be tested.

~~(45)~~ (14) "Examination eligibility" means applicants must be on the registry in categories ~~A-B~~ A or B to take oral, performance, and written tests. An applicant failing ~~3~~ three times to attain a passing grade on any examination must wait ~~1~~ one year before attempting the examinations again.

~~(46)~~ (37) "Removal from system" means any applicant who has been on the registry for ~~2~~ two years without obtaining sufficient points for certification will be dropped from consideration. Those who are dropped may not reapply for a period of ~~2~~ two years.

~~(47)~~ (41) "Role play" means a spontaneous exchange between the counselor and the person playing the part of the client for the purposes of the taped work sample. Reading from a prepared script will not be considered as a test of counselor competency.

AUTH: Sec. 53-24-204, 53-24-208, 53-24-209 and 53-24-215,
MCA

IMP: Sec. 53-24-204, 53-24-208, 53-24-209 and 53-24-215,
MCA

4. The rule 37.86.2213 as proposed to be repealed is on page 37-20315 of the Administrative Rules of Montana.

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

5. The Department of Public Health and Human Services (Department) is proposing the adoption of Rules I through IX as well as the amendment of Administrative Rule of Montana (ARM) 37.27.102 and the repeal of ARM 37.86.2213, to update, reorganize and clarify the rules governing Medicaid substance dependency and abuse treatment services. The proposed new rules and amendments are necessary to fulfill the intent of the 2001 Montana legislature that chemical dependency treatment services, previously limited to persons age 20 and younger, be extended to persons of any age. These new rules and amendments will not increase the cost of the Medicaid Chemical Dependency Treatment Program under rehabilitation option 32 beyond the level authorized by the legislature. The proposed restrictions and limitations are designed to give the Department the ability to manage the services within the budget set by appropriation. The Department is taking this opportunity to update and reorganize the rules governing Medicaid chemical dependency and substance abuse treatment services in an effort to make them more easily understood by Medicaid recipients and providers.

RULE I

The Department is proposing this new rule to update and clarify the menu of Medicaid substance dependency and abuse treatment services available in Montana. The services listed in this rule reflect the spending authority granted the Department in the General Appropriations Act of 2001, Chapter 572, Laws of Montana 2001. The legislature intended that the spending authority be used to extend Medicaid chemical dependency treatment services, previously limited to persons 20 and younger, to persons of all ages.

RULE II

The Department is proposing that, in order to satisfy the Medicaid medical necessity requirement of 53-6-101(8), MCA, medical necessity be determined by a licensed addiction counselor based on the standards published in the American Society of Addiction Medicine (ASAM) Patient Placement Criteria (PPC-2R), April 2001. PPC-2R would be adopted and incorporated by reference to provide common references for purposes of the provision of services through the chemical dependency program. Copies of the PPC-2R may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905.

A treatment plan would be required prior to the provision of all chemical dependency and abuse treatment services, except an initial assessment. All services would be delivered by facilities or programs approved by the Department.

RULE III

The proposed rule would restrict inpatient free standing (non-hospital based) treatment to persons 20 years of age or younger with a diagnosis of substance dependency using the standards published in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (1994), commonly referred to as DSM-IV. DSM-IV would provide providers and Department staff with common references for purposes of the provision of services through the chemical dependency program. This reflects the Department's philosophy that Medicaid services and treatment should be determined based on current standards of care.

The use of standard criteria such as those published by the American Society of Addiction Medicine in PPC-2R and the American Psychiatric Association in DSM-IV is necessary for the effective treatment of persons with substance dependency and abuse. As stated in 53-24-101, MCA, it is the policy of this state that the appropriate resources be focused fully and effectively upon the problem of chemical dependency and utilized in implementing programs for the control and treatment of the problem. 53-24-102, MCA further provides that intoxicated persons should not be subjected to criminal prosecution because

of their consumption of alcoholic beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society.

RULE IV

The Department is proposing this rule to continue the division of outpatient chemical dependency treatment into two levels of service, basic and intensive. Outpatient treatment would only be available after being determined appropriate by a certified chemical dependency counselor.

RULE V

Under the restrictions proposed in this rule, day treatment services would only be available through providers of inpatient free standing treatment. This proposal would continue the current practice for state-approved programs. Day treatment services are intended to remain limited to inpatient free standing residential programs.

The proposed rule would continue the practice of requiring approval from the Department's utilization reviewer prior to the provision of chemical dependency and abuse treatment services. The proposed rule includes the address where providers can obtain the Department's request form.

RULE VI

Except for outpatient case management services, the proposed rule would extend Medicaid outpatient services to persons of any age who meet the diagnostic requirements. Persons 20 years of age and younger would have to have a diagnosis of "substance dependency" or "substance abuse." Persons over the age of 20 would have to have a diagnosis of "substance dependency."

Under the proposed rule, outpatient case management services would be available to persons of any age. Previously, these services were available only to persons 20 years of age or younger. The Department applied to the Centers for Medicare and Medicaid Services for approval to extend Medicaid outpatient case management services to persons over the age of 20. That approval was received by the Department in December 2002. The Department proposes to change the term for such facilities from "state accepted program" to "state approved program" in order to be consistent with the terminology used in the field and in the rest of ARM Title 37, Chapter 27, with the Montana Code Annotated, the terms used by providers, and in the Department's contracts with providers.

The Department is proposing that outpatient chemical dependency treatment services be delivered at facilities approved by the Department in accordance with 53-24-208, MCA and ARM 37.27.102(26).

RULE VII

The proposed rule provides guidance to chemical dependency providers who consult with a child's parent or legal guardian as part of the child's treatment. The Department proposes that the consultation be billed to Medicaid under the child's name and Medicaid identification number along with a statement of the child's diagnosis and an explanation that the consultation was with a parent.

RULE VIII

The Department is proposing a new rule to establish standards and procedures for Medicaid provider of substance dependency and abuse treatment services (MPSDATS). The rule proposes to adopt the existing standards and procedures published annually by the Department and entitled "Explanation of CD Medicaid and State-Paid Services, Instructions for Determining Eligibility for Services and Billing Under Bureau Contracts" dated September 2002.

RULE IX

This proposed rule sets out the standards that would be applied to determine eligibility for chemical dependency and abuse treatment services. The Department is proposing to continue the existing standards, but to extend services to adults as mandated by the legislative grant of spending authority. Persons already eligible for Medicaid services would also be eligible for chemical dependency and abuse treatment services. Persons who are not eligible for Medicaid, but whose monthly gross household income is less than 200% of the federal poverty level (FPL) would also be eligible for chemical dependency and abuse treatment services. Children eligible for Children's Health Insurance Plan (CHIP) benefits would also be eligible.

The proposed rule lists the address at which a potential applicant for chemical dependency and abuse treatment services can obtain a financial application form.

ARM 37.27.102

The Department is proposing the addition of new section (26) to this rule, defining the term "Medicaid provider of substance dependency and abuse treatment services". Under the proposed definition, and as provided in proposed Rule I, outpatient chemical dependency treatment must be delivered by an enrolled provider. Medicaid regulations, Title 42 Code of Federal Regulations (CFR) section 430 describes the medical assistance programs as follows: "each State decides eligible groups, types and range of services, payment levels for services, and administrative and operating procedures." 53-6-101, MCA grants the Department of Public Health and Human Services power to

administer the Montana Medicaid program. In addition to approving treatment providers, the Department is directed in 53-24-204, MCA to establish criteria for the development of new programs, "encourage planning for the greatest utilization of funds by discouraging duplication of services" and "encourage efficiency of services through existing programs"

To fulfill these mandates, the Department is proposing that a Medicaid provider of substance dependency and abuse treatment services be a state-approved provider who is also under contract with the Chemical Dependency Bureau. This will ensure that no services are duplicated. There will be a contractual mechanism to assure that outpatient treatment programs adhere to current standards of care for treatment of substance dependency and abuse. Additionally, the contract will provide for the gathering and exchange of information necessary to meet the Federal reporting requirements to maintain Montana's eligibility for the substance abuse, prevention and treatment (SAPT) block grant.

