

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 8

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 The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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

In the matter of the adoption )  
of new rule I pertaining to ) NOTICE OF PUBLIC  
variable priced outfitter ) HEARING ON PROPOSED  
sponsored B-10 and B-11 ) ADOPTION  
licenses )

TO: All Concerned Persons

1. On June 4, 2003 at 9:00 a.m. a public hearing will be held at the Fish, Wildlife and Park Headquarters Commission Room, 1420 East 6th Avenue, Helena, Montana, to consider the adoption of new rule I pertaining to variable priced outfitter sponsored B-10 and B-11 licenses.

2. The Fish, Wildlife and Parks Commission (commission) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the commission no later than 5:00 p.m. on May 23, 2003, to advise us of the nature of the accommodation that you need. Please contact Hank Worsech, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-2663; fax (406) 444-9733; email hworsech@state.mt.us.

3. The commission desires to receive comment on two different rule options. The proposed new rule options provide as follows:

OPTION A

NEW RULE I CALCULATION METHOD - VARIABLE PRICED OUTFITTER SPONSORED LICENSES B-10 and B-11 (1) The commission shall determine the upcoming year's target number of the variable priced outfitter sponsored class B-10 and B-11 licenses using a unit method. The commission will evaluate the number of licenses sold in the previous years within the five year unit of time to determine the number of licenses to be sold in the upcoming license year.

(2) The five year unit of time is self-inclusive. Any under or over sale of licenses in a previous five year unit shall not affect the target number of licenses in the current five year unit. The adjustments to over or under sales of licenses shall be made only within the current five year unit.

(3) The year 2001 is the first year in the first five year unit under this rule, and the commission shall consider data from this year in making its target number calculations.

(4) The target amount of licenses to be sold is 27,500 class B-10 and 11,500 class B-11 within each five year unit.

AUTH: 87-1-268, MCA

IMP: 87-1-268, MCA

OPTION B

NEW RULE I CALCULATION METHOD - VARIABLE PRICED OUTFITTER SPONSORED LICENSES B-10 and B-11

(1) The commission shall determine the upcoming year's target number of the variable priced outfitter sponsored class B-10 and B-11 licenses using a rolling, olympic average method. To determine a target number, the commission shall evaluate the numbers of licenses sold over a seven year period of time. For the purposes of determining the upcoming year's target for the number of licenses, the commission shall exclude the year of the highest number of licenses sold and the year of the lowest number of licenses sold using the previous seven years for its calculations.

(2) Adjustments for over or under sales shall be made the following year.

(3) The commission shall use this calculation method, beginning with data from the license year 2003.

AUTH: 87-1-268, MCA

IMP: 87-1-268, MCA

4. The 1995 Legislature directed the commission to annually set fees for the variable priced outfitter sponsored class B-10 and B-11 licenses. The fees must be set at a market rate intended to sell as close to but not more than an average of 5,500 class B-10 licenses and 2,300 class B-11 licenses each year, over a five year period. Licenses have been sold since 1996 and have fluctuated in target numbers and price. The commission has determined a need to establish a rule that clarifies the process for determining the target numbers of B-10 and B-11 licenses to be sold. By adopting one of the recommended options, the commission will have a process in rule for determining the target number of B-10 and B-11 licenses to be sold each year. Option A allows for adjustments to the target number over a period of five years and provides a more stable environment as long as over or under sales of the target does not occur in the last year. Option B has more reactive adjustments to over and under sales of the target since it only allows for adjustment to be made in the following year.

5. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Hank Worsech, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-2663; fax (406) 444-9733; or email comments to hworsech@state.mt.us and must be received no later than June 13, 2003.

6. Hank Worsech or someone designated from the legal unit will preside over and conduct the hearing.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

By: /s/ Dan Walker  
Dan Walker  
Commission Chairman

By: /s/ Robert N. Lane  
Robert N. Lane  
Rule Reviewer

Certified to the Secretary of State April 14, 2003

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

In the matter of the	)	NOTICE OF PROPOSED
amendment of ARM 37.86.5104	)	AMENDMENT
and 37.86.5110 pertaining to	)	
PASSPORT enrollment and	)	NO PUBLIC HEARING
services	)	CONTEMPLATED

TO: All Interested Persons

1. On May 24, 2003, the Department of Public Health and Human Services proposes to amend 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. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 12, 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.

37.86.5104 PASSPORT TO HEALTH PROGRAM: ENROLLMENT IN THE PROGRAM (1) through (4) remain the same.

(5) An enrollee may ~~once a quarter~~ choose a new primary care provider up to once per month.

(a) and (b) remain the same.

(c) A recipient who frequently changes primary care providers without good cause may be removed from the program and be placed in the medicaid restricted card program as provided in ~~ARM 46.12.216~~ 37.85.205.

(6) remains the same.

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

IMP: Sec. 53-6-116, MCA

37.86.5110 PASSPORT TO HEALTH PROGRAM: SERVICES (1) An enrollee must obtain the services in (1)(a), except as provided in (1)(b), directly from or through authorization by the enrollee's primary care provider:

(a) medicaid services requiring authorization:

(i) remains the same.

(ii) ~~emergency room,~~ surgery, physical therapy, occupational therapy, speech therapy, and home health services delivered as outpatient hospital services as defined in ARM 37.86.3001;

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

(ii) inpatient and outpatient services for which the primary diagnosis is one of the following ICD-9 codes: 290 through 302, 306 through 314, or 316- ;

(iii) through (xi) remain the same.

(2) The primary care provider's authorization is not required for any of the following medicaid services:

(a) and (b) remain the same.

(c) audiology services as defined in ARM ~~46.12.535~~ 37.86.702;

(d) remains the same.

(e) personal care services as defined in ARM 37.40.1101, except for personal care services as provided pursuant to [Rule II as published in 2003 MAR Notice No. 37-276, issue 7 at page 638, published April 10, 2003];

(f) through (v) remain the same.

(w) home and community services as defined in ARM ~~46.12.1404~~ 37.40.1406;

(x) through (ac) remain the same.

(ad) dietician ~~as defined in ARM 46.12.1480~~ as provided in ARM 37.40.1475; and

(ae) respiratory therapy ~~as defined in ARM 46.12.1474~~ as provided in ARM 37.40.1463.

(3) and (4) 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 53-6-116, MCA

### 3. ARM 37.86.5104

This rule amendment is necessary to correctly state the Department's current practice, which has been in effect since 1993, of allowing a PASSPORT client to choose a new provider up to once per month. This access policy has been monitored and is causing no problems. The change in rule will have no positive or adverse impact on clients or providers. It is a correction to accurately state current practice.

### ARM 37.86.5110

This rule amendment is necessary to correctly state the Department's current practice. PASSPORT approval is not necessary for emergency services. The change in rule will have no positive or adverse impact on clients or providers as it is merely a correction to accurately state current practice.

### ARM 37.86.5110

This rule amendment is necessary because effective July 1, 2003, personal care services provided in the school based services program will require PASSPORT approval. This rule change will impact approximately 450 children.

4. Interested persons may submit their data, views or



arguments concerning the proposed action in writing to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on May 22, 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.

5. If a person who is directly affected by the proposed action wishes to express data, views and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, by facsimile (406)444-9744 or by electronic mail via the Internet to dphhslegal@state.mt.us no later than 5:00 p.m. on May 22, 2003.

6. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the appropriate administrative rule review committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who 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 directly affected has been determined to be 45 based on the 450 children affected by rules covering PASSPORT enrollee provider changes and emergency room outpatient hospital and personal care services.

Dawn Sliva  
Rule Reviewer

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

Certified to the Secretary of State April 14, 2003.

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

In the matter of the )  
amendment of ARM 37.78.102, )  
37.78.406 and 37.82.101 )  
pertaining to Temporary )  
Assistance for Needy Families )  
(TANF) and Medicaid )

NOTICE OF PUBLIC HEARING  
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 14, 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 of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 5, 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.

37.78.102 TANF: FEDERAL REGULATIONS ADOPTED BY REFERENCE

(1) remains the same.

(2) The Montana TANF cash assistance manual in effect January July 1, 2003 is hereby adopted and incorporated by this reference. A copy of the Montana TANF cash assistance manual is available for public viewing at each local office of public assistance, and at the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. Manual updates are also available on the department's website at [www.dphhs.state.mt.us](http://www.dphhs.state.mt.us).

AUTH: Sec. 53-4-212, MCA

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

37.78.406 TANF: TANF CASH ASSISTANCE; INCOME DISREGARDS AND INCOME DEEMING (1) remains the same.

(2) When testing countable monthly income and determining the amount of the assistance payment, the following amounts are subtracted in the order listed from the earned income of each wage earner in the assistance unit after exclusions provided in

ARM 37.78.416:

(a) remains the same.

(b) 25% of the remaining earned income after the disregards in ~~(1)(a)~~ (2)(a) have been applied;

(c) through (6) remain the same.

AUTH: Sec. 53-4-212, MCA

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

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~~ July 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

3. ARM 37.78.102 and 37.82.101

The proposed amendments to ARM 37.78.102 and 37.82.101 are necessary in order to incorporate into the Administrative Rules of Montana the version of the policy manual effective July 1, 2003 and permit all interested parties as well as the public to comment on the Department's policies and to offer suggested changes. Manuals and draft manual material are available for review in each local Office of Public Assistance. Following is a brief overview of the changes being made to each manual section for the Family Medicaid Manual, the SSI Medicaid Manual and the TANF Cash Assistance Manual.

#### Family Medicaid Manual

Fiscal impact based on the changes below is expected to be zero.

Changes to all of the following Family-Related Medicaid Manual sections are proposed primarily to update dates, update legal cites, and add clarifications to policies previously set forth in the manual sections. Citations to the Administrative Rules of Montana (ARM) must be updated because the rules governing Medicaid were transferred from Title 46 of ARM to Title 37 in 2000 and were renumbered, but the manual still contains the old rule numbers. Clarifications are intended to eliminate confusion over current policy rather than changing policy. As explained below, a few of the changes in the manual material reflect substantive changes in Medicaid policies.

In determining eligibility for Medicaid, income limits are applied which are based on federal poverty guidelines revised annually to reflect increases in the cost of living. The Department uses the most recent set of poverty guidelines because using the higher guidelines allows applicants for assistance to qualify who would be ineligible under last year's lower guidelines. The following three sections were updated to incorporate the Federal Poverty Guidelines published in the February 2003 Federal Register:

FMA 004 Poverty Level (MA-PC and MA-PW)  
FMA 005 Poverty Level (MA-PS)  
FMA 006 Extended Medicaid (MA-TR)

FMA 101-1 Confidentiality - Updates legal cites and clarified previously set forth policy.

FMA 103-1 Application Filing - Clarifies that CHIP is not to receive copies of denial notices as HIPAA regulations prohibit CHIP staff from knowing why a child was denied Medicaid eligibility; clarifies that individuals and families can apply for and have their Medicaid case maintained in any Montana county, unless TANF and/or food stamps are also opened, then the entire case must be maintained in the same county. The policy of allowing individuals to apply for public assistance in any county was adopted because Section 53-2-613, MCA, was revised in 2001 to provide that applicants have that right. The policy of requiring that an individual's Medicaid, TANF, and Food Stamp cases all be maintained in the same county is necessary because allowing the cases to be maintained in different counties would lead to duplication of effort and possible errors in determining eligibility and amount of assistance.

FMA 103-4 Verification and Documentation - Updates legal cites; clarifies that verification of a change in the recipient's circumstances is not required if the change is not one which will affect the recipient's eligibility.

FMA 201-3 Qualified Pregnant Woman (MA-QP) - Clarifies that if the mother was receiving Medicaid through a medically needy program, the baby is not eligible for automatic newborn coverage; also clarifies required filing unit members in various situations. Adds requirement that the applicant/recipient also cooperate with Third Party Liability and Program Compliance Medicaid reviews in order to bring the Department into compliance with longstanding federal Medicaid regulations.

FMA 201-6 Newborn Coverage - Updates legal cites; clarifies that only the resources of those siblings who were included in the filing unit at the time of the baby's birth can be considered when determining resource eligibility for the Automatic Newborn program.

FMA 201-8 Poverty Six Child (MA-PS) - Updates legal cites; adds

examples to help clear up confusion regarding 'pick and choose' policy; clarifies system coding requirements. Adds requirement that adults must cooperate with Third Party Liability and Program Compliance Medicaid reviews in order to bring the Department into compliance with longstanding federal Medicaid regulations.

FMA 202-2 Household Member Loses Eligibility - Updates legal cites; clarifies system coding requirements; minor clarifications to policy.

FMA 301-1 Citizenship - Updates legal cites; clarifies verification requirements.

FMA 301-3 Emergency Alien Medical Coverage - Clarifies that an 'otherwise eligible alien' is one who meets the requirements of the most closely related categorically needy coverage group; adds information regarding residency requirements and makes clear that this eligibility is not processed on the eligibility system.

FMA 302-1 Residency - Updates legal cites; clarifies that someone who is in the state for a temporary purpose is not a resident; clarifies that a child is not required to live with a specified caretaker relative to be considered a resident. Corrects policy regarding out of state TANF benefits. The manual currently states, incorrectly, that TANF benefits received in another state are counted in determining eligibility for Medicaid. The Medicaid State Plan was amended several years ago to provide that no TANF cash assistance payments would be counted in determining eligibility for Family Medicaid, but the provision in the manual stating that TANF benefits from another state would be counted was never removed. The manual is now being corrected to state that no TANF benefits, including benefits from another state, will be counted, to comply with the State Plan.

FMA 307-1 Third Party Liability/Health Insurance Premium Payment System - Agency process changed, policies clarified, reformatted, terms updated. Adds specific information regarding process for notifying Third Party Liability Unit of workers' compensation involvement.

FMA 308-1 COBRA 75 Continuation Beneficiaries - Updates legal cites; changes agency process; phone numbers and terminology updated.

FMA 400-1 Alpha Index - Will be updated to reflect correct page numbers and any additional topic headings within "resource" sections. No policy changes.

FMA 401-1 Ownership/Accessibility/Equity Value - Adds definitions of liquid and non-liquid resources and clarifies that classification of a resource as non-liquid does not equate

to inaccessibility. Clarifies via specific statements the policy already in effect that resource exclusions apply to personally-owned property and not to property owned by a trust or corporation.

FMA 402-1 Countable & Excluded Resources - Clarifies via specific statements the policy already in effect that resource exclusions apply to personally-owned property and not to property owned by a trust or corporation. Adds new heading for Asbestos Settlement, which is a countable resource. Other wording clarified throughout.

FMA 402-3 Trust Funds - Clarifies via specific statements the policy already in effect that resource exclusions apply to personally-owned property and not to property owned by a trust or corporation. Reformatted. Clarifies how income from a trust is determined.

FMA 500 Income Overview - Removes suggestion to use visual verification for income and expenses for Medicaid cases.

FMA 500-1 Alpha Index - Will be updated to reflect correct page numbers and any additional topic headings within "income" sections. No policy changes.

FMA 501-1 Unearned Income - Adds headings for Asbestos Settlements, Social Services, and Disability Payments to Children of Female Vietnam Veterans. Clarifies that child support income is obligated to the custodial parent, not the child. Minor clarifications throughout the section.

FMA 703-1 Medical Expense Option - Removes provision allowing waiver expenses to be anticipated before they are incurred. Currently services provided to recipients of Medicaid under the Home and Community Based Waiver, such as home health care services, can be counted toward the recipient's monthly incurment before the expenses are actually incurred, based on the anticipated cost of services expected to be received in that month. This policy is being changed because it resulted in many errors. That is, recipients who were determined to have met their incurment and were granted Medicaid based on anticipated waiver services sometimes did not actually incur that amount of expense during the month; hence they received Medicaid for a month for which they were not eligible as they did not meet their incurment. Clarifies that "other medical and remedial expenses" must be furnished by a licensed medical practitioner within the scope of his/her practice. This is not a change in policy, as the federal Medicaid statute requires that expenses used to meet the incurment be for services provided by a licensed medical practitioner within the scope of his/her practice, but this requirement was not previously stated in the manual. Gives examples of what cannot be used toward the incurment under this provision. Updates Medicaid travel reimbursement rate because ARM 37.86.2401 containing mileage and

per diem rates has recently been amended. Adds clarification that "specific illness" policies such as cancer health insurance and long-term care insurance that are not indemnity policies can be used to offset the medically needy incurment. Explains that medical expenses intended to be met with VA Aid and Attendance are not eligible to be used toward Medicaid incurment.

FMA 805-1 Medicaid Transportation - Updates legal cites, mileage and per diem rates.

FMA 1504-1 Overpayments - Clarified that Medicaid overpayments, unless caused by receipt of continued benefits pending a fair hearing, can only be collected for overpayments that occurred after December 31, 2002, because ARM 37.82.207 specifying what types of overpayment will be collected from recipients was adopted effective January 1, 2003; corrected procedures.

FMA 1510-1 Case File Purging - Removes reference to sending one closed case file per year to the Historical Society. The policy of sending closed case files to the Historical Society is being changed because it was determined that to do so violates confidentiality requirements of HIPAA and the Medicaid program. Clarifies policy regarding visually viewed and hard copy documents. Adds reference to new forms included in 1511-1. Purging guide will be added based on public comment during training and the rule amendment process.

FMA 1511-1 Case File Organization - Clarifies where certain forms used for nursing home cases are to be filed. There is also added clarification on the organization of documents related to over/under issuance, IPV or fraud referral. Some form numbers have also been updated. A note has been added to stress that it is extremely rare for any program's policy to require verification of SSN. Due to HIPAA requirements, added directive that if an authorization to release information is used to collect medical information, the release and medical verification should be stapled together and filed in the permanent documents section.

FMA 1512-1 Case File Transfer - The general rule has been clarified regarding case transfers to counties that might have Tribal TANF. Also policy from the bulletin on special TANF processing for cases with a WRC code has been incorporated. TEAMS CARC process has been updated to reflect expanded policy on which county can manage a case. If more than one program is open, the most restrictive program's policy must be followed. The TEAMS CARC process will be updated based on final decisions and negotiations with Northrop Grumman as well as on public comment during the rule amendment process.

#### SSI Medicaid Manual

Fiscal impact based on the changes below is expected to be zero. Changes to all of the following SSI-Medicaid manual sections are

proposed primarily to update dates, update legal cites, and add clarifications to policies previously set forth in the manual sections. Citations to the Administrative Rules of Montana (ARM) must be updated because the rules governing Medicaid were transferred from Title 46 of ARM to Title 37 in 2000 and were renumbered, but the manual still contains the old rule numbers. Clarifications are intended to eliminate confusion over current policy rather than changing policy. As explained below, a few of the changes in the manual material reflect substantive changes in Medicaid policies.