This amendment is necessary to assure that persons diagnosed as suffering substance dependency or substance abuse receive a minimum quality of care and that treatment programs are managed within the limitations established by law. Without effective methods for enrolling and regulating providers, there would be no assurance that the chemical dependency treatment Medicaid program could operate within legislative mandates or avoid the duplication of services.

The Department is taking this opportunity to clarify the definition of the term "state accepted program" by changing it to "state approved program" and by replacing the word "chemical" with the word "substance" to reflect current practice and terminology of the field. The words "state approved program" are intended to mean that a program has successfully completed a formal approval process and met certain Chemical Dependency Bureau requirements. The approval process is referred to in 53-24-208, MCA, Rule I and Rule II.

This addition reflects the current management of the chemical dependency treatment programs and would support continued efforts to be cost-effective and efficient in our operation of the Medicaid program as dictated by 53-6-101(8), MCA.

The Department is also taking this opportunity to make minor stylistic changes in the amended rule, to conform to current administrative rule practices. Except as noted in the above descriptions, the amendments are for administrative purposes only and are not intended to change any substantive provision of the rule.

ARM 37.86.2213

Under this rule, chemical dependency treatment services are

listed as a service of Early and Periodic Screening, Diagnostic and Treatment (EPSDT). The Department is proposing the repeal of this rule and the incorporation of its elements under the rules governing Chemical Dependency Programs, ARM Title 37, Chapter 27. The repeal of this rule is not intended to change the services or source of payment for chemical dependency treatment services. The proposed reorganization of chemical dependency rules will also make them more consistent with the state Medicaid plan. Removal of chemical dependency treatment services from the EPSDT section is recommended under guidelines issued by the Centers for Medicare and Medicaid Services (CMS).

Fiscal impact

The Department expects these proposed rules and amendments to have no overall effect on state expenditures for substance dependency and abuse treatment services. Prior to state fiscal year (SFY) 2002, these services were provided solely under contracts with private chemical treatment service providers and funded with proceeds from a federal SAPT block grant. The Montana Chemical Dependency Center (MCDC) was funded solely by revenue from the license tax on liquor provided for at 16-1-404, MCA. Beginning in SFY 2002, SAPT block grant funds were used to provide partial funding for MCDC, while state special revenues from the liquor license tax were used to match federal financial participation in Medicaid substance abuse prevention and treatment programs. The Department projects that a total of \$5,198,999.52 will be expended on substance abuse and treatment services in SFY 2003. Of this total, \$1,414,900.63 will come from state special revenues and \$3,784,098.63 would come from Medicaid federal financial participation.

Persons affected

The Department projects these proposed amendments would affect a total of 5,841 persons receiving Montana substance dependency and abuse treatment services in SFY 2003. The total includes 223 youths and 480 adults served under the Medicaid program, plus 638 youths and 4,500 adults served by contractors under the SAPT block grant.

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 Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on March 13, 2003. 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 proposed rule changes are intended to be applied retroactively to July 1, 2002. Since the rules extend Medicaid benefits and reflect the practice of the Department as of that date, no adverse impact will result from retroactive applicability. In December, 2002, the CMS approved the proposed changes to Montana's Medicaid substance dependency and abuse services retroactive to July 1, 2002.

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

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State February 3, 2003.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 4.3.604)
relating to rural assistance)
loan program limitations)

TO: All Concerned Persons

1. On December 26, 2002, the Department of Agriculture published MAR Notice No. 4-14-137 regarding the proposed amendment of the above-stated rule relating to rural assistance loan program limitations, at page 3448 of the 2002 Montana Administrative Register, Issue Number 24.

2. The agency has amended ARM 4.3.604 exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

/s/ W. Ralph Peck

Ralph Peck
Director

/s/ Tim Meloy

Tim Meloy, Attorney
Rule Reviewer

Certified to the Secretary of State February 3, 2003.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of NEW RULE I (ARM 4.16.801))
relating to marketing and)
business development)

TO: All Concerned Persons

1. On December 26, 2002, the Department of Agriculture published MAR Notice No. 4-14-136 regarding the proposed adoption of the above-stated rule relating to marketing and business development, at page 3445 of the 2002 Montana Administrative Register, Issue Number 24.

2. The agency has adopted NEW RULE I, ARM 4.16.801, exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF AGRICULTURE

/s/ W. Ralph Peck

Ralph Peck

Director

/s/ Tim Meloy

Tim Meloy, Attorney

Rule Reviewer

Certified to the Secretary of State February 3, 2003.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT
of ARM 17.30.502, 17.30.619,)	
17.30.702, 17.30.715,)	
17.30.1001, 17.30.1006 and)	(WATER QUALITY)
17.30.1007 pertaining to)	
definitions, incorporation by)	
reference, criteria for)	
determining nonsignificant)	
changes in water quality,)	
standards for ground water and)	
sample collection,)	
preservation and analysis)	
methods)	

TO: All Concerned Persons

1. On October 17, 2002, the Board of Environmental Review published MAR Notice No. 17-173 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 2713, 2002 Montana Administrative Register, issue number 19.

2. The Board has amended the rules exactly as proposed.

3. The following comments were received and appear with the Board's responses:

COMMENT NO 1: Comments were received from Bayer Crop Science, Montana Agricultural Business Association and Montana Department of Agriculture in support of the proposed standards for Bromoxynil.

RESPONSE: The Board acknowledges the comment and is adopting the amendments as originally proposed to ARM 17.30.502, 17.30.619, 17.30.702, 17.30.715, 17.30.1001, 17.30.1006 and 17.30.1007 to update the incorporations by reference of Department Circular WQB-7 as originally proposed.

COMMENT NO. 2: A comment was received stating that the proposed amendments to Department Circular WQB-7 were not made available during the comment period. The commentor recommended re-noticing the rule amendments.

RESPONSE: While the Board acknowledges the difficulties this commentor experienced attempting to obtain a copy of the revised Department Circular WQB-7, the Board declines to re-notice the rules given that the rules were properly noticed in accordance with the Montana Administrative Procedure Act (MAPA), Title 2, chapter 4, MCA, and Montana's Water Quality Act, Title 75, Chapter 5, MCA.

Pursuant to these laws, notice of the rulemaking was published in the Montana Administrative Register (MAR) and

legal notices were published in seven newspapers throughout the state. In addition, notices were mailed to approximately 250 interested persons on the Board's mailing list, as well as 841 interested persons on the Department's mailing list for amendments to WQB-7. For this particular rulemaking, additional mailings were made to agricultural chemical distributors (approximately 400 additional mailings) and a news release was made through the Montana State University Extension Service pesticide education specialist. In the legal notices and mailings to the Department's interested persons mailing list, the name, address, phone number, and E-mail address of the primary contact person from the Department was provided. Despite the wide distribution of notices for this rulemaking, the difficulties encountered by this commentor arise from the fact that the actual amendment to WQB-7 was not published in the MAR.

Under 2-4-307, MCA, an agency may adopt by reference any material or publication that would be too cumbersome or too expensive to publish in the MAR. Since Department Circular WQB-7 falls into the category of being lengthy and therefore expensive to publish, the Board's policy has been to simply incorporate the document by reference. Given the problems noted by the commentor in obtaining an actual copy of the revised WQB-7, the Board will modify its procedures for providing notice of changes to WQB-7. For future modifications to WQB-7, the Board will include in the MAR Notice the name, phone number, and E-mail address of the contact person from the Department and will make the amended Circular available on the Department website, with a link to the MAR Notice. These changes should improve access to documents that are not published in the MAR.

BOARD OF ENVIRONMENTAL REVIEW

By: Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.
Chairman

Reviewed by:

James M. Madden
JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State, February 3, 2003.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of new rules I through X)
pertaining to storm water)
discharges) (WATER QUALITY)

TO: All Concerned Persons

1. On October 17, 2002, the Board of Environmental Review published MAR Notice No. 17-174 regarding a notice of public hearing on the proposed adoption of the above-stated rules at page 2717, 2002 Montana Administrative Register, issue number 19.

2. The Board has adopted new rules I (17.30.1101), II (17.30.1102), III (17.30.1105), IV (17.30.1106), V (17.30.1107), VI (17.30.1110), VII (17.30.1111), VIII (17.30.1115), IX (17.30.1116) and X (17.30.1117) exactly as proposed.

3. No public comments or testimony were received.

BOARD OF ENVIRONMENTAL REVIEW

By: Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.
Chairman

Reviewed by:

James M. Madden
JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State, February 3, 2003.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT AND
of ARM 17.30.1301, 17.30.1303,)	REPEAL
17.30.1304, 17.30.1322,)	
17.30.1323, 17.30.1341,)	
17.30.1351, 17.30.1361 and the)	(WATER QUALITY)
repeal of ARM 17.30.1332)	
pertaining to Montana)	
Pollutant Discharge)	
Elimination System Permits)	

TO: All Concerned Persons

1. On October 17, 2002, the Board of Environmental Review published MAR Notice No. 17-175 regarding a notice of public hearing on the proposed amendment and repeal of the above-stated rules at page 2749, 2002 Montana Administrative Register, issue number 19.

2. The Board has amended ARM 17.30.1301, 17.30.1303, 17.30.1304, 17.30.1323, 17.30.1341, 17.30.1351, 17.30.1361 and repealed 17.30.1332 exactly as proposed. The Board has amended ARM 17.30.1322 as proposed, but with the following changes to correct an internal reference error in the proposal notice, stricken matter interlined, new matter underlined:

17.30.1322 APPLICATION FOR A PERMIT (1) through (10)(h) remain as proposed.

(11) Dischargers of storm water from facilities or activities that are listed in ARM 17.30.1105(1)(a) through (f) must apply for an individual permit, or seek coverage under a storm water general permit as provided for in subchapter 11. Individual permits applications for small municipal separate storm sewer systems are subject to the provisions stated in [NEW RULE VIII(3) ~~through (28)~~ (1) through (18) (17.30.1111(1) through (18))].

(12) through (17)(i) remain as proposed.

3. No public comments or testimony were received.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

James M. Madden
JAMES M. MADDEN
Rule Reviewer

By: Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.
Chairman

Certified to the Secretary of State, February 3, 2003.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT
of ARM 17.36.101, 17.36.310,)	
17.36.320, 17.36.321,)	
17.36.325, 17.36.326,)	(SUBDIVISIONS)
17.36.330, 17.36.332,)	
17.36.333, 17.36.336,)	
17.36.340, and 17.36.345)	
pertaining to definitions,)	
storm drainage, sewage)	
systems, water supply systems,)	
non-public water supply)	
systems, alternate water)	
supply systems, lot sizes, and)	
adoption by reference of DEQ-4)	

TO: All Concerned Persons

1. On October 17, 2002, the Department of Environmental Quality published MAR Notice No. 17-178 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 2785, 2002 Montana Administrative Register, issue number 19.

2. The Department has amended the rules exactly as proposed. Amendments have been made to the DEQ-4 Circular in response to comments as set forth in the adoption notice for MAR Notice No. 17-176 published in this issue of the Montana Administrative Register.

3. The following comments were received, in addition to those noted above pertaining to the DEQ-4 Circular, and appear with the Department's response:

COMMENT NO. 1: Two comments were received in support of the proposed amendment to 17.36.321 allowing use of holding tanks in limited situations through a waiver process.

RESPONSE: The Department acknowledges the comments.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

James M. Madden
JAMES M. MADDEN
Rule Reviewer

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

Certified to the Secretary of State, February 3, 2003.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF ADOPTION AND
of new rules I through IX and)	REPEAL
the repeal of ARM 17.36.901)	
through 17.36.903 and)	
17.36.907, 17.36.909 and)	(WATER QUALITY)
17.36.910 pertaining to)	
Subsurface Wastewater)	
Treatment Systems)	

TO: All Concerned Persons

1. On October 17, 2002, the Board of Environmental Review published MAR Notice No. 17-176 regarding a notice of public hearing on the proposed adoption and repeal of the above-stated rules at page 2761, 2002 Montana Administrative Register, issue number 19.

2. The Board has adopted new rules I (17.36.911), II (17.36.912), III (17.36.913), IV (17.36.914), V (17.36.916), VII (17.36.920), VIII (17.36.922) and IX (17.36.924) and repealed 17.36.901 through 17.36.903, 17.36.907, 17.36.909 and 17.36.910 exactly as proposed. ARM 17.36.908 was proposed for repeal, but that rule is a reserved rule and won't be repealed. The Board has adopted new rule VI (17.36.918) as proposed, but with the following changes.

NEW RULE VI (17.36.918) HORIZONTAL SETBACKS, FLOODPLAINS (1) through (3) remain as proposed.

(4) Sealed components of wastewater treatment systems, if located within a 100-year floodplain, must be designed and constructed to prevent surface water and ground water inundation, and pump lines must be pressure tested prior to use. ~~The minimum test pressure must be five times the operation pressure.~~ Pipes must have a pressure rating of at least two times the operating pressure or pump shutoff pressure, whichever is greater. Pipes must be tested at 1 1/2 times the operating pressure or pump shutoff pressure, whichever is greater, or must be tested as specified by the manufacturer.

3. The following comments were received and appear with the Board's responses. Amendments have been made to the DEQ-4 Circular in response to the comments set forth below:

New Rule I (17.8.911)

COMMENT NO. 1: The definition of "bedrock" should not include a reference to hand tools because no one should enter a test pit eight feet deep to dig with hand tools.

RESPONSE: The reference to hand tools in the definition is needed to indicate one standard for identifying material

that does not provide for adequate treatment of wastewater. The commentor correctly notes that no one should enter a test pit that is not constructed to meet safety standards.

COMMENT NO. 2: The definition of "impervious layer" should be changed to reference a permeability limit rather than a percolation rate.

RESPONSE: This definition uses percolation rate because it is easier for the evaluator to obtain than the permeability of the soils.

COMMENT NO. 3: The definitions of "multiple user" and "shared" wastewater systems should be combined. As currently drafted, a person could divide a one-and-one-half-acre parcel into three half-acre parcels, but a person could not divide a one-acre parcel into two half-acre parcels.

RESPONSE: The comment relates to how these terms affect the application of the lot size rule, ARM 17.36.340. However, the lot size rule is codified in a different subchapter, and changes to the definitions in this rulemaking would not affect the application of the lot size rule. This comment is therefore outside the scope of the present rulemaking. In any event, the commenters correctly note that, under the lot size rule, subdivision lots with multiple-user wastewater systems can be smaller than lots with shared systems. Based on the recommendation of the rule advisory task force, the Department believes that the minimum acreage limits in the lot size rule may be relaxed where more than two users share a drainfield and the drainfield is designed by a professional engineer, as multiple-user systems are required to be.

New Rules II (17.36.912), IV (17.36.914), V (17.36.916)

COMMENT NO. 4: New Rules II, IV, V, and others refer to DEQ-4, 2002 edition. DEQ should consider deleting the year and just stating the current edition.

RESPONSE: When agency rules incorporate a document by reference, the Montana Administrative Procedures Act requires that the agency identify a specific edition of the document.

New Rule VI(4) (17.36.914)

COMMENT NO. 5: DEQ should consider testing to 1 1/2 times the shutoff head pressure of the pump. Five times the operating pressure could burst the specified pipes.

RESPONSE: The language will be changed to the following: "Pipes must have a pressure rating of at least two times the operating pressure or pump shutoff pressure, whichever is greater. Pipes must be tested at 1 1/2 times the operating pressure or pump shutoff pressure, whichever is greater, or must be tested as specified by the manufacturer."

DEQ-4

Chapter 4, Section 4.3.3.2

COMMENT NO. 6: Is it correct that fill can be used to overcome a depth to ground water problem but not bedrock or an impervious layer? The Circular needs a definition for "limiting layer".