In determining eligibility for Medicaid, income limits are applied which are based on federal poverty guidelines revised annually to reflect increases in the cost of living. The Department uses the most recent set of poverty guidelines because using the higher guidelines allows applicants for assistance to qualify who would be ineligible under last year's lower guidelines.

The following five sections were updated to incorporate Federal Poverty Guidelines published in the February 2003 Federal Register:

- MA 003 Qualified Medicare Beneficiaries (QMB)
- MA 004 Special Low-Income Medicare Beneficiaries (SLMB)
- MA 007 Qualified Disabled Working Individuals
- MA 010 Poverty Guidelines
- MA 012 Qualifying Individuals (QI-1)

MA 013 Qualifying Individuals (QI-2) - Section deleted as the QI-2 program ended, per federal rule, as of 12/31/02.

MA 103-1 Application, Eligibility Determination & Furnishing Assistance - Updated legal cites, clarified policies, reformatted; adds "No wrong door" policy - application may be submitted in any county in Montana, regardless of county of residence of applicant. The policy of allowing individuals to apply for public assistance in any county was adopted because Section 53-2-613, MCA, was revised in 2001 to provide that applicants have that right.

MA 103-2 Interview - Reformatted, clarified policies, adds HIPAA and other client notification requirements.

MA 103-4 Processing - Reformatted, clarified policies, adds HIPAA and other client notification requirements.

MA 201-3 Social Security Cost-of-Living Increase Disregard (Pickle Eligibility) - Clarified policies and procedures, flow charts updated.

MA 301-3 Emergency Medicaid for Aliens - Updates legal cites; adds policy that alien sponsor deeming does not apply to this eligibility determination. Clarifies that SSI-Medicaid policies



are used to determine eligibility. Section reformatted.

MA 305-1 Third Party Liability/Health Insurance Premium Payment System - Agency process changed, policies clarified, reformatted, terms updated. Adds specific information regarding process for notifying Third Party Liability Unit of workers compensation involvement.

MA 305-2 COBRA 75 Continuation Beneficiaries - Updates legal cites; changes agency process; phone numbers and terminology updated.

MA 400-1 Alpha Index - Will be updated to reflect correct page numbers and any additional topic headings within "resource" sections. No policy changes.

MA 401-1 Ownership/Accessibility/Equity Value - Adds definitions of liquid and non-liquid resources and clarifies that classification of a resource as non-liquid does not equate to inaccessibility. Clarifies via specific statements the policy already in effect that resource exclusions apply to personally-owned property and not to property owned by a trust or corporation. Example changed to add provision for considering jointly owned home as excluded.

MA 402-1 Countable & Excluded Resources - Clarifies the policy already in effect that an IRA owned by a community spouse is a countable resource in a resource assessment; clarifies via specific statements the policy already in effect that resource exclusions apply to personally-owned property and not to property owned by a trust or corporation. Adds new headings for Domestic Volunteer Services Act and Asbestos Settlement, which are both countable resources. Other wording clarified throughout.

MA 402-3 Trust Funds - Clarifies via specific statements the policy already in effect that resource exclusions apply to personally-owned property and not to property owned by a trust. Reformatted. Adds description of how income from a trust is determined.

MA 402-4 Conditional Assistance - Adds clarification responsibility language for tracking sale of property; adds instructions to create overpayment if conditional assistance is not repaid as agreed.

MA 404-1 Asset Transfers - Legal cites updated. Incorporates Bulletin B56 and removes the note to evaluate transfers by the spouse of a waiver-eligible individual, because this is contrary to the provisions of the waiver. Incorporates spousal impoverishment provisions now applied to HCBS/Waiver cases. Clarifies that transfers between spouses are only allowed without penalty prior to application of spousal impoverishment rules to a couple.

MA 404-3 Asset Transfers to Life Estates - Removes reference to bona fide effort to sell provision because this is no longer relevant in light of the recent amendment of ARM 37.82.435 governing conditional assistance. Formerly ARM 37.82.435 provided that a person who would be ineligible because of excess resources consisting of real property could cause the excess real property to be excluded if the person was making a bona fide effort to sell the real property, but this resource exclusion has now been removed. Adds reference to life estate as a resource. Legal cites updated and section reformatted.

MA 500 Income Overview - Clarified in-kind income can be earned or unearned. Removes suggestion to use visual verification for income and expenses for Medicaid cases; updated examples with 2003 program standards.

MA 500-1 Alpha Index - Will be updated to reflect correct page numbers and any additional topic headings within "income" sections. No policy changes.

MA 501-1 Unearned Income - Adds headings for Asbestos Settlements, Social Services, and Disability Payments to Children of Female Vietnam Veterans. Clarified language regarding retroactive lump sum payments. Adds reimbursement of personal needs money to group home residents as excluded reimbursement. Corrects prorating example.

MA 601-3 Income Disregards - Corrects TEAMS code. No policy or wording changes.

MA 703-1 Medical Expense Option - Removes provision allowing waiver expenses to be anticipated before they are incurred. Currently services provided to recipients of Medicaid under the Home and Community Based Waiver, such as home health care services, can be counted toward the recipient's monthly incurment before the expenses are actually incurred, based on the anticipated cost of services expected to be received in that month. This policy is being changed because it resulted in many errors. That is, recipients who were determined to have met their incurment and were granted Medicaid based on anticipated waiver services sometimes did not actually incur that amount of expense during the month; hence they received Medicaid for a month for which they were not eligible as they did not meet their incurment. Clarifies that "other medical and remedial expenses" must be furnished by a licensed medical practitioner within the scope of his/her practice. This is not a change in policy, as the federal Medicaid statute requires that expenses used to meet the incurment be for services provided by a licensed medical practitioner within the scope of his/her practice, but this requirement was not previously stated in the manual. Gives examples of what cannot be used toward the incurment under this provision. Updates Medicaid travel reimbursement rate because ARM 37.86.2401 containing mileage and

per diem rates has recently been amended. Adds clarification that "specific illness" policies such as cancer health insurance and long-term care insurance that are not indemnity policies can be used to offset the medically needy incurment. Explains that medical expenses intended to be met with VA Aid and Attendance are not eligible to be used toward Medicaid incurment. Explains policy for additional medical expense for group home residents, allowed as the difference between MNIL and group home residential fee.

MA 801-1 Qualified Medicare Beneficiaries (QMB) - Updated to incorporate Federal Poverty Guidelines published in the February 2003 Federal Register.

MA 802-1 Special Low Income Medicare Beneficiaries (SLMB) - Updated to incorporate Federal Poverty Guidelines based on the February 2003 Federal Register. Clarifies budgeting process.

MA 803-1 Qualifying Individuals (QI-1) - Updated to incorporate Federal Poverty Guidelines based on the February 2003 Federal Register. Adds statement that QI-1 did not end 12/31/02 as expected, but is now scheduled to end 9/30/03 at end of Congressional extension. Clarifies budgeting process.

The following five sections were updated to incorporate spousal impoverishment policies into the HCBS/Waiver eligibility process, per federal requirement.

MA 1000 Overview

MA 1001-1 Resource Assessments

MA 1002-1 Income Budgeting Process for Waiver Individuals

MA 1002-2 Income Budgeting Process for Waiver Spouses

MA 1003-1 Medically Needy with an Incurment. MA 1003-1 also incorporates removal of the option to anticipate (project) waiver medical expenses, and provides an example of the alternative processing method. Adds special group home resident expense calculation.

MA 1101-1 Medicaid Transportation - Updates legal cites; updates mileage and per diem rates, because ARM 37.86.2401 containing mileage and per diem rates has recently been amended.

MA 1504-1 Overpayments - States that Medicaid overpayments, unless caused by receipt of continued benefits pending a fair hearing, can only be collected from recipients only for overpayments that occurred after December 31, 2002, because ARM 37.82.207 specifying what types of overpayment will be collected from recipients was adopted effective January 1, 2003; corrected procedures.

MA 1510-1 Case File Purging - Removes reference to sending one closed case file per year to the Historical Society. The policy of sending closed case files to the Historical Society is being changed because it was determined that to do so violates

confidentiality requirements of HIPAA and the Medicaid program. Clarifies policy regarding visually viewed and hard copy documents. Adds reference to new forms included in 1511-1. Purging guide will be added based on public comment during training and the rule amendment process.

MA 1511-1 Case File Organization - Clarifies where certain forms used for nursing home cases are to be filed. There is also added clarification on the organization of documents related to over/under issuance, IPV or fraud referral. Some form numbers have also been updated. A note has been added to stress that it is extremely rare for any program's policy to require verification of SSN. Due to HIPAA requirements, added directive that if an authorization to release information is used to collect medical information, the release and medical verification should be stapled together and filed in the permanent documents section.

MA 1512-1 Case File Transfer - The general rule has been clarified regarding case transfers to counties that might have Tribal TANF. Also policy from the bulletin on special TANF processing for cases with a WRC code has been incorporated. TEAMS CARC process has been updated to reflect expanded policy on which county can manage a case. If more than one program is open, the most restrictive program's policy must be followed. The TEAMS CARC process will be updated based on final decisions and negotiations with Northrop Grumman as well as on public comment during the ARM process.

#### TANF Cash Assistance Manual

Fiscal impact based on the changes below is expected to be zero.

Changes to the following TANF cash assistance manual sections are proposed primarily to update dates, update legal cites, and add clarifications to policies previously set forth in the manual sections. Citations to the Administrative Rules of Montana (ARM) must be updated because the rules governing TANF were transferred from Title 46 of ARM to Title 37 in 2000 and were renumbered, but the manual still contains the old rule numbers. Clarifications are intended to eliminate confusion over current policy rather than changing policy. As explained below, a few of the changes in the manual material reflect substantive changes in TANF policies.

TANF 0-1 - Section was revised to reflect current date for the revised sections.

TANF 0-2 - Section was revised to reflect current manual changes.

TANF 103-1 - TANF manual section 103-1 has been broken into several smaller sections. The new TANF 103-1 deals with filing an application. Clarification was added that an interview might

be scheduled without an application being submitted, in order to provide information to potential applicants. All adult household members are expected to sign the last page of the application for assistance. The policy is being changed that a case file does not need to be maintained in an applicant's county of residence. It can be maintained in any county in Montana if the temporary absence rules apply. It can be maintained in a county adjacent to the applicant's county of residence even if the temporary absence rules do not apply. If the individual is being referred to the WoRC program for case management purposes, the WoRC program in the county that is maintaining the case must manage the case. The example on page 3 is being clarified that if the applicant does not wish to change the start date of benefits, the application is denied because the household is over resources as of the date of application.

TANF 103-2 - TANF manual section 103-1 has been broken into several smaller sections. The new TANF 103-2 deals with the interview and home visits. Again, policy is being clarified that an interview may be scheduled without an application being filed, in order to provide information to potential applicants. Policy on the HCS-101 "Authorization to Release Information" form is being worded to match the policy in TANF 101-1. Clarifies that there are two different home visit policies. Home visits made to determine eligibility must have prior notification to household. Home visits made to the homes of recipients for case management purposes do not require prior notification to household.

TANF 103-3 - TANF manual section 103-1 has been broken into several smaller sections. The new TANF 103-3 deals with the rights and responsibilities and self declaration of status. The policy has not changed from the previously written policy.

TANF 103-4 is being added to the manual to give a brief synopsis of what verification and documentation is needed to determine eligibility.

TANF 103-5 - TANF manual section 103-1 has been broken into several smaller sections. The new TANF 103-5 deals with processing the application. The only change being made to previously written policy is that the out of state request forms should now be sent to Carol Carpenter in Central Office.

TANF 103-7 - TANF manual section 103-7 has been moved to accommodate the breakdown of the TANF 103-1 section into several smaller sections. The legal cites have been updated. The reference to the Medicaid and Food Stamps being maintained in the family's county of residence has been removed. The case can now be maintained in any county. The policy of allowing individuals to apply for public assistance in any county was adopted because Section 53-2-613, MCA, was revised in 2001 to provide that applicants have that right. The policy and

procedure for transferring cases has been updated to show that the case does not have to be transferred to the county of residence. The procedure for transferring cases has also been updated to show that some individuals may need to complete a new application for Tribal TANF benefits. If the family is potentially eligible for CSKT Tribal TANF, a new application is not required. CSKT Tribal TANF will use an application already on file in the case to determine eligibility. If the family is potentially eligible for FBIC Tribal TANF, a new application is required.

TANF 201-2 - Two minor changes were made to TANF manual section 201-2. The legal cites have been updated; and policy on verification of marital status has been changed. New policy requires that marital status requires verification only if questionable. This policy is being adopted to eliminate unnecessary work for both recipients and caseworkers.

TANF 201-3 - Policy was clarified to say that any new household member is added the month following the month of request whether or not he/she is a required filing unit or assistance unit member. For example, an aunt and uncle who have been receiving child only assistance for a niece request to be added to an assistance unit on April 5th. Either the aunt or the uncle (not both) can be added to the assistance unit on May 1st. The other individual becomes a deemed person May 1st. The procedure for changing a FIA when a new household member is added or removed has been included in the manual section.

TANF 300 - The legal cite for TANF 300 was updated and a note was added to cross reference the new manual section TANF 103-4.

TANF 301-2 - A note was added to page 3 that references the 5-year ban and time limited eligibility. Also, a helpful chart was added as a page 17 at the end of the section. The chart is not a change in policy only a helpful tool for Case Managers that was created by Linda Riggleman for the Region 5 Training Center.

TANF 302-1 - New policy is being added to TANF 302-1 on the county of residence. The policy is being changed that a case file does not need to be maintained in an applicant/participant's county of residence. It can be maintained in any county in Montana if the temporary absence rules apply. It can be maintained in a county adjacent to the applicant/participant's county of residence if the temporary absence rules do not apply. The policy of allowing individuals to apply for public assistance in any county was adopted because Section 53-2-613, MCA, was revised in 2001 to provide that applicants have that right. A note was added to page 3 to indicate that if the individual is expected to be absent from the home for longer than 90 days (unless special criteria rules apply) the individual is not considered temporarily absent.

TANF 303-1 - The only change to TANF 303-1 is the legal cite. There are no changes to previously written policy.

TANF 304-1 - Only minor clarifications have been made in TANF 304-1. The legal cite has been updated. Policy has been clarified that attending college is not considered attending secondary school. Also, when a 16 or 17 year old is attending secondary school or its equivalent full time a FIA is not required. Section headings were added for home schooling and GED classes. All references to Medicaid were removed from the examples because TANF and Medicaid are delinked and eligibility must be determined separately for each program. Example number 5 was corrected to say that if the minor child fails to negotiate a FIA the case is closed.

TANF 306-1 - A note was added to clarify that anytime a new application is required a new set of child support papers is also required, even if the case only closed for the ineligibility month. Examples 4 and 5 were rewritten to clarify this point. In both examples, the caretaker relative who is receiving a grant for the minor child must complete child support papers for the teen parent's absent parents. Information was added to the TEAMS process that an interface with SEARCHS does not occur if the child's deprivation code on DEPR is 'IC' or 'UP'.

TANF 306-2 - The legal cites were updated. On page 5, clarification was added that if a good cause claim is denied the participant must be given the opportunity to cooperate and complete the referral process or request case closure. Screen prints of the ABP1 and CSED screen were added to the section.

TANF 306-3 - The legal cites were updated. The address to mail child support payments received in the OPA was updated. Also, reference was made to follow the division cash management policy. The policy on in excess payments was corrected after clarification from CSED. If the child support payment is in excess of the grant amount, the in excess is applied toward the arrears. If there are no arrears owing then it is returned to the non-custodial parent. The policy was clarified to review the CHSS screen in TEAMS at each FIA renewal and redetermination. A screen print of the CHSS screen was added to the section.

TANF 400-1 - Updated to reflect changes in the resource sections.

TANF 401-1 - The definition of liquid and non-liquid resources was added. The policy was also clarified that classification of a resource as non-liquid does not equate to inaccessibility. Policy clarified via specific statements that resource exclusions listed in TANF 402-1 and 403-1 apply to personally-owned property and not to property owned by a trust or corporation.

TANF 402-1 - Clarifies via specific statements the policy already in effect that resource exclusions listed in TANF 402-1 and 403-1 apply to personally-owned property and not to property owned by a trust or corporation. Policies for Contract for Deed and Life Estates were changed to match the policy in FMA and SSI-MA to maintain consistency with the programs. A reference was added to settlement payments that an asbestos settlement or proceeds from a lawsuit are considered countable.

TANF 402-3 - Clarifies via specific statements the policy already in effect that resource exclusions listed in TANF 402-1 and 403-1 apply to personally-owned property and not to property owned by a trust or corporation. Adds description of how income from a trust is determined.

TANF 500-1 - Updated to reflect changes in the income sections.

TANF 501-1 - Adds headings for Asbestos Settlements and Disability Payments to Children of Female Vietnam Veterans. A cross reference to TANF 803-1 was added to assistance programs for TANF received in more than one state. Clarifications and corrections were made to policies on Child Support Arrearages, Child Support or Alimony, Contributions, Foster Care, Gifts, Individual Development Accounts, Recoupment for Prior Overpayments, Sick Leave/Vacation Pay, Striker Income, Subsidized Guardianship, and Veterans Administration.

TANF 502-1 - Clarifications to policies on In-Kind Income, Military Pay, Older American's Act (Green Thumb), Sick Leave/Vacation Pay, Work Study, and Workforce Investment Act.

TANF 701-2 - Adds statement that if the individual is being referred to the WoRC program for case management purposes, the WoRC program in the county that is maintaining the case must manage the case. This is the procedure currently being followed, but it was never explicitly stated in the manual. This provision is now being added for clarification. References to Ed Scheibl were replaced with Jan Paulsen in the Workers Compensation Procedure for WEX. A note was added to Post-Secondary Education (PSE) that when an individual terminates employment without good cause to attend school PSE cannot be used as a FIA component until there is a break in TANF cash assistance coverage or he/she has overcome the job quit. Also, the hours of employment (either paid or unpaid) must be coded on FAIA or WRCS as EMP or JRT as appropriate.

TANF 702-1 - Policy was clarified that if a participant refuses to attend a conciliation meeting a sanction is recommended. If the conciliation meeting does not happen for any other reason, the loss of contact procedure should be followed.