RESPONSE: Fill can be used to overcome any of the limiting layers (ground water, bedrock, or an impervious layer) for replacement drainfields only. See DEQ-4 Chapter 4 (introduction), and ARM 17.36.321(4). "Limiting layer" is defined in the rules at ARM 17.36.101(21). This definition includes ground water, bedrock, and an impervious layer.

Chapter 5, Section 5.2.2

COMMENT NO. 7: Does this section mean that DEQ is not using peak flow for design? Sand filters in particular will suffer if the system is under-used.

RESPONSE: The design must be based on peak flow to prevent hydraulic overload of the system. However, as an alternative to using the tables, DEQ-4 does allow design based on actual water use data collected from similar facilities.

Chapter 7, Section 7.2.10

COMMENT NO. 8: In the proposed Circular DEQ-4, the sizing of septic tanks for residential use is based on commercially available septic tank sizes. In 2002, EPA published the Onsite Wastewater Treatment Systems Manual, which referenced septic tank sizing based on the International Private Sewage Disposal Code, 1995 version. The commentor would like these tank volumes to be acceptable for sizing residential septic tanks.

RESPONSE: The following language has been added:

"F. Septic tank volume may be sized using nationally recognized plumbing codes, provided that there is adequate volume to store at least 3.5 times the estimated daily wastewater flow, and the sizing is approved by the reviewing authority."

Chapter 8, Section 8.8.1

COMMENT NO. 9: Why did DEQ not propose Schedule 80 pipe?

RESPONSE: The task force recommended Schedule 40 as adequate for piping leading into and out of the septic tank.

Chapter 9 and 11

COMMENT NO. 10: A standard trench design does not address systems installed from less than 12 inches deep to at-grade. The commentor recommends that a shallow-capped system be incorporated into the Circular, possibly in chapter 11.

RESPONSE: The following language will be added to Section 11.4.1: "The ground surface where the system is to be placed must be plowed, scarified, or trenched less than 12 inches in depth. Trenching is preferred to plowing or scarifying to prevent horizontal migration of the effluent."

Section 9.3

COMMENT NO. 11: The term "discharge pipe" should be added to the definitions.

RESPONSE: The following language will be added ". . . discharge pipe (pipe leading from the septic tank or dose tank to the distribution lines)"

Section 9.4

COMMENT NO. 12: DEQ should have at least 5 psi for orifices 1/8-inch or smaller.

RESPONSE: The following language will be added: "For orifices smaller than 3/16-inch, the minimum pressure must be 2.16 psi (5 feet of head) at the end of each distribution line."

COMMENT NO. 13: DEQ should consider changing the minimum pressure of 1 psi (2.3 feet of head) to 2.16 psi (5 feet of head) at the end of the distribution lines. Even with effluent filters, the distribution lines can and do become clogged with a biofilm. This biofilm is caused by an inadequate scouring velocity and/or too low of an orifice pressure. Increasing the minimum orifice design pressure would not only increase the orifice pressure but also increase the scouring velocity of the entire distribution system and keep everything clean.

RESPONSE: This change will be made for orifices smaller than 3/16-inch as indicated in the response above.

Section 9.8.1

COMMENT NO. 14: The commentor agrees with the change regarding reserve storage volume, but asked if the reviewer would make the decision on what reserve volume is required.

RESPONSE: The reviewer will evaluate and approve the proposed reserve storage volume based on compliance with this section.

Section 12.1

COMMENT NO. 15: The commentor is not convinced that sand lined trenches help with slow-permeable soils.

RESPONSE: The reference to slow-permeable soils will be deleted.

Section 13.2.4

COMMENT NO. 16: Is there sufficient evidence to allow a twenty-five percent reduction for gravelless chambers?

RESPONSE: Montana has allowed 25-30% reduction for drainfields since 2000. Some counties have allowed gravelless chambers for at least 5 years without any increases in failure rates. One county has allowed chambers for drainfields that would require 90 to 150 lineal feet of standard pipe and drainrock. The county has not experienced any failures of drainfields that have been installed with a 25% reduction.

A recent study in Oregon of almost 400 systems indicated no difference in surface failure rates between chambers and gravel systems when the loading rate was 2.0 times for chamber systems (King et al, 2002, Surface Failure Rates of Chamber and Traditional Aggregate-Laden Trenches in Oregon, Small Flows Quarterly, Fall 2002, pages 27-35). Several studies at the Colorado School of Mines evaluated chamber systems for hydraulic loading and effluent treatment. The throughput of the aggregate-free (chamber) systems was 2.4 times that of the aggregate-laden (gravel) systems. (Lowe and Siegrist, 2000, Evaluation of Soil Infiltration Rates for Septic Tank Effluent as Affected by Aggregate-Free versus Aggregate-Laden Infiltrative Surfaces). Another Colorado School of Mines study compared the performance of gravel trenches to chamber systems loaded at a higher rate simulating a 40% trench length reduction. This study concluded that aggregate-free and aggregate-laden did not exert a measurable effect on hydraulic and purification performance (Van Cuyk et al, 2001, Hydraulic and Purification Behaviors and their interactions during Wastewater Treatment in Soil Infiltration System, Water Resources Journal Vol. 35). Another study by North Carolina State University indicated no evidence that failure rates were different for chamber and gravel systems with a 40% reduction in chamber system sizing (1997 ASTM, Dix and May, A Review of the Field Performance of the Infiltrator Chamber Leaching System).

Chapter 14

COMMENT NO. 17: The commentor recommends using the former Circular WQB-5 sizing criteria for mound systems to prevent abnormally large mound designs.

RESPONSE: The basal and hydraulic loading rates are based on the 2000 Wisconsin Mound Manual referenced in Section 14.2.1 rather than the former Circular WQB-5. The sand loading rate of 1.0 gpd/sq.ft. is based on recommendations in the 2000 manual for mounds.

Section 14.1.1

COMMENT NO. 18: This section requires separation distances to be measured from the outside of the mound where the topsoil meets the ground surface. The commentor recommends changing this to a distance from the outside trench

wall or other identifiable component so as not to penalize owners of mounds that taper the edge of the mound to blend with the landscape.

RESPONSE: The following clarification will be added: "Separation distances must be measured from the outside of the mound where the topsoil fill meets the natural ground surface or, if the design uses a lesser slope for landscaping purposes, where the toe of the mound would be if the 3:1 slope specified in Section 14.2.7 were used."

Section 15.1

COMMENT NO. 19: Should downsizing the drainfield be 50% for all soils?

RESPONSE: The task force recommended this soils restriction for downsizing drainfields after an intermittent sand filter because soils with slow percolation rates cannot accept effluent, even treated effluent, at the same rate as faster percolating soils.

Section 16.1.1

COMMENT NO. 20: The drainfield after a recirculating sand filter should be downsized 50% if the owner of the system has a maintenance contract with an expert with experience in recirculating sand filter operation.

RESPONSE: A 50% reduction is allowed for soils with a percolation rate of between 3 and 60 minutes per inch. The requirement for an operation and maintenance plan with a service contract for on-going service and maintenance required for the life of the system is also specified in Section 16.2.15 and Appendix D. A requirement that the service provider be an expert with experience in sand filter operation has merit, but the Circular does not include such a requirement because of the difficulty in identifying a single standard for the expert qualifications.

Section 16.2.10

COMMENT NO. 21: The spacing of one orifice for each 4 square feet of filter is not necessary. An operating filter with 6 ft²/orifice has excellent effluent quality.

RESPONSE: The task force has recommended this spacing for orifices based on their experience with other operating systems. The 2002 EPA Manual states that smaller dose volumes are preferred because the flow through the porous media will occur under unsaturated conditions. Better wastewater media contact and longer residence time occur under these conditions, which results in better treatment. Greater spacing between orifices could result in filters that are unnecessarily large or in saturation of the area around each orifice, which would limit the spread of effluent throughout the media.

Chapters 17, 20, 21, 22

COMMENT NO. 22: The commentor recommends changing the requirement for providing data for new technology systems for three systems, with six cumulative years of data. This requirement is very restrictive. The commentor suggests that the Circular should recognize nationally accepted scientific evidence of performance in similar climatic conditions, or other evidence approved by the department.

RESPONSE: The department had already removed the six-year requirement from Chapter 17 and 21. However, the task force recommended that the requirement be retained for aerobic treatment units and experimental systems to verify performance of the different types of systems within these categories. Manufacturers can request a deviation from this requirement if other acceptable data are provided. The department and a nondegradation task force are currently working on data requirements for Level II treatment systems and may modify this section in the future to include the revised sampling requirements.

Chapter 24

COMMENT NO. 23: The commentor does not like holding tanks and believes other requirements should be waived to allow the installation of systems other than holding tanks.

RESPONSE: The task force has determined that holding tanks should be used only in very limited cases. These cases include seasonal use facilities where pumping costs would not be prohibitive. Other cases include holding tanks for RV dump stations, which are often located near surface water at RV parks. Discharging high strength wastewater from RVs to a drainfield could result in premature failure of the drainfield and wastewater discharges to surface waters. Using a holding tank instead of a drainfield would contain the effluent until the effluent could be pumped and treated at a public wastewater system located farther from surface water.

COMMENT NO. 24: The commentor wants individual owners, as well as government entities, to be allowed to have holding tanks for RV dump stations.

RESPONSE: The rule does allow individual owners to have a holding tank for a dump station if the station is located at a facility licensed by the Department of Public Health and Human Services and inspected by the local health department. The second sentence in Section 24.1 in Circular DEQ-4, "Holding tanks are for seasonal use structures (facility) and do not meet criteria for lifting of sanitary restrictions", will be removed to reflect the new provisions for holding tanks.

Chapter 27(8)

COMMENT NO. 25: The commentor believes that ground water depth should be addressed in this section.

RESPONSE: The separation distance to ground water is addressed in the rules under New Rule V (25 feet to ground water) and it is not necessary to repeat it in the design circular.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

James M. Madden

JAMES M. MADDEN

Rule Reviewer

By: Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.

Chairman

Certified to the Secretary of State, February 3, 2003.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 17.38.101 and 17.38.106)
pertaining to public water and) (PUBLIC WATER SUPPLY)
sewage system requirements)

TO: All Concerned Persons

1. On October 17, 2002, the Board of Environmental Review published MAR Notice No. 17-177 regarding a notice of public hearing on the proposed amendment of the above-stated rules and the adoption of revisions to department Circular DEQ-4 at page 2780, 2002 Montana Administrative Register, issue number 19.

2. The Board has amended ARM 17.38.101 and 17.38.106 exactly as proposed. Amendments have been made to the DEQ-4 Circular in response to comments as set forth in the adoption notice for MAR Notice No. 17-176 published in this issue of the Montana Administrative Register.

3. In addition to the comments received regarding the DEQ-4 Circular, the following comments were received and appear with the Board's responses.

COMMENT NO. 1: A person who works for an engineering firm submitted written comments regarding the proposed rules. He expressed a general concern that plan review fees are excessive and amount to extortion. He also suggested that the state should bill for review on an hourly basis.

RESPONSE: The proposed amendments adopt fees for review of projects designed under Circular DEQ-4, 2002 Edition, by referencing the existing fee schedule in ARM 17.36.802 (Sanitation in Subdivision Rules). This will provide for a consistent department assessment of fees whether these systems are reviewed as part of a subdivision or as non-subdivision public wastewater systems.

The subdivision fee schedule in ARM 17.36.802 assesses a fee of \$150 for an on-site wastewater system designed under Circular DEQ-4, plus \$50 per hour for review time beyond 3 hours, plus a flat fee of \$25 for review of the associated drainfield. The current fees under the public water supply rules for review of public drainfield-type systems, including the fee for review of septic tanks and drainfields, range from \$200 to \$400. Therefore, the fee amendments should actually reduce the plan review fees for most public drainfield-type systems. The schedule is also consistent with the suggestion made by the commenter with respect to assessing an hourly fee.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

James M. Madden

JAMES M. MADDEN

Rule Reviewer

By: Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.

Chairman

Certified to the Secretary of State, February 3, 2003.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment)	NOTICE OF AMENDMENT
of ARM 17.40.301, 17.40.302,)	
17.40.303, 17.40.308,)	
17.40.309, 17.40.310,)	(WATER POLLUTION CONTROL
17.40.311, 17.40.315,)	STATE REVOLVING FUND)
17.40.316, and 17.40.317)	
pertaining to water pollution)	
control state revolving fund)	

TO: All Concerned Persons

1. On November 14, 2002, the Department of Environmental Quality published MAR Notice No. 17-183 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 3125, 2002 Montana Administrative Register, issue number 21.

2. The Department has amended the rules exactly as proposed.

3. No public comments or testimony were received.

DEPARTMENT OF ENVIRONMENTAL QUALITY

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

Reviewed by:

James M. Madden
JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State, February 3, 2003.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of New Rules I through XI)
pertaining to an alternative) (ALTERNATIVE ENERGY)
energy revolving loan program)

TO: All Concerned Persons

1. On December 26, 2002, the Department of Environmental Quality published MAR Notice No. 17-188 regarding notice of public hearing on the proposed adoption of the above-stated rules at page 3498, 2002 Montana Administrative Register, issue number 24.

2. The Department has adopted new rules I (17.85.101), II (17.85.103), III (17.85.105), IV (17.85.106), V (17.85.107), VI (17.85.110), IX (17.85.113), X (17.85.114) and XI (17.85.115) exactly as proposed and has adopted new rules VII (17.85.111) and VIII (17.85.112) as proposed, but with the following changes, stricken matter interlined, new matter underlined:

NEW RULE VII (17.85.111) APPLICATION EVALUATION PROCEDURE

(1) through (3) remain as proposed.

(4) After approval by the financial institution, the department shall prioritize applications based on the following criteria, which are not necessarily listed in the order of priority:

(a) through (6) remain as proposed.

NEW RULE VIII (17.85.112) ENVIRONMENTAL REVIEW AND COMPLIANCE WITH APPLICABLE STATE LAW

(1) The applicant shall ~~assess the probable environmental consequences of the proposed project provide information about the project, as requested on the application form, in order to allow the department to review the proposed project for compliance with state law.~~ Prior to executing a servicing agreement under ARM 17.85.111(6), the department shall review each application under ARM Title 17, chapter 4, subchapter 6 to determine if the department's approval of a loan for the project may result in significant effects to the quality of the human environment.

(2) The ~~applicant shall certify that the proposed project or activity will~~ must comply with applicable statutory and regulatory requirements protecting the quality of resources such as air, water, land, fish, wildlife and recreational opportunities.

3. The following comments were received and appear with the Department's responses:

COMMENT NO. 1: One commentor indicated concern that the criteria listed in New Rule VII(4) (17.84.311(4)) may be interpreted as listed in order of priority. The commentor

suggested adding "in no specific order" at the end of (4).

RESPONSE: The Department agreed and has amended the rule as shown above.

COMMENT NO. 2: One commentor indicated concern that the language used in New Rule VIII(1) (17.84.312(1)) makes the process sound worse than it really is, and wondered if the language would deter applicants. The commentor suggested that DEQ reword the language to more clearly identify what is expected from applicants to meet MEPA requirements.

RESPONSE: The Department agrees that it is the responsibility of the Department, not the applicant, to assess environmental impacts of a project under the Montana Environmental Policy Act (MEPA). The Department has revised the rule to clarify this point. The revised rule allows the Department to request information from an applicant that is relevant to the Department's MEPA assessment.

The Department has also modified (2) to eliminate the requirement that an applicant certify that a project will comply with applicable environmental laws. The Department agrees that the applicant certification process is unnecessary, although the revised rule retains the requirement that projects maintain compliance with those laws.

DEPARTMENT OF ENVIRONMENTAL QUALITY

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

Reviewed by:

James M. Madden
JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State, February 3, 2003.