TANF 702-2 - Page 1, a note was added to clarify that a sanction recommendation should never be made on a closed case. The Case Manager (either Eligibility or WoRC) should review the case on



TEAMS before making a sanction recommendation. In the review steps number 4, a clarification was added that all committee members must sign the HCS-766 "Sanction Recommendation". In review steps number 5 and good cause procedure number 5, the reference to Carol Carpenter was replaced with Jan Paulsen.

TANF 702-3 - Policy on what to consider the date of a sanction recommendation was added to TANF manual section 702-3. The policy was clarified to say that because a sanction recommendation should never be made on a closed case it couldn't be acted on if the case is closed. The only Case Manager who cannot first review to see if the case is closed is Tribal NEW. Policy was also clarified that if the case reopens before the effective date of closure a new sanction could be recommended. A note was added that Tribal NEW is not required to negotiate a conciliation agreement. The policy was clarified that TEAMS notice X217 "Sanction Follow-up" should not be mailed before the last day of the ineligibility month.

TANF 803-1 - The reference to Ed Scheibl was removed and replaced with Carol Carpenter for dealing with out-of-state TANF benefit verification. When dealing with retroactive time clock adjustments and inquiries from other states, the reference was changed from Ed Scheibl to Lisa Brittingham.

TANF 1506-3 - The legal cite was updated. All references to county office were changed to OPA. A cross reference was added when dealing with fair hearing requests for TANF cash assistance sanction or ineligibility month see TANF 702-4.

TANF 1510-1 - Removes reference to sending one closed case file per year to the Historical Society. The policy of sending closed case files to the Historical Society is being changed because it was determined that to do so violates confidentiality requirements of HIPAA and the TANF program. Clarifies policy regarding visually viewed and hard copy documents. Added reference to new forms included in 1511-1. Purging guide will be added based on public comment during training and the rule amendment process.

TANF 1511-1 - Clarifies where certain forms used for nursing home cases are to be filed. There is also added clarification on the organization of documents related to over/under issuance, IPV or fraud referral. Some form numbers have also been updated. A note has been added to stress that it is extremely rare for any program's policy to require verification of SSN. Due to HIPAA requirements added directive that if an authorization to release information is used to collect medical information the release and medical verification should be stapled together and filed in the permanent document section.

TANF 1512-1 - The general rule has been clarified regarding case transfers to counties that might have Tribal TANF. Also policy from the bulletin on special TANF processing for cases with a

WRC code has been incorporated. TEAMS CARC process has been updated to reflect expanded policy on which county can manage a case. If more than one program is open, the most restrictive program's policy must be followed. The TEAMS CARC process will be updated based on final decisions and negotiations with Northrop Grumman.

ARM 37.78.406

ARM 37.78.406 governs income disregards applied to a household's gross income for purposes of calculating net income to be counted in determining TANF eligibility and grant amount. Subsection (2)(a) of the rule currently provides for the deduction of 25% of the remaining earned income after the disregards in (1)(a) have been applied. The reference should be to subsection (2)(a) rather than (1)(a), however. The Department proposes to amend ARM 37.78.406 at this time to correct the error.

The proposed manual changes are available for public viewing at any county office of public assistance or at the central office of the Public Assistance Bureau at 1400 Broadway, Room A113, Helena, Montana and on the Department's website, [www.dphhs.state.mt.us/legal\\_section/proposed\\_manual\\_changes.htm](http://www.dphhs.state.mt.us/legal_section/proposed_manual_changes.htm). The policies or pages in the manuals that are being changed effective July 1, 2003 are clearly marked on the proposed manual replacement materials.

The incorporation and adoption of the manuals, including the proposed changes to the manuals, will not increase, decrease, or change the nature of any fees, costs, or benefits. There are approximately 6400 cases (approximately 17,000 individuals) presently receiving TANF cash assistance, all of which are impacted by the Department's administrative policies. There are approximately 79,454 individuals receiving medical care through the Medicaid program, all of which are impacted by the Department's administrative policies. The Department does not expect these amendments to have any significant impact on families in Montana.

4. The Department intends that these proposed amendments will be effective July 1, 2003.

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 May 22, 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](mailto:dphhslegal@state.mt.us). The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the

mailing list, please write the person at the address above.

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 April 14, 2003.

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

In the matter of the )  
amendment of ARM 37.14.1002 )  
and 37.14.1003 pertaining to )  
radiation general safety )  
provisions )

NOTICE OF PUBLIC HEARING  
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 16, 2003, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 5, 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.

37.14.1002 DEFINITIONS ~~(1)~~ As used in this subchapter:

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

~~(b) (2) "Dead-man switch" means a an underwriters laboratory (UL) switch so constructed that a single depression by the operator will provide a single exposure and that a circuit closing contact can only be maintained by continuous pressure by the operator does not provide a continuous or multiple exposure.~~

(c) through (j) remain the same but are renumbered (3) through (10).

(11) "NCRP" means the national council on radiation protection and measurements.

(k) through (n) remain the same but are renumbered (12) through (15).

(16) "Qualified expert" means a health physicist, medical physicist, radiologist, or other individual who can competently perform the calculations necessary to provide shielding requirements within the standards of this chapter.

(o) through (t) remain the same but are renumbered (17) through (22).

AUTH: Sec. 50-79-201 and 75-3-201, MCA

IMP: Sec. 50-79-101, 50-79-102, 50-79-103 and 75-3-201,  
MCA

37.14.1003 GENERAL SAFETY PROVISIONS (1) through (4)  
remain the same.

(5) The general shielding safety requirements are as follows:

(a) Before beginning construction of a new facility for the utilization of x-rays for diagnostic or therapeutic purposes, or prior to the modification of any such facility, floor plans detailing proposed equipment arrangement and shielding precautions shall be submitted to a qualified expert.

(b) The qualified expert shall review the floor plans to determine whether the plans are consistent with NCRP Report No. 49, or its successor, whether the plans meet the requirements of Title 10, part 20 of the Code of Federal Regulations, and whether the plans meet the requirements of this subchapter.

(c) Within 30 days of reaching a determination that the floor plans meet the criteria stated in (5)(b), the qualified expert shall submit to the department a written report containing, at a minimum, the following information:

(i) name, address, and credentials of the qualified expert;

(ii) facility site name, address, and telephone number;

(iii) facility owner's name, address, and telephone number;

(iv) whether the report pertains to construction of a new facility, or modification of an existing facility;

(v) name and address of the manufacturer or facility from which the equipment was purchased;

(vi) the date of installation; and

(vii) the qualified expert's opinion that the proposed equipment arrangement and shielding precautions are consistent with NCRP Report No. 49, or its successor, and are in compliance with the requirements of Title 10, part 20 of the Code of Federal Regulations, and the requirements of this subchapter.

~~(a) (d) Each installation shall be provided with such primary protective barriers and/or secondary protective barriers as are necessary to assure compliance with ARM 37.14.705, 37.14.708 and 37.14.709. This requirement shall be deemed to be met if the thickness of such barriers are equivalent to those as computed in accordance with Appendix C of this subchapter, National Bureau of Standards Handbook 76: "Medical X-ray Protection Up to Three Million Volts." determined by a qualified expert to be consistent with NCRP Report No. 49 or its successor.~~

(b) (e) Lead barriers shall be mounted in such a manner that they will not sag or cold-flow because of their own weight and shall be protected against mechanical damage. Lead shielding less than  $\pm$  one mm thick shall be bonded to panels of some rigid supporting material. The minimum allowable thickness of lead is 0.79mm (1/32 inches or two pounds per square foot).

(c) through (f) remain the same but are renumbered (f) through (i).

(6) through (8) remain the same.

AUTH: Sec. 50-79-201, 50-79-202, 50-79-204, 75-3-201 and 75-3-204, MCA

IMP: Sec. 50-79-101, 50-79-102, 50-79-103, 50-79-104, 50-79-105, 50-79-106, 50-79-107, 50-79-108, 50-79-201, 50-79-202, 50-79-203, 50-79-204 and 75-3-201, MCA

3. The primary purpose of ARM Title 37, chapter 14, is to regulate sources of radiation, including the use of x-ray systems for diagnostic and therapeutic purposes, and the protection of facility employees engaged in the operation of x-ray systems. The Department has become aware of concerns regarding the current rules expressed by healthcare providers, architects, radiological health physicists and radiation safety officers. Some of said concerns are that the current rules (as they pertain to the use of x-ray systems) are vague, difficult to understand, and provide little or no guidance regarding the general design of x-ray facilities (including shielding), appropriate reference materials, or desired training, experience, and credentials of persons qualified to determine compliance.

The Department has reviewed the current rules, and agrees with many of these criticisms. It is therefore necessary for the Department to amend the current rules in order to provide for better protection of facility personnel engaged in the operation of x-ray systems. In order to address the shortcomings of the current rules, the Department proposes to adopt the foregoing amendments to ARM 37.14.1002 and 37.14.1003.

The proposed amendments define certain professionals deemed to be of sufficient education and training to determine compliance with ARM Title 37, chapter 14, and require review of plans by said professionals prior to construction of new facilities or modification of current facilities. The proposed amendments also identify reference materials to which said professionals must refer, and state minimum specifications for shielding.

It is the Department's position that determinations of compliance with the requirements of ARM Title 37, chapter 14 (including compliance with NCRP Report No. 49 and CFR Title 10, part 20) should be made by a person with a sufficient level of training, education, and experience to competently perform the calculations necessary to determine compliance. The professionals deemed qualified by the Department to make said determinations and calculations are identified in proposed ARM 37.14.1002(16) (defining "qualified expert").

The alternatives are to either permit persons with a lesser level of education, training, or experience to perform said calculations, or to require a greater level of education, training and experience. Allowing persons with a lesser level of education, training, or experience to perform said

calculations could result in a potential risk of Department approval of x-ray systems and facilities which do not adequately protect facility employees from exposure to radiation. Requiring a greater level of education, training and experience could result in a situation where no professional within the state would have sufficient education, training and experience to satisfy the requirements of the rule.

The Department also proposes the designation of Title 10, part 20 of the Code of Federal Regulations, and the National Council on Radiation Protection and Measurements' Report No. 49 as appropriate measures of compliance with ARM Title 37, chapter 14. CFR Title 10, part 20, contains the federal standards for protection against ionizing radiation by which owners and operators of x-ray facilities are bound. NCRP Report No. 49 is the most current industry standard manual pertaining to radiation protection.

Because facilities are already required to comply with CFR Title 10, part 20, and because NCRP Report No. 49 is the most current widely-accepted, comprehensive manual available in this field, the alternatives to adoption of CFR Title 10, part 20 and NCRP Report No. 49 would be to either not provide outside references to which qualified experts must refer, or to restate the entire contents of the federal rules and Report No. 49 within ARM Title 37, chapter 14.

The result of not providing for outside references would be that no guidance would be provided to qualified experts pertaining to their determination of compliance with ARM Title 37, chapter 14, leaving a determination of compliance within the absolute discretion of the qualified expert. This, in turn, could lead to inconsistent interpretation and application of ARM Title 37, chapter 14. The result of restating the entirety of the applicable federal rules and Report No. 49 in ARM Title 37, chapter 14, would be to dramatically increase the length of the state rules without any recognizable benefit or increase in safety to facility employees.

The Department also proposes specification of a minimum allowable thickness of lead shielding. It is the Department's position that the proposed specifications provide for the minimum amount of shielding necessary to protect facility employees involved in the operation of x-ray systems. The alternatives are to not set a minimum thickness, to set a minimum thickness at a lesser level than specified in the proposed amendments, or to set a minimum thickness at a level greater than specified in the proposed amendments.

The result of not setting a minimum requirement is to leave the determination to the discretion of the facility or a qualified expert inspecting plans for the facility, which could result in inconsistent interpretation and application of ARM Title 37, chapter 14, and possibly in an inadequate level of protection of

facility employees. The result of setting a minimum thickness at a lesser level than specified in the proposed amendments would be to provide for an inadequate level of protection of facility employees. The result of setting a minimum thickness at a level greater than specified in the proposed amendments would be to increase the expense of construction without resulting in a measurable benefit to facility employees.

The proposed amendments to ARM Title 37, chapter 14, will neither increase nor decrease a monetary amount to which facilities affected by the proposed amendments pay or receive.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on May 22, 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.

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

Dawn Sliva  
Rule Reviewer

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

Certified to the Secretary of State April 14, 2003.



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

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of ARM 37.86.805,	)	ON PROPOSED AMENDMENT
37.86.1004, 37.86.1506,	)	
37.86.1802, 37.86.1807,	)	
37.86.2207, 37.86.2405,	)	
37.86.2505 and 37.86.2605	)	
pertaining to hearing aid	)	
services, reimbursement for	)	
source based relative value	)	
for dentists, home infusion	)	
therapy services, prosthetic	)	
devices, durable medical	)	
equipment (DME) and medical	)	
supplies, early and periodic	)	
screening, diagnostic and	)	
treatment services (EPSDT),	)	
transportation and per diem	)	
and specialized nonemergency	)	
medical transportation	)	

TO: All Interested Persons

1. On May 16, 2003, at 3:00 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 of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 5, 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.

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

(a) remains the same.

(b) the amount specified for the particular service or item in the department's fee schedule. The department hereby adopts and incorporates by reference the department's fee schedule dated ~~January 1, 2002~~ July 2003 which sets forth the

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

(2) remains the same.

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

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

37.86.1004 REIMBURSEMENT METHODOLOGY FOR SOURCE BASED RELATIVE VALUE FOR DENTISTS (1) For procedures listed in the relative values for dentists scale, reimbursement rates shall be determined using the following methodology:

(a) The fee for a covered service shall be the amount determined by multiplying the relative value unit specified in the relative values for dentists scale by the conversion factor specified in (1)(b) or (c). The department hereby adopts and incorporates by reference the relative values for dentists scale published January 2003 ~~for the year 2002~~. Copies of the relative values for dentists scale are available upon request from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(b) The conversion factor used to determine the medicaid payment amount for services provided to eligible individuals age 18 and above is ~~\$19.87~~ 19.99.

(c) The conversion factor used to determine the medicaid payment amount for services provided to eligible individuals age 17 and under is ~~\$25.83~~ 25.99.

AUTH: Sec. 53-6-113, MCA

IMP: Sec. 53-6-101, MCA

37.86.1506 HOME INFUSION THERAPY SERVICES, REIMBURSEMENT

(1) Subject to the requirements of these rules, the Montana medicaid program will pay for home infusion therapy services on a fee basis, as specified in the department's home infusion therapy services fee schedule. The department hereby adopts and incorporates ~~herein~~ by reference the home infusion therapy services fee schedule ~~(July 1996)~~ dated July 2003. A copy of the home infusion therapy services fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. The specified fees are on a per day or a per dose basis as specified in the fee schedule. The fees are bundled fees which cover all home infusion therapy services as defined in ARM 37.86.1501.

(2) and (3) remain the same.

(4) Subject to (4)(c), professional nursing services provided as part of a recipient's home infusion therapy program are separately billable and will be reimbursed in the following manner:

(a) remains the same.

(b) nursing services provided by licensed nurses employed by the home infusion therapy agency will be reimbursed to the agency under the methodology specified in ARM ~~46.12.1470~~ 37.86.2207; and

(c) remains the same.

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

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

37.86.1802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS (1) through (3) remain the same.

(4) The following items are not reimbursable by the program:

(a) through (e) remain the same.

(f) purchase of air fluidized beds; and

(g) any delivery, mailing or shipping fees or other costs of transporting the item to the recipient's location; and

(h) disposable incontinence products.

(5) remains the same.

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

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

37.86.1807 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 February 1, dated July 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) through (5) remain the same.

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

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

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

(2) Reimbursement for outpatient chemical dependency treatment, nutrition, and private duty nursing services is specified in the department's EPSDT fee schedule. The department hereby adopts and incorporates herein by reference the department's EPSDT fee schedule dated ~~January 1~~ July 2003. A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Medicaid Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) through (11) 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 February 1, dated July~~ 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) through (5) remain the same.

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

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

37.86.2505 SPECIALIZED NONEMERGENCY MEDICAL TRANSPORTATION, REIMBURSEMENT (1) remains the same.

(2) The department hereby adopts and incorporates by reference the department's fee schedule ~~effective dated July 2002~~ 2003 which sets forth the reimbursement rates for specialized nonemergency medical transportation services and other medicaid services. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

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

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

37.86.2605 AMBULANCE SERVICES, REIMBURSEMENT (1) remains the same.

(2) The department hereby adopts and incorporates by reference the department's fee schedule ~~effective dated July 2002~~ 2003 which sets forth the reimbursement rates for ambulance services and other medicaid services. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) through (5) remain the same.

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

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

3. ARM 37.86.805, 37.86.1506, 37.86.1807, 37.86.2207, 37.86.2405, 37.86.2505 and 37.86.2605

These rules are amended to reference the Department's fee schedules dated July 2003. These fee schedules will be increased +0.6%. This change will remove the 2.6% fee reduction implemented for state fiscal year (SFY) 2003 in order for the Medicaid program to remain within the budget appropriation of

the 2001 Legislature. This cost savings measure terminates on June 30, 2003. In addition, this change reflects the current 2% provider rate reduction as outlined in the Governor's proposed budget.

The fee schedules referenced in these rules may be revised after the publication of the first notice of these rules. This may be necessary based on the 2003 Legislative Session's final appropriation for Medicaid services and comments from the public. As of the publication date of these rules a final appropriation amount is unknown. This rule notice is being published prior to the final action of the Legislature in order to have an effective date of July 1, 2003.

A copy of the fee schedule will be posted on the internet at the Department's home page at the following address: <http://www.dphhs.state.mt.us/hpsd/medicaid/medpi/medpi.htm> or a copy may be reviewed or obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Medicaid Services Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

The proposed amendment impacts approximately 11,600 providers enrolled in Montana Medicaid and approximately 17,000 Medicaid recipients that utilized these services in SFY 2002.

ARM 37.86.1004

ARM 37.86.1004(1)(a) is amended to update the reference to the relative value scale for dentists (RVD) to the relative value units (RVU) as of January 1, 2003, published by Relative Value Studies, Inc. This rule change is proposed to be applied retroactively to January 1, 2003. There is no adverse impact to retroactive application. The rule change reflects the Department's practice of using the current RVD.

ARM 37.86.1004(1)(b) is amended to increase the conversion factor used to determine the medicaid payment amount for services provided to eligible individuals 18 and above. The proposed increase in the conversion factor is an increase of +0.6% to \$19.99. This change reflects the termination of the 2.6% fee reduction implemented July 1, 2002 through June 30, 2003. In addition, this change reflects the current 2% provider rate reduction as outlined in the Governor's proposed budget. This change is subject to revision based on the final actions of the 2003 Legislative Session and comments from the public.