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

In the matter of the)
amendment of ARM 24.207.2101,)
pertaining to real estate)
appraisers)

CORRECTED NOTICE
OF AMENDMENT

TO: All Concerned Persons

1. On October 17, 2002, the Board of Real Estate Appraisers published MAR Notice No. 24-207-18 regarding the proposed amendment of the above-stated rule at page 2827, 2002 Montana Administrative Register, Issue Number 19. On January 30, 2003, the Board published a notice of the amendment of ARM 24.207.2101 at page 110 of the 2003 Montana Administrative Register, Issue Number 2.

2. The reason for the correction is that the notice of proposed amendment inadvertently failed to include an existing authorization cite for ARM 24.207.2101, section 37-1-306, MCA. The text of the rule remains exactly as proposed. The corrected citation is shown with the new material underlined.

24.207.2101 CONTINUING EDUCATION (1) through (9) remain the same as adopted.

AUTH: 37-1-131, 37-1-306, 37-1-319, 37-54-105, MCA
IMP: 37-1-131, 37-1-306, 37-54-105, 37-54-210, 37-54-303, and 37-54-310, MCA

BOARD OF REAL ESTATE APPRAISERS
TIMOTHY MOORE, CHAIR

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

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

Certified to the Secretary of State February 3, 2003.

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

In the matter of the adoption	)	NOTICE OF ADOPTION AND
of the temporary emergency	)	REPEAL OF TEMPORARY
amendment of ARM 37.82.101,	)	EMERGENCY RULES
37.82.417 and 37.82.423 and)	
the repeal of ARM 37.82.418)	
pertaining to medicaid)	
eligibility)	

TO: All Interested Persons

1. Due to budget shortfalls, it is necessary to amend and repeal these rules to maintain the medicaid program within its operating budget for the current state fiscal year.

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

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

37.82.101 MEDICAL ASSISTANCE, PURPOSE AND INCORPORATION OF POLICY MANUALS (1) remains the same.

(2) The department hereby adopts and incorporates by this reference the state policy manuals governing the administration of the medicaid program effective ~~January 1, 2003~~ February 1, 2003. The Family Medicaid Manual, the SSI Medicaid Manual and the proposed manual updates are available for public viewing at each local office of public assistance or at the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. The proposed manual updates are also available on the department's website at "www.dphhs.state.mt.us".

AUTH: Sec. 53-2-201 and 53-6-113, MCA
IMP: Sec. 53-6-101, 53-6-131 and 53-6-141, MCA

37.82.417 TRANSFER OF RESOURCES (1) The following definitions apply to this ~~section~~ subchapter:

(a) through (i) remain the same.

(j) "Home" means the client's principal place of residence, including adjoining land and outbuildings;

(k) "Principal place of residence" means the property on which the individual, the individual's spouse, or a dependent child of the individual (including a dependent adult child) currently resides or has resided within the previous six months

and the individual, the individual's spouse, or a dependent child of the individual intends to return to the property to reside within six months of absence in the event of a temporary absence. Only one property may qualify as an individual's principal place of residence.

(2) The client's home ~~is~~:

(a) is a countable resource; and

(b) will be considered an exempt resource so long as the client or a dependent relative child resides in the home and ownership is retained by the client.

(3) through (9) remain the same.

AUTH: Sec. 53-2-201, 53-2-601 and 53-6-113, MCA

IMP: Sec. 53-2-601, 53-6-101, 53-6-113 and 53-6-143, MCA

37.82.423 CONDITIONAL MEDICAL ASSISTANCE, ELIGIBILITY

(1) remains the same.

(2) To be eligible for conditional assistance an applicant must:

(a) be categorically eligible ~~as being by reason of being~~:

(i) through (e) remain the same.

(f) not have countable liquid resources exceeding three times the appropriate federal supplemental security income monthly benefit payment standard at the time of application; and

(g) ~~agree in writing to: make reasonable efforts to sell the resources as defined in (3) within the conditional assistance period specified in (4); and~~

~~(i) sell excess non-liquid resources during the period of conditional assistance; and~~

~~(ii) (h) enter into a written agreement to use the net proceeds of the sale of the excess non-liquid resources to refund to the department conditional medical assistance payments paid on the applicant's behalf.~~

(3) "Reasonable efforts to sell" means:

(a) list the property for sale at market value or less with an agent; or

(b) begin advertising the property for sale at market value or less in at least one of the appropriate local media;

(c) place a "For Sale" sign on the property;

(d) begin conducting "open houses" or otherwise show the property to interested parties on a continuous basis; and

(e) attempt any other appropriate methods of sale.

~~(3)~~ (4) Conditional assistance may be provided to an eligible applicant for up to three months while attempting to dispose of excess personal property, and up to nine months while attempting to dispose of excess real property. An additional three months of conditional assistance may be provided to an applicant when the department determines that the sale of the resource has been prevented by circumstances beyond the applicant's control.

~~(4)~~ (5) The amount of conditional medical assistance to be refunded to the department is equal to the lesser of:

(a) and (b) remain the same.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-101 and 53-6-131, MCA

3. The rule 37.82.418 to be temporarily repealed is on page 37-18389 of the Administrative Rules of Montana.

AUTH: Sec. 53-6-113, MCA
IMP: Sec. 53-6-131, 53-6-141 and 53-6-142, MCA

4. Medicaid is jointly funded by the State and Federal government. Its purpose is to provide health care benefits to eligible low income persons without other resources. The Montana legislature appropriated a limited amount of State funds to support the Medicaid program for the State Fiscal Year 2003. The Medicaid program, however, has experienced increased caseloads and increased usage. Consequently, the Medicaid appropriation is being exhausted much faster than was originally projected. If Medicaid spending continues at its present rate, even assuming no additional increase in caseloads or usage, the State general fund appropriation would be overspent by approximately \$3.5 million before the end of the fiscal year. Due to this serious budgetary shortfall, it is necessary for Medicaid to reduce spending immediately before all funds appropriated for the Medicaid program are depleted. Should Medicaid be unable to pay benefits, low income recipients and the medical care system in the State of Montana will suffer serious harm, creating imminent peril to the public health, safety and welfare of the citizens of the State.

The emergency rules enacted herein are necessary to reduce the number of eligible Medicaid recipients by increasing the Department's ability to recoup benefits paid through conditional assistance through the following changes: a recipient's "principal place of residence" shall be defined to include the ONE home where the individual, the individual's spouse, or the individual's dependent child resides or has resided in the previous six months. However, in cases where the home is not currently occupied by the individual, the individual's spouse, or the individual's dependent child, at least one of these persons must evidence an intent to return to residence in the home within six months and must actually return to residence in the home within six months or the home will no longer constitute a "principal place of residence". If the home is no longer a "principal place of residence", then it may be a countable resource for purposes of the Medicaid program. This new definition is being added to ARM 37.82.417.

Another change that is necessary to deal with the Program's budget crisis, is the repeal of ARM 37.82.418. That rule previously permitted eligibility for Medicaid provided a person with excess resources involving real property agreed to attempt to sell the excess real property. This exception to the resource limit is revoked and replaced with a more precise conditional assistance exception. Conditional assistance is

described in ARM 37.82.423. That rule is being amended to clarify what actions constitute a "reasonable effort to sell", to clarify the conditional assistance recipient's obligations under the exception, and to ensure that awareness is raised that conditional assistance is conditional and the recipient has an obligation to repay the assistance once the excess resource is sold. Individuals receiving conditional assistance have nine months to sell real property and three months to sell personal property which exceeds the applicable resource limit.

The last change that is necessary in order to manage the Program's budget crisis, is the incorporation of new policy manual material implementing these changes. Besides the two changes discussed above, the new manual material impacts definitions of "home", "life estate", and "contract for deed". The definitions are clarified so that staff who make eligibility determinations are aware of how to classify these three potential pieces of property and the income that may be generated thereby. The rule is also necessary to clarify that if the resource is excluded, it still must generate any income that could be made available to the applicant/recipient - and that income may be required to be applied to cost of care.

The Department intends to engage in rulemaking through the regular process provided by the Montana Administrative Procedure Act as soon as is practicable. Persons impacted by this rule will have a full opportunity for public input through that rulemaking process.

The Department anticipates a general fund savings of approximately \$650,000 for the period beginning February 1, 2003 and ending June 30, 2003. The Department also anticipates that this rule will impact approximately 520 recipients.

5. These emergency rules are effective on February 1, 2003.

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

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

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State January 31, 2003.

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

In the matter of the adoption	)	NOTICE OF ADOPTION OF
of temporary emergency	)	TEMPORARY EMERGENCY
amendments of ARM 37.85.207,	)	RULES
37.86.606, 37.86.1102,)	
37.86.1806, 37.86.1807,)	
37.86.2405, 37.86.2801 and)	
37.86.2905 pertaining to)	
reductions in medicaid rate)	
reimbursement and services)	

TO: All Interested Persons

1. The Department of Public Health and Human Services is adopting the following temporary emergency rule amendments of ARM 37.85.207, 37.86.606, 37.86.1102, 37.86.1806, 37.86.1807, 37.86.2405, 37.86.2801 and 37.86.2905 pertaining to reductions in medicaid rate reimbursement and services.

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

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

37.85.207 SERVICES NOT PROVIDED BY THE MEDICAID PROGRAM

(1) remains the same.

(2) The following medical and nonmedical services are explicitly excluded from the Montana medicaid program except for those services covered under the health care facility licensure rules of the Montana department of public health and human services when provided as part of a prescribed regimen of care to an inpatient of a licensed health care facility, except for those services specifically available, as listed in ARM 37.40.1406, to persons eligible for home and community based services; and except for those medicare covered services, as listed in ARM 37.83.812 to qualified medicare beneficiaries for whom the Montana medicaid program pays the medicare premiums, deductible and coinsurance:

(a) through (l) remain the same.

(m) treatment services for infertility, including sterilization reversals; and

(n) experimental services;

(o) all gastric bypass related services (including initial bypass and revisions); and

(p) circumcisions not authorized by the department as

medically necessary.

(3) Effective February 1, 2003, until June 30, 2003, the following services will no longer be covered for individuals age 21 and over:

- (a) audiology;
- (b) eyeglasses;
- (c) routine eye exams provided by optometrists and ophthalmologists;
- (d) hearing aids;
- (e) orthotic devices;
- (f) prosthetic devices;
- (g) dental, excluding emergency services for the treatment of pain; and
- (h) denturist.

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

AUTH: Sec. 53-2-201, 53-6-113 and 53-6-402, MCA
IMP: Sec. 53-2-201, 53-6-101, 53-6-103, 53-6-116, 53-6-131, 53-6-141 and 53-6-402, MCA

37.86.606 THERAPY SERVICES, SERVICE REQUIREMENTS AND RESTRICTIONS (1) through (6) remain the same.

(7) The following limits apply to therapy services:

(a) Occupational therapy services are limited to ~~70~~ 40 hours per state fiscal year per recipient without prior authorization and up to an additional 30 hours per state fiscal year per recipient as prior authorized by the department. No more than 100 hours of occupational therapy services per state fiscal year per recipient may be reimbursed by the Montana medicaid program. Individuals age 21 or older are not eligible to receive additional hours over 40.

(b) Speech therapy services are limited to ~~70~~ 40 units of service per state fiscal year per recipient without prior authorization and up to an additional 30 units of service per state fiscal year per recipient as prior authorized by the department. No more than 100 units of service of speech therapy services per state fiscal year per recipient may be reimbursed by the Montana medicaid program. Individuals age 21 or older are not eligible to receive additional hours over 40.

(i) remains the same.

(c) Physical therapy services are limited to ~~70~~ 40 units of service per state fiscal year per recipient without prior authorization and up to an additional 30 units of service per state fiscal year per recipient as prior authorized by the department. No more than 100 units of physical therapy services per state fiscal year per recipient may be reimbursed by the Montana medicaid program. Individuals age 21 or older are not eligible to receive additional hours over 40.

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

37.86.1102 OUTPATIENT DRUGS, REQUIREMENTS (1) through (4) remain the same.

(5) Each prescription shall be dispensed in the quantity ordered except that:

(a) remains the same.

(b) Notwithstanding the above, prescriptions may not be dispensed in quantities greater than ~~100 dosages~~ or a 34-day supply, ~~whichever is greater.~~

(6) remains the same.

AUTH: Sec. 53-6-113, MCA

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

37.86.1806 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, REIMBURSEMENT REQUIREMENTS

(1) Requirements for the purchase or rental of prosthetic devices, durable medical equipment, medical supplies and related maintenance, repair and services are as follows:

(a) through (b) remain the same.

(c) A prior authorization is required for the following:

(i) for any line item of prosthetic device, durable medical equipment, medical supplies and related maintenance, repair and services on which the department's fee is equal to or greater than \$1,000; and

~~(ii) purchase of wheelchairs and wheelchair accessories if the combined charges for the wheelchair and accessories exceed \$1,500 or if the provisions of (1)(c)(i) apply;~~

~~(A) All prior authorization requests for wheelchairs and wheelchair accessories must include submission to the department of the pertinent manufacturer's price list pages for the requested item; and~~

~~(iii) (ii) all other items identified as requiring prior authorization in the department's fee schedule referenced in ARM 37.86.1807(2)(d).~~

(d) through (6) remain the same.

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

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

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

(2) Prosthetic devices, durable medical equipment and medical supplies shall be reimbursed in accordance with the department's fee schedule effective ~~July 2002~~ February 1, 2003, which is hereby adopted and incorporated by reference. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

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

(a) remains the same.

(b) Upon review of the aggregate number of billings as

provided in (3)(a), the department will establish a fee for each item which has been billed at least 50 times by all providers in the aggregate during the previous 12-month period. The department shall set each such fee at ~~90~~ 80% of the average charge billed by all providers in the aggregate for such item during such previous 12-month period. For purposes of determining the number of billings and the average charge, the department will consider only those billings that comply with ARM 37.86.1806(1)(b).

(i) remains the same.

(c) Except as provided in (4), for all items for which no fee has been set under the provisions of (3)(b), the department's fee schedule amount shall be ~~90~~ 80% of the provider's usual and customary charge.

(i) through (5)(b) remain the same.

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

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

37.86.2405 TRANSPORTATION AND PER DIEM, REIMBURSEMENT

(1) remains the same.

(2) The department hereby adopts and incorporates by reference the department's fee schedule effective ~~July 2002~~ February 1, 2003 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) No payment is available for personal vehicle mileage or per diem costs that total less than ~~\$10~~ \$5 in a calendar month.

(4) remains the same.

(5) Mileage for transportation in a personally owned vehicle is reimbursed: at the rate of \$.13 per mile.

~~(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

37.86.2801 ALL HOSPITAL REIMBURSEMENT, GENERAL

(1) remains the same.

(2) Allowable costs will be determined in accordance with generally accepted accounting principles as defined by the American institute of certified public accountants. Such definition of allowable costs is further defined in accordance with the Medicare Provider Reimbursement Manual, HCFA Pub. 15 (referred to as "Pub. 15"), subject to the exceptions and limitations provided in the department's administrative rules. The department hereby adopts and incorporates herein by

reference Pub. 15, which is a manual published by the United States department of health and human services, health care financing administration, which provides guidelines and policies to implement medicare regulations which set forth principles for determining the reasonable cost of provider services furnished under the Health Insurance for Aged Act of 1965, as amended. A copy of Pub. 15 may be obtained through the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(a) Hospitals located in the state of Montana providing inpatient and outpatient hospital services reimbursement under the retrospective cost-based methodology for a hospital that is identified by the department as a distinct part rehabilitation unit or an isolated hospital are subject to the provisions regarding cost reimbursement and coverage limits and rate of increase ceilings specified in 42 CFR 413.30 through 413.40 (1992), except as otherwise provided in these rules. This provision applies to distinct part rehabilitation units only through January 31, 2003. The department hereby adopts and incorporates herein by reference 42 CFR 413.30 through 413.40 (1992). A copy of 42 CFR 413.30 through 413.40 (1992) may be obtained through the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(b) through (8) remain the same.