ARM 37.86.1004(1)(c) is amended to increase the conversion factor used to determine the medicaid payment amount for services provided to eligible individuals 17 and under. The proposed increase in the conversion factor is an increase of +0.6% to \$25.99. This change reflects the termination of the 2.6% fee reduction implemented July 1, 2002 through June 30, 2003. In addition, this change reflects the current 2% provider

rate reduction as outlined in the Governor's proposed budget. This change is subject to revision based on the final actions of the 2003 Legislative Session and comments from the public.

The proposed amendment impacts approximately 450 providers enrolled in Montana Medicaid and approximately 70,000 Medicaid recipients that utilized these services in SFY 2002.

ARM 37.86.1802

Due to anticipated Medicaid funding cutbacks by the 2003 Legislative session the Department must cut \$250,000 in general fund for the 2004/2005 biennium. To comply with this directive, the Department will no longer cover disposable diapers, pads and wipes. The Department has covered these items in the past but these are convenience items. This rule amendment specifically lists these items as not reimbursable by the program. The Department will continue to cover reusable diapers. This change will save the Department \$239,000 general fund and affect approximately 1300 recipients.

Typographical corrections are also being made to these rules to correct erroneous cross references.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on May 22, 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.

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

Dawn Sliva  
Rule Reviewer

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

Certified to the Secretary of State April 14, 2003.

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

In the matter of the )  
amendment of ARM 37.85.212 )  
pertaining to resource based )  
relative value scale (RBRVS) )  
fees )

NOTICE OF PUBLIC HEARING  
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 16, 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 amendment of the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 5, 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 rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.85.212 RESOURCE BASED RELATIVE VALUE SCALE (RBRVS)  
REIMBURSEMENT FOR SPECIFIED PROVIDER TYPES (1) For purposes of this rule, the following definitions apply:

(a) through (e) remain the same.

(f) "Resource based relative value scale (RBRVS)" means the most current version of the medicare resource based relative value scale contained in the physicians' medicare fee schedule adopted by the centers for medicare and medicaid services of the U.S. department of health and human services and published in the Federal Register annually, as amended through ~~November 1, 2001~~ December 31, 2002 which is hereby adopted and incorporated by reference. A copy of the medicare fee schedule may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. The RBRVS reflects RVUs for estimates of the actual effort and expense involved in providing different health care services.

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

(3) Except as set forth in (8), (9), (10) and (11) the fee for a covered service provided by any of the provider types specified in (2) is determined by multiplying the relative value units determined in accordance with (7) by the conversion factor

specified in (4), and then multiplying the product by a factor of one plus or minus the applicable policy adjustor as provided in (5), if any; provided, however, that rates for procedure codes included in the conversion to the RBRVS reimbursement methodology are:

(a) remains the same.

(b) for state fiscal year 1999, no less than 80% of and no more than 145% of the medicaid fee for that procedure in state fiscal year 1997;

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

(ii) those codes restricted to 145% of the medicaid fee of the level of state reimbursement in state fiscal year 1997 which were at the lowest percentage of medicare reimbursement in state fiscal year 2002 shall be frozen at their state fiscal year (SFY) 2002 levels, less 2.6%;

(g) effective state fiscal year (SFY) 2004, all codes will be paid at the federal RVUs without regard to a transition corridor.

(4) The conversion factor used to determine the medicaid payment amount for the services covered by this rule for state fiscal year ~~2003~~ 2004 is:

(a) ~~\$31.90~~ 30.34 for medical and surgical services, as specified in (2); and

(b) ~~\$26.25~~ 14.06 for anesthesia services.

(5) through (7) remain the same.

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

(a) remains the same.

(b) For state fiscal year ~~2003~~ 2004, the "by-report" rate is 51% of the provider's usual and customary charges.

(9) through (14) remain the same.

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

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

3. The Medicaid program provides medical assistance to low income residents of Montana. The State of Montana and the federal government jointly fund the program. The purpose of the rule amendment is to update the resource based relative value scale (RBRVS) fees in accordance with the most recently proposed relative value units (RVU) released by Centers for Medicare and Medicaid (CMS).

RVUs are a numerical value assigned to each health care provider procedure code. The value is based on the comparison of relative effort and expense expended for provider services. The RVUs are developed by CMS based on economic research done to assure services are reimbursed appropriately. Work units, malpractice and office/facility practice expenses are included in the calculation of RVUs.

ARM 37.85.212 is amended annually because the RBRVS



reimbursement system requires annual updates to RVUs. This rule change incorporates the revision of the by-report reimbursement rate, which is set based on actual claims history from the most recent period.

The proposed rule amendment also states that the transition period has ended. The transition period was used to gradually introduce the fee changes from initial implementation of the RBRVS in August of 1997. The transition has been completed.

The end of the transition corridor will increase the medical/surgical conversion factor and will decrease the anesthesia conversion factor, while leaving the aggregate payments unaffected.

This rule amendment also incorporates the revision of the conversion factor for reimbursement level changes. For SFY 2004, the conversion factor was adjusted to incorporate the expiration of the 2.6% reductions implemented July 2002 and the implementation of the 2% rate reduction to be implemented July 1, 2003, per legislative direction. Effective July 1, 2003, the medical and surgical services conversion factor is \$30.34, while the anesthesia conversion factor is \$14.06. This change is subject to revision based on the final actions of the 2003 Legislative Session and comments from the public. The budget impact is approximately \$260,000.

Leaving the rules unchanged is not an option, because the RBRVS reimbursement system requires annual updates to RVUs.

This rule amendment is subject to change as there may be further direction from the 2003 Legislative Session. Additionally, the changes to the conversion factors caused by the removal of the transition corridors are estimated here and may change when the latest actual data are used in the fee-setting process.

The proposed amendment to ARM 37.85.212 impacts approximately 8,000 Medicaid RBRVS providers and approximately 75,000 Medicaid clients that utilized these services in SFY 2002.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on May 22, 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.

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

Dawn Sliva  
Rule Reviewer

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

Certified to the Secretary of State April 14, 2003.

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

In the matter of the )  
amendment of ARM 37.49.101, )  
37.49.102, 37.49.108, )  
37.49.112, 37.49.401, )  
37.49.405, 37.49.406, )  
37.49.412, 37.49.414 and )  
37.49.701 pertaining to )  
foster care services )

NOTICE OF PUBLIC HEARING  
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On May 14, 2003, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on May 5, 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.

37.49.101 IV-E FOSTER CARE ELIGIBILITY: DEFINITIONS For purposes of this subchapter, the following definitions apply:

~~(1) "Business asset development account (BADA)" means an account in a bank or other similar financial institution containing funds to be used for business development such as the purchase of assets or operation or maintenance of a business. The account must be in the joint names of a member of the filing unit and capital opportunities or other lending institution. All funds from the account must be disbursed directly to vendors of the business.~~

~~(2) (1) "Child" means a person who is under age 18 or who is age 18 or older if the person is a full-time student in a secondary school who is reasonably expected to obtain a secondary school diploma or its equivalent in or before the month of the person's 19th birthday.~~

~~(3) (2) "Child-caring Child care institution" means a public or a private nonprofit institution, or public institution which accommodates no more than 25 children, which is licensed or approved by the state to provide care for no more than 25~~

children who have been removed from the home of the children's parents or guardians by a voluntary agreement or by court order. The term does not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children determined to be delinquent.

~~(4)~~ (3) "Child support rights" means a child's legal entitlement to cash assistance from a parent with whom the child does not live.

~~(5)~~ (4) "Department" means the department of public health and human services.

~~(6)~~ (5) "Dependent child" means a child as defined in this rule who is deprived of parental support or care due to any of the causes set forth in ARM 37.49.113, lives with a specified relative as provided in ARM 37.49.112 and lacks income and resources sufficient for the child's needs according to the assistance standards and resource limits set forth in ARM 37.49.407 and 37.49.501.

~~(7)~~ (6) "Earned income" means income information acquired by researching the data in the automated eligibility system maintained by the department, the automated wage and labor data base maintained by the Montana department of labor and industry and the automated income tax data base maintained by the Montana department of revenue. Income information may also be obtained from the child or parents all income earned by an individual from work or an activity in which the individual is engaged, including but not limited to wages, salary, commissions, and tips. Earned income means gross earned income prior to any deductions or withholding for income or social security taxes, garnishments, attachments, income deductions, insurance premiums, or any other purpose.

~~(8)~~ "Earned income from self-employment" means the total profit from the business enterprise determined by subtracting business expenses as allowed in ARM 37.49.405 from gross revenue. Returns from capital investments are earned income when produced as a result of the individual's own efforts.

~~(9)~~ (7) "FAIM TANF cash assistance" means assistance in the form of monthly cash payments provided in the to eligible families achieving independence in Montana program.

~~(10)~~ (8) "Filing unit" means the child for whom IV-E eligibility is being sought and the persons with whom the child lives whose income and resources are considered in determining the child's eligibility.

~~(11)~~ (9) "Foster home" means a home licensed ~~or approved~~ by the state to provide care for a child or children who have been removed from the home of the child or children's parents or guardians by voluntary agreement or by court order.

~~(12)~~ (10) "IV-E foster care maintenance payments" means monthly cash payments made on behalf of a IV-E eligible child to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child and reasonable travel for a child's visitation with family or other caretakers. Local travel associated with providing the items listed above is also an allowable expense. In the case of child

care institutions, such term must include the reasonable costs of administration and operation of such institutions as are necessarily required to provide the items described above for the support and maintenance of a child living in a foster home, child caring institution, or kinship placement pursuant to the federal Social Security Act, subchapter IV, part E, 42 USC 670 through 672.

~~(13)~~ (11) "Gross monthly income" means all earned and unearned income received in the month being considered, except for income excluded under ARM 37.49.412 and 37.49.414. In stepparent household cases as described in ARM 37.49.201, gross monthly income includes any income of the stepparent deemed available to the spouse as unearned income as provided in ARM 37.49.406.

~~(14)~~ (12) "Kinship placement foster care" means an out of home placement in the home of an appropriate relative who is not required to be licensed as a foster care home a youth care facility in which substitute care is provided to one to six children or youth other than the kinship parent's own children, stepchildren or wards. The substitute care may be provided by any of the following:

- (a) a member of the child's extended family;
- (b) a member of the child's or family's tribe;
- (c) the child's godparents;
- (d) the child's stepparents; or
- (e) a person to whom the child, child's parents or family ascribe a family relationship and with whom the child has had a significant emotional tie that existed prior to the department's involvement with the child or family.

~~(15)~~ (13) "Married" means that a legally recognized marital relationship exists between two persons, regardless of whether the marriage was created ceremonially or by common law.

~~(16)~~ (14) "Medical support rights" means a child's legal entitlement to health insurance coverage and/or assistance in paying medical expenses from a parent with whom the child does not live.

~~(17)~~ (15) "Minor parent" means a person under the age of 18 who is the biological or adoptive parent of a dependent child who is in the care of the minor parent.

~~(18)~~ (16) "Month of eligibility" means the month in which either:

- (a) the child's parent or legal guardian entered into a voluntary placement agreement in regard to the child; or
- (b) the petition was filed which resulted in a judicial determination to the effect that it would be contrary to the welfare of the child to remain in the home and that reasonable efforts have been made to prevent or eliminate the need to remove the child from the home.

~~(19)~~ (17) "Net monthly income" means gross monthly income less any earned or unearned income excluded pursuant to ARM 37.49.412 and 37.49.414 and less any earned income disregarded in ARM 37.49.413.

~~(20)~~ "Out of home care" means full-time care of a child in an out of home setting for the purpose of providing food,

~~shelter, security, safety, guidance, and, if necessary, treatment to children who are without the care and guidance of their parents or guardians. Out of home care includes, but is not limited to, care provided in child care institutions, foster homes, and kinship placements.~~

~~(21) (18) "Placing worker" means an individual who has the authority and responsibility to make decisions regarding the placement of a child who has been removed from the child's home by a voluntary agreement entered into by the child's parent or legal guardian or as a result of a judicial determination that removal from the home will serve the child's welfare. A placing worker may be an employee or agent of a governmental unit, private organization, or other entity, including but not limited to the department's child and family services division, an Indian tribe, and department of justice corrections and Lutheran social services.~~

~~(22) "Primary wage earner (PWE)" means, in a household where both of a child's natural and/or adoptive parents are residing with the child, the parent who earned the most total gross income in the 24 month period immediately preceding the month of eligibility. If both parents earned the same amount, the PWE is whichever parent is designated by the eligibility worker.~~

~~(19) "Substitute care" means full-time care of a youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or who are without the care and supervision of their parents or guardian.~~

~~(23) (20) "Unearned income" means all income that is not earned income as defined in this rule and includes but is not limited to social security benefits, veteran's benefits or payments, worker's compensation payments, unemployment compensation payments, child support payments, and dividends paid on capital investments.~~

~~(21) "Youth care facility" means a facility that is licensed by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth foster homes, kinship foster homes, youth group homes, youth shelter care facilities, child care agencies, transitional living programs and youth assessment centers. Youth care facilities must meet the definition of a child care institution in order to receive IV-E foster care maintenance payments.~~

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

37.49.102 IV-E FOSTER CARE ELIGIBILITY: GENERAL REQUIREMENTS (1) IV-E eligibility for a child who has been placed in ~~out of home~~ substitute care shall be determined based on circumstances in the month of eligibility as defined in ARM 37.49.101.

- (2) A child shall be determined IV-E eligible if:
  - (a) the child was placed in ~~out of home~~ substitute care:

(i) pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian; or

(ii) by an order issued by a court of competent jurisdiction pursuant to the provisions of Title 41, chapter 3, MCA;

(b) the state or tribe has legal responsibility for the child's care and placement in accordance with the requirements of the Title IV-E agreement between the tribe and the state;

(c) the child:

(i) meets the requirements for IV-E eligibility as specified in ARM 37.49.101 through 37.49.502 in the month of eligibility; or

(ii) was living in the home of a the legal custodial specified relative as provided in ARM 37.49.112 during any month in the ~~6~~ six months immediately prior to the month of eligibility and would have met the requirements for IV-E eligibility as specified in ARM 37.49.101 through 37.49.502 during said month; and

(d) meets all other eligibility requirements of ARM 37.49.101 through ARM 37.49.502.

(3) If a child is determined to be IV-E eligible ~~in the month of eligibility~~, eligibility continues as long as the child remains in state ~~or tribal~~ custody or jurisdiction until age 18, regardless of subsequent changes in the filing unit's income or resources. However, ~~eligibility no longer exists~~ IV-E funds cannot be used for maintenance payments when:

(a) deprivation of parental support as defined in ARM 37.49.113 no longer exists; or

(b) the child is age 18, ~~unless: the child is a full-time student in a secondary school who is reasonably expected to obtain a secondary school diploma or its equivalent on or before the month of the child's 19th birthday.~~

(i) the child is age 18 and a full-time student in a secondary school who is reasonably expected to obtain a secondary school diploma or its equivalent in or before the month of the child's 19th birthday; and

(ii) the child is under the jurisdiction of a tribe which has a code that allows for foster care past age 18;

(c) a judicial determination that:

(i) reasonable efforts to finalize the permanency plan have not been made within 12 months from the time the court determined that the child was subjected to abuse or neglect; or

(ii) 12 months after the first 60 days of the removal from the home, whichever comes first; or

(iii) from the time of the last permanency plan hearing or within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary;

(d) the child is not placed in a IV-E eligible and licensed foster care placement; or

(e) the child's income and/or resources exceed the limits specified in ARM 37.49.407 and 37.49.501.

(4) A child who is IV-E eligible and who meets the requirements of ~~(5)~~ (3) may receive benefits consisting of:

- (a) IV-E foster care medicaid coverage; and
- (b) IV-E foster care maintenance payments.

~~(5) After a child has been determined to be IV-E eligible, eligibility for IV-E foster care medicaid coverage and maintenance payments shall be determined based on the income and resources of the child in subsequent months. If the child's countable income and/or resources exceed the maximum allowable income and resources provided in ARM 37.49.407 and ARM 37.49.501, the child shall not be entitled to benefits although the child may still be IV-E eligible.~~

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

37.49.108 IV-E FOSTER CARE ELIGIBILITY: AGE (1) As a condition of IV-E eligibility, a child must be either:

(a) remains the same.

(b) age 18 or older if the child is a full-time student in a secondary school who is reasonably expected to obtain a secondary school diploma or its equivalent in or before the month of the child's 19th birthday and the child is under the jurisdiction of a tribe which has a tribal code that allows for foster care if the child is over 18.

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

37.49.112 IV-E FOSTER CARE ELIGIBILITY: LIVING WITH A SPECIFIED RELATIVE (1) As a condition of IV-E eligibility, at any time within ~~6~~ six months immediately prior to the month of eligibility, the child must have been living with any relation, from whose custody the child is being removed, who is related by blood including those of half blood, marriage, or adoption who is within the fifth degree of kinship to the child in a place of residence maintained as their home.

(a) The relative with whom the child resided, within the previous six months and from whose legal custody and from whom the child is being removed, must be the child's parent, grandparent, great grandparent, great-great grandparent, great-great-great grandparent, sibling, uncle, aunt, great uncle, great aunt, great-great uncle, great-great aunt, first cousin, first cousin once removed, nephew, niece, or step relatives of the same degree of kinship; for example, stepparent, stepgrandparent, or stepsibling.

(b) A spouse of any of the relatives named above is considered to be within the required degree of kinship, even after the marriage is terminated by death or divorce.

(c) The specified relative, who signed the parental agreement or against whom the petition is filed to remove the child, must have legal custody of the child.

~~(2) IV-E eligibility may exist even though either the child or the relative is temporarily absent from the home, if the relative continues to exercise responsibility for the care and control of the child and plans to resume exercising~~



~~responsibility for the care and control of the child at a later date, and the temporary absence does not exceed 90 days.~~

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

37.49.401 IV-E ELIGIBILITY: A CONDITION OF NEED MUST EXIST (1) ~~A child is not IV-E eligible unless the filing unit has income and resources equal to or less than the applicable income and resource standards established in ARM 37.49.407 and 37.49.501 in the month of eligibility the requirements in ARM 37.49.102 are met.~~

(2) ~~After the initial determination of IV-E eligibility, the child is not eligible for IV-E benefits as specified in ARM 37.49.102(4)(a) and (b) unless the child has income and resources equal to or less than the applicable income and resource standards established in ARM 37.49.407 and 37.49.501. :~~

(a) deprivation of parental support as defined in ARM 37.49.113 exists, and:

(i) the child is 18 years or less; or

(ii) the tribal code allows for a foster care youth who is age 18 and a full-time student in a secondary school and who is reasonably expected to obtain a secondary school diploma or its equivalent in or before the month of the child's 19th birthday; and

(b) a judicial determination that:

(i) reasonable efforts to finalize the permanency plan have been made within 12 months from the time the court determined that the child was subjected to abuse or neglect; or

(ii) 12 months after the first 60 days of the removal from the home, whichever comes first; or

(iii) from the time of the last permanency plan hearing, or within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary;

(c) the child is placed in a IV-E eligible and licensed foster care placement; and

(d) the child has income and resources equal to or less than the applicable income and resource standards established in ARM 37.49.407 and 37.49.501.