AUTH: Sec. 2-4-201, 53-2-201 and 53-6-113, MCA

IMP: Sec. 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA

37.86.2905 INPATIENT HOSPITAL SERVICES, REIMBURSEMENT

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

(a) For inpatient hospital services, including inpatient rehabilitation services and services provided in a setting that is identified by the department as a distinct part rehabilitation unit, provided within the state of Montana, providers will be reimbursed under the diagnosis related groups (DRG) prospective payment system described in (2) except as otherwise specified in these rules. Medicare certified rehabilitation units (through January 31, 2003 only), isolated hospitals and critical access hospitals will be reimbursed their actual allowable costs determined on a retrospective basis, with allowable costs determined according to ARM 37.86.2801(2). Except as otherwise specified in these rules, facilities reimbursed under the DRG prospective payment system will be reimbursed, in addition to the prospective DRG rate, for the following:

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

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

(a) through (b) remain the same.

(c) The department computes a Montana average base price per case. This average base price per case is \$2070 excluding capital expenses, effective for services provided on or after July 1, 2002. For services provided on or after February 1, 2003 through June 30, 2003, the base price per case is \$1967 excluding capital expenses.

(d) through (8) remain the same.

(9) Inpatient hospital service providers shall be subject to the billing requirements set forth in ARM 37.85.406. At the time a claim is submitted, the hospital must have on file a signed and dated acknowledgment from the attending physician that the physician has received the following notice: "Notice to physicians: medicaid payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient, as attested to by the patient's attending physician by virtue of his or her signature in the medical record. Anyone who misrepresents, falsifies or conceals essential information required for payment of federal funds, may be subject to fine, imprisonment or civil penalty under applicable federal laws." The acknowledgment must be completed by the physician at the time that the physician is granted admitting privileges at the hospital, or before or at the time the physician admits his or her first patient to the hospital. Existing acknowledgments signed by physicians already on staff remain in effect as long as the physician has admitting privileges at the hospital. The provider may, at its discretion, add to the language of this statement the word "medicare" so that two separate forms will not be required by the provider to comply with both state and federal requirements. In addition, except for ~~distinct part rehabilitation units and~~ hospital resident cases, a provider may not submit a claim until the recipient has been either:

(a) through (17) remain the same.

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

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

3. The Department of Public Health and Human Services is adopting these temporary emergency rule amendments to prevent imminent peril to the public health, safety and the welfare of Medicaid recipients. Based on November utilization reports, Medicaid enrollment and Medicaid costs are increasing. The Department projects imminent and substantial budget deficits in the Montana Medicaid program for State Fiscal Year (SFY) 2003. The projected deficits require the Department to make immediate adjustments to reimbursement policies and services for the Montana Medicaid program. A longer delay in the implementation of these cuts would necessitate larger program cuts in the future, causing imminent peril to the public health, safety or the welfare of Medicaid recipients. Section 17-8-104, MCA subjects public officials to civil penalties if they fail to keep expenditures, obligations and liabilities within the amount of the legislative appropriation as required by 17-8-103, MCA.

The emergency amendments are necessary to allow the Department to maintain the core Medicaid services required by the federal government within the funding level appropriated by the Montana Legislature.

The estimated financial impact of these emergency rules is to reduce total state and federal expenditures for Medicaid services in Montana by approximately \$3.2 million in the fiscal year ending June 30, 2003. Of the total, state general fund expenditures are reduced a total of approximately \$877,000. The Department believes the savings from these emergency amendments and other cost-saving measures will allow it to stay within legislative appropriations.

The emergency rule amendments provide the following changes:

ARM 37.85.207(1)(o) is amended to exclude all gastric bypass surgery. ARM 37.85.207(1)(p) is amended to exclude any circumcisions not preauthorized by the Department. This change results in a general fund savings of \$41,700 from reduced expenditures for state fiscal year (SFY) 2003.

ARM 37.85.207(3) is amended to temporarily eliminate optional services not required by the federal government for individuals age 21 and over. These optional services include audiology, eyeglasses, routine eye exams provided by optometrists and ophthalmologists, hearing aids, dental, denturist, orthotics and prosthetics. These temporary eliminations will be in effect from February 1, 2003, until June 30, 2003. SFY 2003 general fund savings equal \$485,281.

ARM 37.86.606(7) is amended to reduce the current occupational, speech and physical therapy hours from a maximum of 100 hours to 40 hours for adults age 21 and over. SFY 2003 general fund savings equal \$4,583.

ARM 37.86.1102(5) is amended to provide for a maximum 34-day supply on all prescription drug benefits. The current rule provides for either a 34-day supply or 100 tablets, whichever is greater. SFY 2003 general fund savings equal \$20,593.

ARM 37.86.1806(1) is amended to expand the prior authorization requirements for wheel chairs and wheel chair accessories. All wheel chairs and wheel chair accessories will now require prior authorization regardless of charge.

ARM 37.86.1807(2) is amended to refer to the Department's fee schedule current as of February 1, 2003, for durable medical equipment. The changes in the fee schedule reflect the services that now require prior authorizations and the new "by-report" percentages.

ARM 37.86.1807(3) is amended to reduce the current fee for durable medical equipment based on a percentage of billed

charges from 90% to 80%. SFY 2003 general fund savings equal \$20,000.

ARM 36.86.2405 is amended to adopt the standard mileage rate of \$.13, which is the amount allowed by the IRS for computing the tax deduction for medical related travel. Concurrently, the Department will lower the minimum payment allowed for a calendar month of travel from \$10 to \$5.

ARM 37.86.2801(2) and 37.86.2905(1)(a) are amended to provide for cost settlement of hospital distinct part rehabilitation units (HDPRU) based on cost-based methodology through January 31, 2003. HDPRU will be reimbursed under the diagnosis related group (DRG) prospective payment system effective February 1, 2003. Interim payment of HDPRU is based on a cost-based methodology through January 31, 2003. Effective February 1, 2003 reimbursement will be under the DRG prospective payment system.

The Department has considered and will adopt feasible measures to eliminate the budget deficit for SFY 2003. In addition to the emergency rules, the Department has implemented program and policy changes that will reduce total medicaid expenditures by \$2,253,000 to the appropriated funding level. The Department will be proposing other rule changes to re-examine the treatment and evaluation of recipient resources for purposes of determining medical eligibility.

The number of persons affected would be 11,600 providers enrolled in Montana Medicaid and approximately 17,000 Medicaid recipients that utilized these services in SFY 2002. This change could impact the entire Medicaid recipient population of 78,000 should they have need of these services during the period of February 1, 2003 through June 30, 2003.

There is an adverse impact on Medicaid recipients from the elimination of optional services. Clients will not be able to obtain these services or will be required to pay privately for their needed services. However, some of these services will be cost shifted to other services such as hospitals or physicians services. In addition, the combination of these cuts and previous cuts will impact access to health care for some clients if providers choose to discontinue their participation in the Medicaid program.

The Department cannot spend more than its appropriation and with the increases in enrollment and utilization, more demand has been placed on the program. The Department has reviewed alternatives to these emergency rules to contain costs in the Medicaid program. The Department recognizes the impact of these rules on providers and needy Montanans, and has adopted measures that attempt to minimize the negative impact on providers and clients. In order to stay within the budget, the Department must adopt these rules, which are a combination of reducing

eligibility, limiting services and reducing payments to health care providers.

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

5. 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 Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, submit by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us.

Dawn Sliva
Rule Reviewer

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

Certified to the Secretary of State January 31, 2003.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

- ▶ Department of Agriculture;
- ▶ Department of Commerce;
- ▶ Department of Labor and Industry;
- ▶ Department of Livestock;
- ▶ Department of Public Service Regulation; and
- ▶ Office of the State Auditor and Insurance Commissioner.

Education and Local Government Interim Committee:

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

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

- ▶ Department of Public Health and Human Services.

Law and Justice Interim Committee:

- ▶ Department of Corrections; and
- ▶ Department of Justice.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2002. This table includes those rules adopted during the period October 1, 2002 through December 31, 2002 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

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

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

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