AUTH: Sec. 53-2-201 and 53-6-113, MCA  
IMP: Sec. 53-2-201, 53-2-613 and 53-6-131, MCA

37.49.405 IV-E FOSTER CARE ELIGIBILITY: TREATMENT OF INCOME (1) ~~All available income of any required member of the filing unit is counted in determining IV-E eligibility, unless a specific provision elsewhere in this chapter provides that the income will be excluded, disregarded, or otherwise not counted.~~

~~(a) Income is considered available both when actually available and when a member of the filing unit has a legal interest in it and the legal ability to make the income available for support and maintenance.~~

~~(2) In determining the amount of income earned from self-~~

~~employment, the total profit from the business enterprise is calculated by subtracting allowable business expenses from gross receipts or revenue. This total profit, unless it is excluded under a provision of ARM 37.49.412, is the gross income to which the earned income disregards specified in ARM 37.49.413 are applied to arrive at countable earned income.~~

~~(a) Business expenses are costs directly related to the production of goods or the furnishing of services and without which the goods could not be produced or the services furnished. Allowable business expenses include materials, labor, tools, rental equipment, supplies, and utilities.~~

~~(b) Allowable business expenses do not include depreciation or personal work related expenses such as clothing or transportation to the site of employment.~~

~~(3) (2) Income averaging may be used to determine monthly income if:~~

~~(a) income information is obtained for an annual or quarterly period of time is paid during 1 month but is intended to cover a period of time which is greater than 1 month. In such cases, the monthly income is calculated by dividing the total amount of the payment or payments income by the number of months the payment or payments are intended to cover. An example would be an employee who receives a paycheck during only 9 months of the year but whose salary is considered to be for a 12 month period; or~~

~~(b) income fluctuates significantly from month to month. An example would be an employee paid an hourly wage whose hours worked vary from month to month.~~

~~(4) (3) Income tax refunds are not considered as either earned or unearned income but are considered a resource to the filing unit.~~

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

IMP: Sec. 53-2-201 and 53-6-131, MCA

37.49.406 IV-E ELIGIBILITY: DEEMING OF INCOME (1) The income of certain individuals who live with the filing unit but are not members of the filing unit is considered in determining IV-E eligibility. The income of such individuals is considered by means of a procedure known as "deeming" which is described in (3) below.

(2) The income of the following individuals is deemed to be available to the filing unit:

(a) a stepparent, i.e., a person who is not the natural or adoptive parent of any child in the filing unit but is married to the parent of a child in the filing unit;

(b) a sponsor of an alien for the 3 three years immediately following the alien's entry into the United States; and

(c) a parent of a minor parent if the minor parent's child is the child placed in out-of-home substitute care.

(3) The following amounts are subtracted from the income of individuals whose income is required to be deemed, and the net amount obtained is counted as unearned income available to

the filing unit, regardless of whether that amount is actually made available to the filing unit for its support and maintenance:

(a) a standard work expense of \$90 is subtracted from the individual's earned income, if any;

(b) an amount of earned income, unearned income, or a combination of both which is equal to the net monthly income standard for a family consisting of the individual whose income is deemed and all persons who live with the individual and qualify as the individual's dependents for federal income tax purposes but are not included in the filing unit;

(c) actual verified amounts paid by the individual to persons who do not live with the individual but who qualify as dependents of the individual for federal income tax purposes; and

(d) actual verified amounts of alimony or child support paid by the individual to persons not living with the individual.

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

IMP: Sec. 53-2-201 and 53-6-131, MCA

37.49.412 IV-E FOSTER CARE ELIGIBILITY: EXCLUDED EARNED INCOME (1) The following earned income is not counted when comparing the filing unit's gross monthly income to the applicable G.I. standard:

~~(a) for any 6 months of the calendar year, the earned income of a dependent child who is a full-time student;~~

~~(b) income received by a dependent child under section 503 of the Job Training Partnership Act (JTPA) of 1982, P.L. 97-300, for the first 6 months of participation in JTPA training; and~~

~~(c) earned income tax credit (EITC) advance payments and refunds.~~

(2) The following earned income is not counted when comparing the filing unit's net monthly income to the applicable NMI standard:

~~(a) for any 6 months of the calendar year, the earned income of a dependent child who is a full-time student; and~~

~~(b) during the 7th and following months of the calendar year in which the child has received IV-E benefits, the earned income of a dependent child who is a full-time student if the child's total income including the child's earned income does not exceed the G.I. standard for a household of that size;~~

~~(c) income received by a dependent child under section 503 of the JTPA, for the first 6 months of participation in JTPA training; and~~

~~(d) (b) EITC advance payments and refunds.~~

(3) Income tax refunds are not considered as either earned or unearned income but are considered a resource to the filing unit.

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

IMP: Sec. 53-2-201 and 53-6-131, MCA

37.49.414 IV-E FOSTER CARE ELIGIBILITY: EXCLUDED UNEARNED INCOME (1) The following unearned income is not counted when comparing the filing unit's gross monthly income and net monthly income to the applicable G.I. and NMI standards:

(a) complementary assistance from other agencies and organizations which consists of:

(i) goods and services not intended to be covered by the FAIM TANF cash assistance grant; or

(ii) a supplement to FAIM TANF cash assistance payments for a different purpose; ;

(b) agent orange settlement payments;

(c) undergraduate student loans and grants for educational purposes such as Pell grants, supplemental educational opportunity grants, state student incentive grants, college work study, BIA assistance, veterans financial assistance, or university year for action (UYA);

(d) low income energy assistance payments (LIEAP);

(e) the value of the food stamp coupon allotment;

(f) the value of U.S. department of agriculture donated foods;

(g) any benefits received under Title VII of the nutrition program for the elderly of the Older Americans Act of 1965 as amended;

(h) the value of supplemental food assistance received under the Child Nutrition Act of 1966 and the special food services program for children under the National School Lunch Act, P.L. 92-433 and P.L. 93-150;

(i) all monies awarded to Indian tribes by the Indian claims commission or court of claims as authorized by P.L. 92-254, 93-134, 94-114, and 94-540;

(j) payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(k) any contribution made by relatives or others on behalf of the filing unit which is not directly available to the filing unit;

(l) the tax exempt portions of payments made pursuant to the Alaska Native Claims Settlement Act, P.L. 92-203;

(m) all payments under Title I of the Elementary and Secondary Education Act;

(n) incentive payments or reimbursement of training related expenses made to participants in the work readiness component (~~WERC~~) of the FAIM TANF program;

(o) payments for supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the service corps of the retired executives and active corps of executives and any other program under Titles II and III of P.L. 93-113;

(p) payments to individual volunteers in service to America (VISTA) volunteers under Title I of P.L. 93-113, pursuant to section 404(g) of that law; and

(q) small nonrecurring gifts such as those for Christmas, birthdays, and graduation, up to \$30 per member of the filing

unit in any period of 3 three consecutive calendar months.

(2) Income tax refunds are not considered as either earned or unearned income but are considered a resource to the filing unit.

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

IMP: Sec. 53-2-201 and 53-6-131, MCA

37.49.701 IV-E FOSTER CARE ELIGIBILITY: GROUNDS FOR TERMINATION OF BENEFITS; NOTICE OF TERMINATION (1) If a child is determined to be IV-E eligible ~~in the month of eligibility,~~ eligibility continues as long as the child remains in state or tribal custody or jurisdiction regardless of subsequent changes in the filing unit's income or resources. However, eligibility no longer exists when:

~~(a) deprivation of parental support as defined in ARM 37.49.113 no longer exists; or~~

~~(b) the child is age 18 unless the child is a full-time student in a secondary school who is reasonably expected to obtain a secondary school diploma or its equivalent ~~on in~~ or before the month of their 19th birthday and is under the jurisdiction of a tribe whose code allows for foster care past the age of 18.~~

(2) When a child becomes ineligible for IV-E benefits, a written notice must be sent to the placing worker at least 10 days prior to the date on which the benefits will terminate, except as provided in (3)(a) through (c)(ii). The notice must state that the benefits are being terminated, the reason for the termination, and the date on which the benefits will terminate. The notice must also contain information about the right to a fair hearing and to contact the department prior to the effective date of termination to discuss any disagreement or misunderstanding regarding eligibility.

(3) The department is not required to send notice 10 days prior to the date of termination but must send notice not later than the date of termination if:

(a) the department has information from a reliable source that the child has died;

(b) the child's whereabouts are unknown; or

(c) the placing worker has signed a written statement which:

(i) requests the termination of benefits for the child; or

(ii) contains information which indicates that the child is no longer eligible for benefits and also contains an acknowledgment that benefits for the child must be terminated as a result of that information.

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

IMP: Sec. 53-2-201 and 53-6-131, MCA

3. Federal law requires states to determine eligibility for Title IV-E foster care funds according to the criteria contained in the AFDC state plan in effect July 16, 1996. Currently Montana's IV-E eligibility determination policy is

more restrictive than the state plan requires. In order to increase the number of Title IV-E eligible children and a corresponding increase in federal funds, the eligibility criteria is broadened to mirror the state plan requirements and revisions to state law.

Briefly, the proposed changes in each of the rules are as follows:

ARM 37.49.101 clarifies some of the definitions, eliminates definitions that applied to AFDC but don't apply to IV-E and revises definitions to mirror federal and state law changes. One definition is added to more directly connect the current state law, current federal law and the administrative rule.

ARM 37.49.102 is amended to reflect federal and state laws and clarifies the language.

ARM 37.49.108 is amended to reflect the state law definition of "child".

ARM 37.49.112 is amended to reflect the federal Adoption and Safe Families Act revisions.

ARM 37.49.405 and 37.49.412 are amended to reflect the parameters of the AFDC state plan of July 16, 1996 rather than the AFDC policy manual in 1996.

ARM 37.49.406 replaced the words out of home care with substitute care.

ARM 37.49.414 replaced the words FAIM with TANF to reflect the state law revisions.

ARM 37.49.602 changed the redetermination of eligibility from every six months to 12 months.

ARM 37.49.701 removed redundant and duplicative language found in ARM 37.49.102.

The proposed changes are necessary to reflect the current requirements for the use of Title IV-E federal funding as described in state statute, the Adoption and Safe Families Act of 1997, federal policy, and the Title IV-E state plan. The current administrative rules are more restrictive than required by state and federal law. The proposed changes would comply with all appropriate state and federal laws and the state's Title IV-E plan, yet broadens the eligibility for IV-E to include a greater number of children. Broadened eligibility for children increases the federal funding available for their care while in substitute care, and thus enhance the state's ability to capture federal funding for substitute care. The specific laws that allow or require the proposed changes are as follows:

- \* ARM 37.49.101(1) reflects revisions to 41-3-102, MCA; (2) and (10) revise language to match the definitions found in 45 CFR 1355.20; (12) reflects 2003 SB95; (6) removes AFDC eligibility requirements that are not required by the broader parameters of the AFDC 1996 state plan; (18) reflects state law changed in 2001; (19) and (21) clarify the connection between existing definitions in state statute and ARM with the federal language; and the deleted (22) is the federal exemption to states' AFDC plan issued August 7, 1998.
- \* ARM 37.49.102(1) was revised to comply with the Adoption and Safe Families Act of 1997 and (2) and (4) clarify and remove redundant language.
- \* ARM 37.49.108 reflects the definition found in 41-3-102, MCA.
- \* ARM 37.49.112(1)(a) and (c) reflect requirements of Adoption and Safe Families Act of 1997 and removes language pertaining to AFDC but required in the IV-E state plan.
- \* ARM 37.49.401 revises and clarifies language to comply with Adoption and Safe Families Act of 1997.
- \* ARM 37.49.405 and 37.49.412 are revised to mirror the AFDC State Plan for determining eligibility.
- \* ARM 37.49.406 changes the language to reflect 52-2-602, MCA.
- \* ARM 37.49.412 changes the term for cash assistance from FAIM to TANF to reflect state law.
- \* ARM 37.49.414 changes the requirement for IV-E eligibility determinations from six months to 12 months to comply with the Administration for Children and Families, policy 8.3A.10.
- \* ARM 37.49.701(1) changed to comply with 41-3-102, MCA.

The only alternative or option available to the Department to changing the rules is to leave the rules unchanged. The rules would then remain more restrictive than required by both state and federal law, and would be out of compliance with several law changes. To leave the rules unchanged would be costly to the Department and state, as federal funding that is available would not be captured for use with children in state care. Many of these changes should have been made at the time state or federal law was revised. The Department does not believe this is an appropriate option due to the expense to the state.

4. The Department intends that these proposed amendments

will be effective July 1, 2003.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on May 22, 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 April 14, 2003.



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

In the matter of the	)	NOTICE OF PUBLIC HEARING
proposed amendment of ARM	)	ON PROPOSED AMENDMENT
37.40.302, 37.40.307,	)	AND REPEAL
37.40.311, 37.40.330,	)	
37.40.337 and 37.40.345 and	)	
the repeal of ARM 37.40.360	)	
pertaining to medicaid	)	
nursing facility	)	
reimbursement	)	

TO: All Interested Persons

1. On May 15, 2003, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment 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 May 5, 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.

37.40.302 DEFINITIONS (1) through (8) remain the same.

(9) "Minimum data set (MDS)" means the assessment form approved by the ~~health care financing administration (HCFA) centers for medicare and medicaid services (CMS)~~, and designated by the department to satisfy conditions of participation in the medicaid and medicare programs.

(10) through (15) remain the same.

(16) "Rate year" means a 12-month period beginning July 1. For example, rate year ~~2003~~ 2004 means a period corresponding to the state fiscal year July 1, ~~2002~~ 2003 through June 30, ~~2003~~ 2004.

(17) through (19) remain the same.

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

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

37.40.307 NURSING FACILITY REIMBURSEMENT (1) remains the

same.

(2) Effective July 1, 2001, and in subsequent rate years, nursing facilities will be reimbursed using a ~~price-base~~ price-based reimbursement methodology. The rate for each facility will be determined using the operating component defined in (2)(a) and the direct resident care component defined in (2)(b):

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

~~(c) The rate setting methodology effective July 1, 2001, will hold nursing facilities harmless. To the extent that a provider's rate could decrease using the price-based reimbursement methodology described in this rule, each facility will receive the greater of their price-based rate or their rate in effect on June 30, 2001 increased by 2%. This hold harmless methodology, which provides for a minimum 2% rate increase each state fiscal year, will be in effect for state fiscal years 2002 and 2003. For state fiscal year 2004, or at such time as all facilities have moved to the price, each facility will be reimbursed according to the price-based nursing facility reimbursement system.~~

(d) and (e) remain the same but are renumbered (c) and (d).

(3) and (4) remain the same.

(5) In addition to the per diem rate provided under ~~(5)~~ (2) or the reimbursement allowed to an ICF/MR provider under ~~(7)~~ (4), the Montana medicaid program will pay providers located within the state of Montana for separately billable items, in accordance with ARM 37.40.330.

(6) through (12) remain the same.

AUTH: Sec. 53-6-113, MCA

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

37.40.311 RATE ADJUSTMENT FOR COUNTY FUNDED RURAL NURSING FACILITIES (1) For state fiscal year 2003 2004, and ~~subject to the availability of sufficient county, state and federal funding,~~ the department will provide a mechanism for a one time, lump sum payment to non-state governmental owned or operated facilities for medicaid services. These payments will be for the purpose of maintaining access and viability for a class of "at-risk" county affiliated facilities who are predominately rural and are the only nursing facility in their community or county or who provide a significant share of nursing facility services in their community or county.

(a) remains the same.

(b) The department will calculate the amount of lump sum distribution that will be allowed for each county affiliated provider so that the total per day amount does not exceed the computed medicare upper payment limit for these providers. Distribution of these lump sum payments will be based on the medicaid utilization at each participating facility for the period July 1, ~~2002~~ 2003 through June 30, ~~2003~~ 2004.

(c) In order to qualify for this lump sum adjustment effective July 1, ~~2002~~ 2003, each non-state governmental owned or operated facility must enter into a written agreement to transfer local county funds to be used as matching funds by the

department. This transfer option is voluntary, but those facilities that agree to participate must abide by the terms of the written agreement.

(2) Effective for the period commencing on or after July 1, ~~2002~~ 2003, and ~~subject to the availability of sufficient county, state and federal funding~~, the department will provide for a one time, lump sum distribution of funding to nursing facilities not participating in the funding for "at-risk" facilities for the provision of medicaid services.

(a) The department will calculate the maximum amount of the lump sum payments that will be allowed for each participating non-state governmental owned or operated facility, as well as the additional payments for other nursing facilities not participating in the funding for "at-risk" facilities for the provision of medicaid services, based on the availability of funding and in accordance with state and federal laws, as well as applicable medicare upper payment limit thresholds. This payment will be computed as a per day add-on based upon the funding available. Distribution will be in the form of lump sum payments and will be based on the medicaid utilization at each participating facility for the period July 1, ~~2002~~ 2003 through June 30, ~~2003~~ 2004.

AUTH: Sec. 53-6-113, MCA

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

37.40.330 SEPARATELY BILLABLE ITEMS (1) through (2)(c) remain the same.

(3) The department will reimburse for separately billable items at direct cost, with no indirect charges or mark-up added. For purposes of combined facilities providing these items through the hospital portion of the facility, direct cost will mean invoice price to the hospital with no indirect cost added.

(a) If the items listed in (1)(a) through (1)(de) are also covered by the medicare program and provided to a medicaid recipient who is also a medicare recipient, reimbursement will be limited to the lower of the medicare prevailing charge or the amount allowed under ~~(2)~~ (3). Such items may not be billed to the medicaid program for days of service for which medicare Part A coverage is in effect.

(b) through (10) remain the same.

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

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

37.40.337 REIMBURSEMENT TO OUT-OF-STATE FACILITIES

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

(3) To receive payments, the out-of-state provider must enroll in the Montana medicaid program. Enrollment information and instructions may be obtained from the department's fiscal intermediary, ~~Consultee~~ ACS, at P.O. Box 4286, Helena, MT 59604-4286.

(4) through (5) remain the same.

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

37.40.345 ALLOWABLE COSTS (1) This rule applies for purposes of determining allowable costs for cost reporting periods beginning on or after July 1, 1991. Allowable costs for cost reporting periods beginning prior to July 1, 1991 will be determined in accordance with rules for allowable costs then in effect.

(2) For purposes of reporting and determining allowable costs, the department hereby adopts and incorporates herein by reference the ~~health insurance manual 15 (HIM-15)~~ Provider Reimbursement Manual (PRM-15), published by the United States department of health and human services, social security administration, which provides guidelines and policies to implement medicare regulations and principles for determining the reasonable cost of provider services furnished under the Health Insurance for Aged Act of 1965, as amended. A copy of the ~~HIM-15~~ PRM-15 may be obtained through the Department of Public Health and Human Services, Senior and Long Term Care Division, P.O. Box 4210, 111 Sanders, Helena, MT 59604-4210. Applicability of the ~~HIM-15~~ PRM-15 is subject to the exceptions and limitations specified in this rule.

(a) remains the same.

(3) For purposes of reporting costs as required in ARM 37.40.346, allowable costs will be determined in accordance with the ~~HIM-15~~ PRM-15, subject to the exceptions and limitations provided in these rules, including but not limited to the following:

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

(c) Administrator compensation is allowable only as determined according to the ~~HIM-15~~ PRM-15 provisions relating to owner compensation, and as specifically limited in this rule.

(i) through (4) remain the same.

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

3. The rule 37.40.360 as proposed to be repealed is on page 37-8875 of the Administrative Rules of Montana.

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

4. The Department is proposing these amendments to implement legislative funding for nursing facility reimbursement for state fiscal year 2004. The executive budget contains no provider rate increases for nursing facility providers. It included approximately a 1.87% provider rate reduction below the current level. Current legislative intent provides that the rate reduction will be funded with a reallocation of the portion of "at-risk" provider payments that have traditionally been directed to the mental health program. Additionally, there is legislation being proposed (House Bill 705) which provides for

an increase in the nursing facility provider tax to be used to provide for increases in the funding for nursing homes in FY 2004.

Medicaid per diem rates would continue to be established annually each July 1st. The provisions for a hold harmless 2% minimum reimbursement would be eliminated as the transition to the price-based methodology would be complete in FY 2004.

These rules continue the mechanism for funding rural "at-risk" county nursing facilities, to receive additional reimbursement up to the Medicare upper limit. For rate year 2004, the Department would continue to provide a mechanism for a one time, lump-sum payment to "at-risk" non-state governmental owned or operated facilities for Medicaid services. These payments would be for the purpose of maintaining access and viability for a class of "at-risk" county affiliated facilities who are predominately rural in nature and are, for the most part, the only nursing facility in their community or county. In order to qualify for this lump sum adjustment, each non-state governmental owned or operated facility must enter into a written agreement to transfer local county funds to be used as matching funds by the Department. This transfer option is voluntary, but those facilities that agree to participate must abide by the terms of the agreement. Distribution of these lump sum payments would be based on the Medicaid utilization at each participating facility.

For the period commencing on or after July 1, 2003, the provision for a one time, lump sum distribution of funding to other nursing facilities not determined to be "at-risk" would continue for the provision of Medicaid services. These facilities are faced with declining census and the need for increased staffing in order to maintain viability and assure that quality nursing facility services are available to Medicaid eligible residents. Distribution of these lump sum payments would be based on the Medicaid utilization at each participating facility.

The Department is also proposing to incorporate changes in terminology and to update the rules where necessary to provide clarification and to make the rules more understandable. The name of the Department's fiscal intermediary "Consultec", has been changed by the company to "ACS" and the rules are being updated to reflect the change. ARM 37.40.360 would be repealed because the appropriation of funds from its lien and estate recovery program to the medicaid nursing home program was not renewed for the purpose of one time payments.

The Department will provide rate sheets to all providers in advance of the rule hearing, for verification purposes and in order to facilitate comments, when final case mix information and Medicaid utilization data and other details necessary to compute accurate reimbursement rates become available. These

sheets will reflect the proposed distribution of available funding, in order to meet the Department's goals for a price-based system of reimbursement and will incorporate legislative appropriated funding levels.

These proposed rules continue the methodology for moving to a full price-based system of reimbursement which would narrow the range of rates being paid to nursing facility providers and stabilize the levels of reimbursement paid across all facilities. A price-based system would better recognize the increasing levels of acuity of residents being admitted to the nursing facility setting and would serve to lessen the volatility of the rate setting process. The system of reimbursement would be decoupled from the costs being directly incurred by each nursing facility and the Department plans to move toward a system of reimbursement that is based on an established price for nursing facility services. The reimbursement system would reimburse providers based upon their rates relative to the recognized price for nursing facility services and would serve to narrow the range of rates being paid for nursing facility services under Medicaid and would stabilize the system of reimbursement for providers.

If funding levels are not sufficient to continue the move toward a price-based approach, the Department will be faced with the following issues. Statewide occupancy rates in Montana nursing facilities are at 79% of capacity at the current time. At the same time, the care needs of the typical nursing facility resident are increasing. These residents are being admitted at an older age with medically fragile and complex care needs that can no longer be met in home or community settings. As these trends towards lower occupancy and increased acuity continue, it becomes more important than ever that nursing facility providers receive rate increases that are reflective of the increased cost of doing business. If Medicaid rates do not stabilize, small rural providers of nursing facility services would find it more difficult to keep their doors open with decreasing occupancy levels and the inability to predict the level of funding that may be available in order to determine the best way to provide nursing facility services in their communities. Increased costs due to lower occupancy levels and unpredictability of the system of reimbursement are likely to be passed on to the privately paying individuals.

The legislature recognized the need for improved funding during State fiscal biennium 2002 through 2003 by providing a 4.5% provider rate increase in each fiscal year. Revenue shortfalls in the current biennium would mean that the legislature cannot make the same level of commitment to the nursing facility program through rate increases as they did during the last biennium. Additional revenue for the program may be available through an increase in the nursing facility provider tax which would be effective July 1, 2003 and would provide additional state special revenue to fund nursing facility reimbursement.

Additionally, the legislature continues to approve the use of local county matching funds as a source of additional revenue for nursing facility providers in order to maintain access to, and the quality of, nursing facility services.

Price-based system:

For rate year 2004 (July 1, 2003 - June 30, 2004) the nursing facility per diem rate would be computed as follows:

(1) The Medicaid per diem rates would include two components. The operating component (includes both operating and capital combined) which is the same for all nursing facilities and represents 80% of the overall price. The nursing component which would be adjusted for individual nursing facility acuity and is 20% of the overall price.

(2) Medicaid per diem rates would be established annually each July first. The provisions for a hold harmless, 2% minimum rate increase would be eliminated as the transition to the price-based methodology would be complete in State fiscal year 2004.

(3) The minimum data set (MDS) case mix assessment data would be used in the computation of each facility's resident acuity. Each nursing facility's case mix index would be calculated quarterly based upon a point in time, using the most recent annual or quarterly MDS information. Non-Classifiable MDS assessment would be excluded from the computation of case mix indexes during the transition period. Medicaid case mix for annual rate setting would be based on the most recent 4 quarter average of Medicaid case mix indices (CMIs) for each nursing facility.

Rural "at-risk" providers one time payments:

ARM 37.40.311 provides a mechanism for rural "at-risk" county nursing facilities to receive additional reimbursement up to the Medicare upper limit. For rate year 2004, the Department would provide a mechanism for a one time, lump-sum payment to "at-risk" non-state governmental owned or operated facilities" for Medicaid services. These payments would be for the purpose of maintaining access and viability for a class of "at-risk" county affiliated facilities who are predominately rural in nature and are, for the most part, the only nursing facility in their community or county. In order to qualify for this lump sum adjustment, each non-state governmental owned or operated facility must enter into a written agreement to transfer local county funds to be used as matching funds by the Department. This transfer option is voluntary, but those facilities that agree to participate must abide by the terms of the agreement. Distribution of these lump sum payments would be based on the Medicaid utilization at each participating facility. The Department is taking this opportunity to delete language stating the payment is subject to available funding. The Department

believes this language is unnecessary and is deleting it so that the rule will be consistent with other reimbursement rules.

Other nursing facility one time payments:

For the period commencing on or after July 1, 2003, the Department would continue to provide for a one time, lump sum distribution of funding to other nursing facilities not determined to be "at-risk" for the provision of Medicaid services. These facilities are faced with declining census and the need for increased staffing in order to maintain viability and assure that quality nursing facility services are available to Medicaid eligible residents. Distribution of these lump sum payments would be based on the Medicaid utilization at each participating facility.

Estimated financial and budget effects:

These proposed rule changes are necessary to implement legislative funding for nursing facility reimbursement for state fiscal year 2004. The legislature has not provided for any rate increases in FY 2004 in the executive budget. They have provided funding from "at-risk" payments that previously were directed to offset Medicaid costs in the Medicaid mental health program to the nursing facility program to offset a 1.87% provider rate reduction in fiscal year 2004. The total state and federal funding available for fiscal year 2004 is currently projected at \$115,184,181, which includes \$12,903,702 in additional state special and federal revenue that would be provided by the increase in the nursing facility provider tax from the current \$2.80 amount to \$4.50, an increase of \$1.70 per day in FY 2004. The estimated total funding available for fiscal year 2004 for nursing facility reimbursement is estimated at approximately \$145,391,991 of combined state funds, state special revenue, federal funds, and patient contributions. Appropriated days for state fiscal year 2004 are estimated at 1,266,574. The estimated financial impact of the proposed provider funding increases is approximately \$5.3 million in additional state, special revenue and federal funds in fiscal year 2004 over the FY 2003 appropriated level.

The estimated total funding impact of the one time payments to "at-risk" non-state governmental providers and other nursing facilities not determined to be "at-risk", is estimated at \$5,689,096 of state special revenue funds and approximately \$20,978,692 in total funds for the nursing home program.

5. The Department intends that these proposed amendments will be effective July 1, 2003.

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 May 22, 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 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 April 14, 2003.

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

In the matter of the	)	NOTICE OF PUBLIC HEARING
amendment of ARM 37.80.101,	)	ON PROPOSED AMENDMENT
37.80.102, 37.80.201,	)	AND REPEAL
37.80.202, 37.80.205,	)	
37.80.301, 37.80.316 and	)	
37.80.502 and the repeal of	)	
ARM 37.80.204 pertaining to	)	
the child care and	)	
development fund	)	

TO: All Interested Persons

1. On May 16, 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 May 5, 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.

37.80.101 PURPOSE AND GENERAL LIMITATIONS (1) remains the same.

(2) Child care assistance may be available to cover the cost of child care incurred by working parents who are income eligible and who demonstrate a need for child care assistance in support of employment.

(a) through (c) remain the same.

(d) A parent who provides child care to another's child while their own child is cared for by someone else is not eligible for child care assistance, unless they are an employee of a child care provider that is unable to care for the parent's child.

(3) through (10) remain the same.

AUTH: Sec. 52-2-704 and 53-4-212, MCA

IMP: Sec. 52-2-702, 52-2-704, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611 and 53-4-612, MCA

37.80.102 DEFINITIONS As used in this chapter, the following definitions apply:

(1) remains the same.

(2) "Child care" means supplemental parental care as defined in ARM 37.95.102 provided by either a child care facility or by a legally unregistered provider, for a child:

(a) from birth through the ~~month of~~ day prior to the 13th birthday;

(b) who is a child with special needs ~~under the age of 18;~~  
or

~~(c) who is a child with special needs that has not attained 19 years of age and is a full-time student in a secondary school, or in a high school equivalency, or GED program; or~~

~~(d) (c) who is under the age of 18~~ 19 and under the supervision of a court.

(3) and (4) remain the same.

(5) "Child with special needs" means a child who is age 18 or younger who requires additional assistance because of an emotional or physical disability and/or cognitive delay that is verified by medical records or other appropriate documentation.

(5) through (8) remain the same but are renumbered (6) through (9).

(10) "Full-time child care" means care certified for 30 or more hours per week on a regular basis, as established in ARM 37.95.102.

(9) through (16) remain the same but are renumbered (11) through (18).

~~(17) "A child with special needs" means a child who is age 17 or younger who requires additional assistance because of an emotional or physical disability and or cognitive delay which is verified by medical records or other appropriate documentation.~~

~~(18)~~ (19) "Teen parent" means a parent who is attending high school, GED courses, or an equivalency program and has not yet attained the age of 20 years.

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

AUTH: Sec. 52-2-704 and 53-4-212, MCA

IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611 and 53-4-612, MCA

37.80.201 NON-FINANCIAL REQUIREMENTS FOR ELIGIBILITY AND PRIORITY FOR ASSISTANCE (1) through (3)(d) remain the same.

(4) If a birth or adoptive parent of a child ~~for whom child care costs are being incurred~~ does not live with the child and is not paying child support under a child support order recognized by a Montana district court, the custodial parent must apply for and cooperate with child support enforcement services from the department's child support enforcement division. A custodial parent who fails without good cause to apply for such services and to cooperate with the child support enforcement division will be decertified for benefits under this chapter as of the date of such failure. Good cause is defined

as specified in ARM 37.78.215.

(5) remains the same.

(6) Due to limited funding for child care assistance, some households which meet all requirement for eligibility may not receive benefits. If there are insufficient funds to provide benefits to all eligible households, priority for benefits will be determined as follows:

(a) ~~a households household~~ receiving assistance funded by ~~the~~ TANF program are ~~is~~ guaranteed needed child care when participating in family investment agreement activities which require child care, subject to the following:

(i) Assistance will begin the date that the TANF participant parent is both referred to and contacts a child care resource and referral agency to obtain child care assistance, so long as the participant makes the contact within 10 days after the date the referral is made.

(ii) If the parent does not contact the child care resource and referral agency within 10 days after being referred for TANF child care assistance, eligibility for child care assistance will begin on the date a child care certification plan is obtained from the child care resource and referral agency.

(b) through (d) remain the same.

~~(7) Payment may only be made for care provided during the time both parents or, in single parent households, the parent, and any other adult included in calculating household size under this chapter, are required to be out of the home to attend work or training or due to a short term medical emergency. Under no circumstances may payment be made for child care provided by a parent or person acting in loco parentis of the child, even if such parent does not reside in the child's household. In addition, no payment under this chapter may be made for child care provided by any person who is included as a member of the same household as the child for purposes of determining eligibility for TANF cash assistance or child care assistance under this chapter.~~

(8) Payment may only be made for care provided during the time both parents or, in single parent households, the parent, and any other adult included in calculating household size under this chapter, are required to be out of the home to attend work or training. Brief care or eligibility interruptions may be accommodated under continuity of care policies, as established in the department's Child Care Manual, section 6-6, dated July 1, 2003. The Child Care Manual, section 6-6 is hereby adopted and incorporated by this reference. A copy of section 6-6 of the manual may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952.

(8) through (9)(b) remain the same but are renumbered (9) through (10)(b).

~~(10) Households eligible for head start full day/full year may receive child care assistance as provided in the Child Care Manual, Sections 5-1 through 5-3, dated August 1, 2001. The~~

~~Child Care Manual sections 5-1 through 5-3 are hereby adopted and incorporated by this reference. The manual section is available for public viewing at the resource and referral agencies located in various communities through the state, or at the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, Cogswell Building, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. Copies of the Child Care Manual sections are also available upon request at the aforementioned address.~~

AUTH: Sec. 40-4-234, 52-2-704 and 53-4-212, MCA  
IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722,  
52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601 and 53-4-611,  
MCA

37.80.202 FINANCIAL REQUIREMENTS FOR ELIGIBILITY; PAYMENT FOR CHILD CARE SERVICES; PARENT'S COPAYMENT (1) remains the same.

(2) Assets owned by the members of the household or in which the ~~member~~ members of a household have an interest are not considered in determining whether a household is eligible for child care assistance.

(3) through (4)(d) remain the same.

(5) In computing a household's size for purposes of determining eligibility and the parent's copayment, the household has the option of choosing to include or exclude as a household member any other person residing with the child.

(a) After the household exercises its option to include or exclude a person when eligibility is initially being determined, the household cannot subsequently choose a different option, unless the optional members ~~leaves~~ leave the household.

(6) In computing the household's income for purposes of determining eligibility and the parent's copayment, the income of all persons counted in computing household size must be counted. The income of persons not counted in computing household size will not be counted.

(7) through (13) remain the same.

~~(14) The household's monthly copayment shall be the amount specified in the department's child care assistance sliding fee scale as amended July 1, 2002. The sliding fee scale is hereby adopted and incorporated by reference and shall be in effect until October 31, 2002. A copy of the sliding fee scale is available upon request from the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, Cogswell Building, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. The household's size and income are taken into consideration in determining the copayment amount each household must pay.~~

(15) remains the same but is renumbered (14).

AUTH: Sec. 52-2-704 and 53-4-212, MCA  
IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722,  
52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-212, 53-4-601 and 53-4-611,  
MCA

37.80.205 CHILD CARE RATES: PAYMENT REQUIREMENTS

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

(5) The rates set forth in the Child Care Manual Section 1-4, dated July 1, 2001 2003, are the maximum rates payable. The Child Care Manual Section 1-4 is hereby adopted and incorporated by this reference. The manual section is available for public viewing at the resource and referral agencies located in various communities through the state, or at the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, Cogswell Building, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. Copies of the Child Care Manual section are also available upon request at the aforementioned address. Additionally, the rate charged by the child care provider for children whose child care is paid for by the department cannot exceed the rate charged to private pay parents for the same service. The following exceptions apply for quality child care providers:

(a) Providers who qualify for a one star quality child care rating will receive 110% of the respective rate and providers who qualify for a two star rating will receive 115% of the respective rate. The criteria to qualify for quality incentive adjustments are set forth in Section 7 of the Child Care Manual, dated July 1, 2001 March 1, 2002. The Child Care Manual Section 7, dated July 1, 2001 March 1, 2002, is hereby adopted and incorporated by this reference. The manual section is available for public viewing at the resource and referral agencies located in various communities through the state, or at the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, Cogswell Building, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. Copies of the Child Care Manual section are also available upon request at the aforementioned address.

(6) Rates for children with special needs may be adjusted for special accommodations which increase the cost of care. A special needs subsidy rating scale and/or an individual child care plan must be completed to determine the appropriate rate adjustment. The criteria used to determine special needs adjustments are set forth in Section 1-4a of the Child Care Manual, dated July 1, 2001 March 1, 2002. The Child Care Manual Section 1-4a is hereby adopted and incorporated by this reference. The manual section is available for public viewing at the resource and referral agencies located in various communities through the state, or at the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, Cogswell Building, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. Copies of the Child Care Manual section are also available upon request at the aforementioned address.

~~(7) Child care payments provided under this chapter will be calculated using the rates in the department's tables of child care provider rates as amended through June 30, 2002. The tables of child care provider rates are hereby adopted and incorporated by this reference. A copy of the child care~~

~~provider rates is available upon request from the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, Cogswell Building, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952. The rates vary by resource and referral district. The provider's payment will be calculated using the applicable rate for the district in which the child care facility is physically located.~~

(8) remains the same but is renumbered (7).

AUTH: Sec. 52-2-704 and 53-4-212, MCA

IMP: Sec. 52-2-704 and 52-2-713, MCA

37.80.301 REQUIREMENTS FOR CHILD CARE FACILITIES, COMPLIANCE WITH EXISTING RULES, CERTIFICATION (1) through (3) remain the same.

(4) A provider's eligibility to receive state payment under a state assisted child care program may be terminated if:

(a) the provider willfully misrepresents services provided, as set out in ARM 37.80.316(4) or 37.80.502(6); or

(b) the provider refuses access to the child care setting and child records during business hours to the following personnel:

(i) employees or other agents of state or local government, investigating child care services or child abuse or neglect;

(ii) child care resource and referral agency personnel investigating child care services; or

(iii) health, building or fire officials investigating child care facility health and safety issues.

(5) All child care providers shall maintain current sign-in/sign-out records for each child receiving child care assistance and utilize them as follows:

(a) Each time the child enters or leaves the provider's care, the parent or other individual authorized to deliver or pick up the child shall initial or sign the sign-in/sign-out sheet. An electronic signature system may be used if it employs a unique and confidential identification process for individuals.

(b) Sign-in/sign-out records must indicate the child's name, the date, the hour, and the minute when the child enters and leaves the provider's care.

(c) The provider shall make sign-in/sign-out records available to child care resource and referral agency staff and state and local government health, safety or law enforcement representatives upon request.

(d) The provider shall keep sign-in/sign-out records for five years beyond the date of attendance.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723 and 52-2-731, MCA

37.80.316 REQUIREMENTS AND PROCEDURES FOR CHILD CARE PAYMENTS (1) through (3) remain the same.

(4) The provider must submit a claim for covered child care services on the billing form provided by the department. Except as provided in (3)(a), a completed billing form with all information and documentation necessary to process the claim must be received by the resource and referral agency of the department within 60 days after the last day of the calendar month in which the service was provided. Timely filing of claims in accordance with the requirements of this rule is a prerequisite for payment. In addition:

(a) The claim must be for actual care provided by the provider designated on the child care certification plan as defined in ARM 37.80.102(1) and subject to the limitations described in 37.80.201(9). The provider may not bill for care subcontracted to another individual or facility.

(b) The claim must indicate the child's actual attendance accurately, within one quarter hour. The provider's claim may be rounded to the nearest quarter hour of total daily attendance.

(c) The claim must be verifiable through the provider's sign-in/sign-out records as required in ARM 37.80.301(5).

(a) and (b) remain the same but are renumbered (d) and (e).

(5) remains the same.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704 and 52-2-713, MCA

37.80.502 CHILD CARE UNDERPAYMENT AND OVERPAYMENT: CRIMINAL PROSECUTION (1) through (6)(a) remain the same.

(7) If a willful action results in an overpayment, the following will occur:

(a) The first willful action will result in a 10% assessment being added to the amount of repayment due and, if the provider is responsible, web invoicing privileges will be lost and copies of sign-in/sign-out sheets must be submitted with invoices for the following three months.

(b) The second willful action will result in a 25% assessment being added to the amount of repayment due and, if the provider is responsible, copies of sign-in/sign-out sheets must be submitted with invoices for the following six months.

(c) The third willful action will result in the household or provider responsible being ineligible to participate in the child care development fund assistance, grant, and quality child care programs.

AUTH: Sec. 52-2-704 and 53-4-212, MCA

IMP: Sec. 52-2-704, 52-2-713 and 53-4-212, MCA

3. The rule 37.80.204 as proposed to be repealed is on page 37-17803 of the Administrative Rules of Montana.

AUTH: Sec. 52-2-111, 52-2-704, 53-2-201 and 53-4-212, MCA

IMP: Sec. 52-2-704 and 52-2-713, MCA

4. The Department has determined that the foregoing



proposed amendments to the rules governing the Child Care Subsidies Program and the repeal of one of those rules are necessary for the following specific reasons, in addition to the general aim of ensuring that the limited available funding for child care is used to the fullest to serve Montana's most needy families.

ARM 37.80.101

The addition of subsection (2)(d) is necessary to preclude the existing practice of trading children for the primary purpose of qualifying for child care subsidies that would not otherwise be merited. Without the change, the Child Care and Development Fund will be unfairly depleted by parents who can care for their own children at home but resort to a trade to care for someone else's in order to apparently qualify for a subsidy.

ARM 37.80.102

Subsection (2)(a) must be amended in order to comply with federal rules governing the Child Care and Development Fund, the source of the funding for the Department's subsidy program. 45 CFR 98.20(a) states that child care funding is available for, among other categories, children who are under 13 years of age. Since the current rule language allows child care funding for a brief period beyond age 13, the amendment is necessary in order to avoid violating federal conditions on use of the funding.

The amendments to (2)(b) and (c) and the definition of "child with special needs" are also necessary to conform to the language of 45 CFR 98.20(a), which allows child care funding to be used for special needs children under the age of 19. The federal regulation allows the Department the option to include such children as beneficiaries of subsidized child care but does not allow the option to limit the age of the special needs children. The definition of "child with special needs" is also moved within the rule so that its placement is alphabetical.

Addition of a definition of "full-time child care" is necessary to identify when children are eligible for care payments under the Certified Enrollment Program, a benefit which allows payment for up to 150 hours of absence in a calendar year but is available only to children needing full-time care. Without the definition, there would be no certainty about what constitutes full-time care.

The additions to the definition of "teen parent" are necessary to waive the work requirement for teen parents, so that they clearly can pursue education without a work requirement as well. While the Department considered leaving the definition more broad, it ultimately determined that the available funding should be reserved for those teenage parents who are improving their employability through secondary education.

ARM 37.80.201

The deletion in section (4) is needed to ensure that a parent has to pursue child support for all children in the household, not just those needing child care, in order to qualify for child care subsidies, thereby mitigating the need for such subsidies. No alternatives to the change were considered because the change reflects current policy and helps prevent unnecessary reliance on the limited child care funding.

The amendment to subsection (6)(a) is necessary to eliminate the programmatic and funding problems caused by belated requests for retroactive payments for TANF family child care of which the department was unaware. The change requires a TANF family to apply for child care assistance within a reasonable time frame and prevents retroactive payments when the family does not do so. The Department declined to leave the language as it was because it felt the change will enhance the Department's ability to serve TANF families in a timely manner and to manage the Child Care Subsidy Program.

The first sentence of section (7) is proposed to be deleted and moved to a new section (8) unchanged, with the exception of deletion of the explicit provision about short-term medical emergencies. The additional language in new section (8) in effect includes short-term medical emergencies, as well as other exemptions from the work requirement, by incorporating the relevant provision of the Department's Child Care Manual, which lists them. The changes are therefore necessary to include all of the exceptions to the work requirement currently utilized by the Department through the Child Care Manual, rather than limiting the exception to short-term medical emergencies. Failure to make this change would unreasonably limit exceptions to the work requirement. The exemptions were those the Department felt necessary to maintain continuity of care while bridging minor gaps in a family's eligibility.

The provision in section (10) for Head Start families must be deleted, effective July 1, 2003, because the TANF reserve funding ends June 30, 2003. In the future, should funding once again become available, the Department will consider reestablishing such subsidies. Terminating the program for Head Start families will save the Department approximately \$227,000 annually.

ARM 37.80.202

Section (14) is proposed to be deleted because it is obsolete, applying as it does, by its terms, only through October 31, 2002. The parallel provision currently in effect is already contained in section (15), now renumbered as (14).

ARM 37.80.204

This rule, concerning the At-Home Infant Care Program, needs to be repealed because funding for the program ends June 30, 2003. Failing to repeal the rule will leave the Department responsible for a service for which it has no funding. Ending the program will save approximately \$125,000 annually. The At-Home Infant Care Program was a pilot program lasting over a period of 18 months and serving a total of 60 families at one time or another over that period, for varying periods of time. If the program were continued and fully utilized, approximately 27 children per month could have been served.

ARM 37.80.205

This rule, concerning child care payment rates, incorporates rate schedules and standards contained in the Department's Child Care Manual. Since specific sections of the manual as of certain dates are incorporated, and several have been updated, incorporation of the updated sections was necessary. Failure to do so would result in confusion, since the rates and standards with the old dates would no longer be in the manual. Although the dates have changed, the rates themselves have not been changed. Section (7) is proposed to be deleted because it is obsolete and applied only through June 30, 2002.

ARM 37.80.301 and 37.80.316

The provisions proposed to be added in the new sections were recommended by the Montana Early Childhood Advisory Council to the Department as necessary to help prevent fraud, thereby ensuring that child care benefits are used to the fullest by Montana's neediest families. No alternative was considered, because failure to be very clear about fraud-prevention requirements and/or to establish consequences for misrepresentation would have the result of wasting badly needed funding for child care.

ARM 37.80.502

The provisions added in section (7) were also recommended by the Montana Early Childhood Advisory Council to provide needed consequences for intentional fraud resulting in overpayment. Leaving out such consequences was not acceptable to the Department because such failure would facilitate continued misrepresentation of child care needs and costs, identified by the Department as already occurring in some cases, with the concurrent loss of badly needed child care funds. Also, federal rules mandate that the Department recover child care payments that are the result of fraud. The Department believes that an incremental penalty process will reduce fraud and promote accuracy in the issuance of child care benefits as well as save the department and its contractors the time needed to deal with chronic offenders. Finally, the Department plans to implement internet invoicing capabilities for child care providers, and

believes that this capability should be reserved for those providers who accurately represent the service they provide.

5. The Department intends that these proposed amendments and repeal will be effective July 1, 2003.

6. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Kathy Munson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on May 22, 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.

7. 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 April 14, 2003.

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

In the matter of the adoption )  
of new rules I through V )  
regulating and distributing ) NOTICE OF ADOPTION  
recreational use of the )  
Beaverhead and Big Hole rivers)

TO: All Concerned Persons

1. On December 26, 2002, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-287 regarding the public hearings on proposed adoption of new rules I through V regulating and distributing recreational fishing use on the Beaverhead and Big Hole rivers at page 3462 of the 2002 Montana Administrative Register, Issue Number 24. On January 30, 2003, the commission published MAR Notice No. 12-289, an amended notice of public hearings on proposed adoption at page 83 of the 2003 Montana Administrative Register, Issue Number 2.

2. The commission has adopted new rules II (ARM 12.11.205) and III (ARM 12.11.210) exactly as proposed in the amended notice of public hearings.

3. The commission has adopted new rules I (ARM 12.11.202), IV (ARM 12.11.215) and V (ARM 12.11.220) with the following changes to the amended notice of public hearings. Stricken matter interlined, new matter underlined:

NEW RULE I (ARM 12.11.202) RIVER DEFINITIONS The following definitions apply to this subchapter:

(1) "Float fishing" means any fishing from a boat and wade fishing when fishing access is gained by boat.

(2) "Float outfitting" means the operation of any boat for the commercial purposes purpose of float fishing by a fishing guide or fishing outfitter.

(3) "Guide" means a person as defined in 87-37-101, MCA.

(4) "Official access site" means those river access sites that are publicly owned, managed, and maintained as an access point. The following are official access sites on the Big Hole River:

- (a) High Road fishing access site;
- (b) Pennington fishing access site;
- (c) Notch Bottom fishing access site;
- (d) Glen fishing access site;
- (e) Brownes Bridge fishing access site;
- (f) Salmon Fly at Melrose fishing access site;
- (g) Maiden Rock FWP fishing access site;
- ~~(f)~~(h) Maiden Rock BLM fishing access site;
- ~~(g)~~(i) Divide fishing access site;
- ~~(h)~~(j) Power House fishing access site;
- ~~(i)~~(k) Dewey fishing access site;
- ~~(j)~~(l) Jerry Creek fishing access site;

- ~~(k)~~(m) Mallons fishing access site;
- ~~(l)~~(n) Dickie Bridge fishing access site;
- (o) Eastbank BLM fishing access site;
- ~~(m)~~(p) Sportsman Park fishing access site;
- ~~(n)~~(q) Fishtrap fishing access site; and
- ~~(e)~~(r) Mudd Creek Bridge fishing access site.

(5) "Outfitter" means a person as defined in 37-47-101, MCA.

(6) The commission shall repeal or amend this rule on or before May 1, 2005.

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-303, MCA

NEW RULE IV (ARM 12.11.215) NEW OUTFITTER MORATORIUM AND OUTFITTER RESTRICTIONS ON THE BEAVERHEAD RIVER (1) through (3) remain as proposed.

(4) In the event of the death of an outfitter who has an opportunity to outfit on the Beaverhead River as outlined in this sub-chapter, that opportunity may be assumed by a member of the immediate family of the deceased outfitter. This provision does not supercede the outfitter licensing requirements and authority of the board of outfitters. ~~No other transfers will be permitted for the opportunity to outfit on the Beaverhead River.~~ The transfer of those outfitting businesses that these rules regulate on the Beaverhead River are governed by 37-47-310, MCA, as amended by the 2003 Legislature and approved by the governor effective March 24, 2003.

(5) All outfitters given the opportunity to operate on the Beaverhead River, as outlined in this sub-chapter, will be issued boat tags that will identify them as authorized by the commission to operate on this river. These boat tags must be displayed on all authorized outfitter boats when operating on the Beaverhead River.

(6) The commission shall repeal or amend this rule on or before May 1, 2005.

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-303, MCA

NEW RULE V (ARM 12.11.220) NEW OUTFITTER MORATORIUM AND OUTFITTER RESTRICTIONS ON THE BIG HOLE RIVER (1) through (3) remain as proposed.

(4) In the event of the death of an outfitter who has an opportunity to outfit on the Big Hole River, as outlined in this sub-chapter, that opportunity may be assumed by a member of the immediate family of the deceased outfitter. This provision does not supercede the outfitter licensing requirements and authority of the board of outfitters. ~~No other transfers will be permitted for the opportunity to outfit on the Big Hole River.~~ The transfer of those outfitting businesses that these rules regulate on the Big Hole River are governed by 37-47-310, MCA, as amended by the 2003 Legislature and approved by the governor effective March 24, 2003.

(5) All outfitters given the opportunity to operate on the Big Hole River, as outlined in this sub-chapter, will be issued boat tags that will identify them as authorized by the commission to operate on this river. These boat tags must be displayed on all authorized outfitter boats when operating on the Big Hole River.

(6) The commission shall repeal or amend this rule on or before May 1, 2005.

AUTH: 87-1-301, 87-1-303, MCA  
IMP: 87-1-303, MCA

4. The commission's proposed new rules are primarily the same as the current biennial rules that are scheduled to sunset in May of 2003. After taking into consideration the large amount of well-thought-out public comments, the commission proposes to keep the rules primarily the same for up to two more years so that the River Recreation Advisory Council can conclude its work and the statewide river recreation planning process can continue to address the issues. The Department of Fish, Wildlife & Parks (department) can then examine the results of the statewide planning process and assess the Beaverhead and Big Hole rivers rules and present the data to the commission to determine whether it is necessary to make any more changes.

The commission received comments at three public hearings and it received numerous written comments. Written comments were received electronically from the department's website where the rules were posted and an opportunity to comment was provided. Additionally, written comments were received through the mail and by fax. A total of 537 individuals, organizations, clubs and businesses submitted comments to the commission. 188 comments supported the proposed new rules (no distinction between the two rivers). Five comments supported the proposed new rules for the Beaverhead River. 251 comments supported the proposed new rules for the Big Hole River. 87 comments opposed the proposed new rules (no distinction between the two rivers). No comments opposed the proposed new rules for just the Beaverhead River. Five comments opposed the proposed new rules for the Big Hole River. A summary of the comments appears below with the commission's responses:

COMMENT 1: A number of individuals and some organizations criticized the process used to establish the biennial rules from which the administrative rules were drawn. They believed that the original rulemaking process was rushed and arbitrary. Others stated that there is an erroneous perception that the rules are the result of a hard-labored consensus. Some outfitters stated that they were not against all restrictions on the river but thought more time and thought should have been given to the original biennial rules.

RESPONSE: The department, as authorized by the commission, worked with two citizen advisory groups that

developed recommendations for the 2001 Beaverhead and Big Hole biennial rules. The commission assumes that the comments above suggest that the process would have yielded a better set of rules if the citizen advisory groups would have been allowed more time to develop their recommendations.

The commission has also heard from some members of the citizen advisory groups that the process took too long to develop the biennial rules. The commission also heard from people who, like the commentors above, felt that the process was rushed, particularly at the end when final decisions were being made. There are no specific guidelines that dictate the amount of time that a citizen advisory group should have to develop its recommendations. By its very nature, each citizen advisory group process is different in regard to the amount of time the participants will need to accomplish their charter. The commission has a vested interest in achieving viable solutions to problems facing popular rivers like the Beaverhead and Big Hole. The commission supports taking adequate time to develop rules that will accomplish their intended purpose.

Additionally, the commission worked very hard to develop the biennial rules through a consensus-based process. However, the commission also recognized that as the decision-maker with the authority to adopt the rules, it would not rubber stamp the advisory committees' work. The commission was also concerned that if it left the rivers unregulated for a period of time, there would be a rush of use on the rivers and important, decision-making data would be distorted.

COMMENT 2: Several individuals and an individual representing a group of outfitters thought that data did not support the restrictions in the rules. Some stated that data did not indicate social crowding on the river as a problem. Others opposed various sections of the rules restricting nonresidents and outfitters and stated that data did not support these restrictions. Conversely, a number of individuals commented that there is adequate data to support the rules.

RESPONSE: The commission frequently hears concerns that there are no data that justify the rules governing recreational use on the Beaverhead or the Big Hole rivers. When developing the rules, the department worked to collect data that would characterize the recreational use on the Beaverhead and Big Hole rivers: the amount of angling pressure on these rivers and the proportion of use attributed to categories of user groups and types of use. This information was made available to the citizen advisory groups and the commission. Additionally, the commission has the discretion to make decisions based on a combination of data and public input. A decision as to the level of use or the amount of "crowding" that is acceptable is a decision that the commission may make based on the best data and opinions before it.



The development of the biennial rules was one of the first attempts by the commission to develop river recreation management guidelines. The department learned much about the design, implementation, analysis, and use of river recreation surveys. The department continues to examine how it conducts surveys and strives to provide information that is credible and useful to decision-makers and the public. This is an iterative process and the commission can produce a better product by listening to the public's concerns and suggestions for improvement.

COMMENT 3: An individual representing an outfitting association stated that the legislature has not given the commission authority to adopt the proposed rules.

RESPONSE: The commission disagrees and contends that 87-1-303, MCA, confers upon the commission the authority to adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams.

COMMENT 4: An individual representing an outfitting association thought that department personnel did not follow 2-4-302(7), MCA, by reading the Notice and Function of the Administrative Rule Review Committee at the three hearings held in Butte, Dillon, and Sheridan.

RESPONSE: The commission notes that the requirement of 2-4-302(7), MCA, to read the Notice and Function of the Administrative Rule Review Committee at a hearing is a directory requirement, not a jurisdictional prerequisite to adopt a rule. The commission believes that in adopting these rules, it substantially complied with the Montana Administrative Procedure Act.

COMMENT 5: An individual representing an outfitting association commented that the proposed new rules violate the Land and Water Conservation Fund Act because they discriminate against nonresidents.

RESPONSE: The commission feels that the rules comply with the Land and Water Conservation Fund Act because they do not prohibit nonresidents from the activities of fishing or floating on the rivers. A nonresident may still use the rivers but just may not fish from a boat from limited sections on certain days. A nonresident may still wade fish from any of the fishing access sites. The rules are narrowly tailored and limited in scope to restrict only certain uses at certain times on certain stretches of the rivers. Additionally, the commission feels that it is important to keep the rules as proposed to allow the statewide river recreation planning process to continue its work and consider all options.

COMMENT 6: A number of individuals thought the rules governing recreational use on the Beaverhead and Big Hole rivers

have negatively impacted local economies. They thought the rules resulted in fewer tourists visiting the area and that this impacted outfitters and local businesses that depend upon tourism-related dollars.

RESPONSE: While the commission acknowledges that it is possible that the rules may have caused some nonresidents to not visit the Beaverhead and Big Hole rivers, the commission notes that statewide, national, and global variables may have affected the number of people visiting southwest Montana and the Beaverhead and Big Hole rivers. Since the commission adopted the first rules in 1999, there were years in which regional and national factors affected this equation, factors such as serious forest fires, drought, terrorism, stock market down-turns, and corporate failures. The commission is very concerned about local economies, but notes that it is difficult to sort out which factors may have caused fewer people to visit the Beaverhead and Big Hole rivers. In fact, by maintaining a quality experience on the rivers, the rules could also have a positive impact in the long-term economic viability of industries reliant on recreational uses of the rivers.

COMMENT 7: Several commentors believed that the rules are unfair to or discriminate against nonresidents. Some pointed out that the river is a national resource as much as a state resource, and nonresidents contribute to the federal tax dollars that help support the river. Others thought that the nonresident restrictions were insulting and made nonresidents second-class citizens. One nonresident stated that he goes above and beyond the call of duty in practicing stream etiquette. Another comment stated that children born in Montana who move away will be classified as nonresidents when they come back to visit.

RESPONSE: In response to citizens' requests, the commission did make a few nonresident limitations on the river. The commission believes that it is important to distinguish what the rules are perceived to do and what they actually do. The river is not closed to nonresidents. Any restrictions in nonresident use are limited in scope, location, and duration. Nonresident float fishing is limited only on certain days and/or sections of the river. Nonresidents have no limitations on wade angling anywhere on the river, and the limitations only affect a very small percentage of the total recreation potential available on the river. In some cases the national media has probably led many people to assume the rivers were completely closed to nonresidents. The department is aware of this situation and makes every attempt to write news releases that accurately describe the rules and specifically point out that the rivers are never totally closed to nonresident anglers, and that on days when there are float restrictions, the nonresident anglers can still fish via wading from all fishing access sites on the rivers. The department's Conservation Education Division pays close attention to this issue and makes every effort to

provide accurate and helpful information about the rules, and to clarify that the rules are designed to provide a quality river recreation experience for residents and nonresidents.

Additionally, the commission adopted the Beaverhead and Big Hole biennial rules as a temporary protection for the river and the river experience until a permanent solution could be found. The River Recreation Advisory Council is working on statewide river recreation policy recommendations.

COMMENT 8: An individual commented that press releases announcing the possibility of fishing closures due to the drought caused clients to stay away from the Big Hole River. This individual thought that the department needs to provide more specific information to the media that explains if some sections of the river are closed and other sections are open.

RESPONSE: It is the department's job to inform the public about existing resource conditions. It is also the department's job to inform the public about probable future resource conditions. Montana has had a series of years where snow pack is below average, and consequently, some rivers, reservoirs, and lakes have experienced low water and elevated water temperatures that have posed threats to fisheries. On an ongoing basis, the department works towards protecting the aquatic resources and providing angling opportunities to the public. There are situations when it is necessary to restrict angling opportunities in order to protect fish during periods of low flows and elevated water temperatures. The department makes every attempt to involve and inform the public when these decisions are made. It also uses its professional knowledge to forecast future river conditions so that anglers can prepare for temporary changes in the regulations.

Every time there is a closure of a section of a river due to drought, the department puts out a press release explaining the closure and the reason for it. Additionally, where helpful, the department includes graphics depicting the sections of the river affected by the closures. However, the department agrees that it needs to make every effort to provide accurate information to the public and media. It is making a concerted effort to educate the media to better use the department's website that contains extensive information on drought closures.

COMMENT 9: Some outfitters stated that during periods of high water, the only fishable water is above where the Wise River enters the Big Hole River. On Thursdays, when the outfitter closure is from Fish Trap to Jerry Creek (22 miles), there is virtually no fishable water. The same problem occurs during periods of low water for outfitters.

RESPONSE: When the rules were originally developed, the commission acknowledged that over time it might be necessary to amend the rules in order to improve their effectiveness. The

commission proposes that it re-examine this component of the rules after it completes the statewide river recreation planning effort.

COMMENT 10: A number of individuals submitted comments in support of the rules and provided information about why they like the rules. The following is a summary of reasons that these individuals supported the rules:

- The rules are particularly important during drought years.
- The rules reduce the number of boats on the river(s).
- The reduction in boats on the river benefits the resident and nonresident wade angler.
- The current number of outfitters is sufficient to meet the needs of the recreation users.
- Support for the Resident's Day.
- The recreation plan is a fair balance between recreation and business interests.
- It would be a shame to go to allocations and drawings when the mechanisms on the Beaverhead and Big Hole rivers are working.
- The grayling does not need more angling pressure.
- The rules provide needed protection for the river resources.
- Uncontrolled recreational use is not in the interest of any user group.
- The 2001 department user satisfaction survey shows overwhelming support for the rules.
- Failure to renew this plan will result in a surge in the number of outfitters on these rivers.
- Montana residents pay a financial price for living here.
- The rules were the result of a consensus process.
- The rules distribute use more evenly across the river.
- The rules protect the investment of existing outfitters by providing their clients with a quality experience.
- The boat identification tags cut down on local illegal outfitters and guides.

RESPONSE: The commission notes the information provided by these individuals and appreciates their support.

COMMENT 11: A number of individuals supported the rules and offered recommendations. The following is a summary of their recommendations:

- Retain the provision of the rules that states that river user days can only be transferred to immediate family members.
- The two-boat launch limit on the Big Hole River should be applied to the upper-Beaverhead River.

- There should be harsher penalties for outfitters who do not comply with the rules.
- There needs to be more enforcement of the rules.
- The rules should be expanded year-round.
- Give the rules a chance to work: one year is not enough to judge their effectiveness.
- The rules need to remain in place until a statewide river recreation management plan is in place.
- Suggest expanding the rules to other rivers.
- Nonresident license fees should be increased.
- It is not necessary to revisit the plans every two years, suggest implementing for a longer period of time, perhaps permanent.
- The level of management should be determined by those who live along and use the river often.

RESPONSE: The commission is interested in the recommendations provided by these individuals and appreciates their support.

COMMENT 12: An individual representing an outfitting association stated opposition to any moratorium, cap on clients, or boat tag requirement.

RESPONSE: The commission appreciates this point of view and will continue to consider its feasibility. At present, the commission has determined from a combination of public comment and data that the rules as drafted best address concerns on the Beaverhead and Big Hole rivers.

COMMENT 13: An individual representing an outfitting association commented that the proposed rules were in violation of the Montana Administrative Procedure Act because he believes that the statement of reasonable necessity does not state the rationale for regulating nonresident and outfitted float fishing. He also thought the statement of reasonable necessity was not expressed in terms that are easily understood and that there was no data that indicated there was a reasonable necessity to adopt the rules.

RESPONSE: The commission notes that it disagrees that the statement of reasonable necessity was not adequate. Section 2-4-305, MCA, requires the commission to address the reasonable necessity for the rules by stating the principal reasons for them. The commission feels that it has done just that by explaining that a combination of public comment, data, and commission discretion support implementing the proposed rules to address concerns expressed by the public.

COMMENT 14: An individual representing an outfitting association said that in the past the department has been cooperative in providing survey data pertaining to the

Beaverhead and Big Hole rivers rules; but in recent weeks he had difficulty obtaining the most recent data from the department for the purposes of formulating these comments.

RESPONSE: The department is committed to providing public information and has been as responsive to the individual's requests as possible given its resources and manpower.

COMMENT 15: An individual representing an outfitting association said that there were no monitoring or evaluation techniques in the rules to gauge their effectiveness.

RESPONSE: The commission notes this comment and recognizes that the rules themselves do not put a system of monitoring or evaluation in place. Monitoring and evaluation will remain a management tool in the future. The commission further contends that it is more appropriate to evaluate the rules when the statewide river recreation planning process is completed. At that time, the commission will be able to evaluate the rules and take into account the results of the statewide planning process and input from the public based on a number of years of rule implementation.

COMMENT 16: An individual representing an outfitting association stated opposition to the closure of the river reach from Highway South (Tash) Bridge to Selway Bridge to float outfitting. He believed there was no data to support this closure and that all float fishing should be controlled in this stretch as the majority of angling pressure was from local residents.

RESPONSE: The department collected data for the commission that characterized the recreational use on the Beaverhead and Big Hole rivers. The commission believes that the data demonstrates the amount of angling pressure on the rivers and the proportion of use attributed to categories of use groups and types of use. The commission has the discretion to use data in combination with public comment and its own expertise to make a decision that it believes best serves the public.

COMMENT 17: An individual representing an outfitting association commented that he does not agree that residents deserve a section of the river to themselves each day of the weekend. Conversely, a number of individuals commented that they vehemently support the nonresident limitations.

RESPONSE: As a point of clarification, the rules do not limit all uses of the rivers on all stretches for nonresidents on a given day. The rules allow wade fishing and other recreational uses on every stretch of the rivers.

The comments show that a segment of the Montana citizens vehemently believe that the commission should protect their opportunities even if it is necessary to provide fewer opportunities for nonresidents.

In the case of the Beaverhead and Big Hole rivers, the commission attempted to identify solutions that would meet the interests of both residents and nonresidents. Furthermore, the commission's perspective is that if the rules successfully address concerns about crowding, both residents and nonresidents will benefit from the improved conditions. The amount of controversy surrounding this particular issue, however, is evidence that the commission needs to take a comprehensive look at river recreation management tools and develop policies that address the issue of residency. Additionally, the commission believes that until there are policy guidelines in place, it would be imprudent to make changes to the nonresident components of the rules. The commission is committed to managing rivers in a way that will provide a quality experience for all users.

COMMENT 18: A number of opponents and proponents to the rules supported limiting the number of daily launches per float users. A similar comment expressed concern that the rules focus on a particular user group and not all user groups.

RESPONSE: The commission followed public opinion and experience from agencies in other states to focus on the outfitting component first, before directly addressing nonoutfitted or private use. Additionally, in adopting the original biennial rule, the commission followed legislation introduced in the 1999 session that focused on outfitted use. However, this is another example of an issue that the statewide river recreation planning process may address. While the commission has in its discretion chosen to follow this path thus far, it may change its course in the future to reflect findings or to respond to any recommendations of the River Recreation Advisory Council.

COMMENT 19: A number of individuals commented that they find the transferability issue to be an ongoing problem.

RESPONSE: The governor signed House Bill 411 into law on March 24, 2003. Therefore, House Bill 411 as signed into law controls the transferability issue and the rule has been amended to reflect that.

COMMENT 20: An individual indicated concern that both the Beaverhead and Big Hole rivers are addressed in one set of administrative rules.

RESPONSE: The commission notes this comment and proposes to continue with one set of rules addressing both rivers for continuity of process. However, it will continue to

consider this issue as the statewide river recreation planning process proceeds.

COMMENT 21: An individual noted that the rules are about social management and not about protecting resources.

RESPONSE: The commission recognizes that the rules address social conflicts on the Beaverhead and Big Hole rivers. The commission also notes that the rules address the quality of river recreation experience through fishing.

COMMENT 22: A number of outfitters noted that the rules resulted in an inequity among outfitters.

RESPONSE: The amount of use allocated to the outfitters was based on historical use numbers that outfitters record and send to the Board of Outfitters. The amount of use is based on an outfitter's highest client use year over a six-year period. At the time the rules were developed, the commission thought this to be the fairest method of determining the maximum number of use days an outfitter would be allowed during the designated time period. The commission based its rules on historical use knowing that it would continue to search for other methods of addressing concerns over crowding on the rivers. Further, the commission recognizes that after the statewide river recreation planning process is completed, the River Recreation Advisory Council will have addressed and may have recommendations on this very issue.

COMMENT 23: An individual commented that the definition of "float outfitting" needs further clarification.

RESPONSE: The commission amended New Rule I (ARM 12.11.202) River Definitions to clarify that float outfitting includes only the practice of float fishing for commercial purposes. Therefore, the rules do not regulate scenic floating for commercial purposes.

COMMENT 24: An individual noted that the rule listing official access sites on the Big Hole River does not include the Salmon Fly, the second Maiden Rock, and the Eastbank fishing access sites.

RESPONSE: The commission amended New Rule I (ARM 12.11.202) River Definitions to include these three fishing access sites.

COMMENT 25: Two commentators suggested that the sunset date for the rules be several months earlier than proposed and that the statewide river recreation planning process be completed well before May of 2005.



RESPONSE: The commission will take this and other comments under advisement and will encourage the statewide river recreation planning process to be completed in a timely manner.

COMMENT 26: An individual commented that the rules should provide an alternative for number of outfitter days of use on the rivers.

RESPONSE: The rules as proposed allow an outfitter who has documented the requisite use to outfit for a maximum of the number of days from that outfitter's highest client use year from among the years of 1995 through 2000. The comment suggests allowing an outfitter to choose between the maximum number of clients or a designated number of boats. The commission chooses to be consistent and keep the rules as proposed. However, it will continue to consider alternatives such as the one suggested in this comment.

COMMENT 27: At least two individuals noted that the rules are confusing to the public and are thus hard to follow.

RESPONSE: The commission recognizes that it can always take steps to make the rules more user friendly. Therefore, the department has taken steps to make it easier for the public to interpret and comply with the rules, such as posting signs at the access sites and printing wallet sized rule cards. The commission will continue to make all efforts to clarify the rules.

COMMENT 28: An individual suggested discontinuing the rules until the River Recreation Advisory Council has completed its work.

RESPONSE: The commission has chosen to keep the rules in place as proposed. This provides continuity in process and preserves the status quo until the River Recreation Advisory Council can complete its work. At that time, the commission may readdress some of the issues raised in this rulemaking process as well as in the river recreational planning process.

COMMENT 29: An individual commented that by restricting use of the Beaverhead and Big Hole rivers, the rules have displaced use and its associated problems to other rivers.

RESPONSE: The commission recognizes this concern and similarly recognizes that it is an issue appropriate for the statewide river recreation planning process. The commission felt it necessary to address concerns on the Beaverhead and Big Hole rivers through these rules but will also continue to look at how these rules affect other rivers as well.

By: /s/ M. Jeff Hagener  
M. Jeff Hagener  
Commission Secretary

By: /s/ Robert N. Lane  
Robert N. Lane  
Rule Reviewer

Certified to the Secretary of State April 14, 2003

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

In the matter of the adoption )	
of new rules I through III, )	
closing Cochrane, Morony, and )	
Ryan reservoirs to all )	
boating, sailing, floating, )	NOTICE OF ADOPTION
swimming, personal watercraft )	AND AMENDMENT
use, and waterfowl hunting; )	
and the amendment of ARM )	
12.11.501, list of water )	
bodies, to include Cochrane, )	
Morony, and Ryan reservoirs )	

TO: All Concerned Persons

1. On February 27, 2003, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-290 regarding the public hearing on the proposed adoption of new rules I through III, closing Cochrane, Morony, and Ryan reservoirs to all boating, sailing, floating, swimming, personal watercraft use, and waterfowl hunting; and the amendment of ARM 12.11.501, list of water bodies, to include Cochrane, Morony, and Ryan reservoirs at page 276 of the 2003 Montana Administrative Register, Issue Number 4.

2. The commission has adopted new rules I through III, ARM 12.11.1403, 12.11.1405, and 12.11.1407, with the following changes, stricken matter interlined and new matter underlined:

NEW RULE I (ARM 12.11.1403) COCHRANE RESERVOIR

- (1) Cochrane Reservoir is located in Cascade County.
- (2) Cochrane Reservoir is closed to all boating, sailing, floating, swimming, personal watercraft use, and waterfowl hunting.
- (3) Fishing from shore is permitted ~~only in designated areas on Cochrane Reservoir~~ except in areas where public access is prohibited as marked.

AUTH: 23-1-106, 87-1-303, MCA  
IMP: 23-1-106, 87-1-303, MCA

NEW RULE II (12.11.1405) MORONY RESERVOIR (1) Morony

- Reservoir is located in Cascade County.
- (2) Morony Reservoir is closed to all boating, sailing, floating, swimming, personal watercraft use, and waterfowl hunting.
- (3) Fishing from shore is permitted ~~only in designated areas on Morony Reservoir~~ except in areas where public access is prohibited as marked.

AUTH: 23-1-106, 87-1-303, MCA  
IMP: 23-1-106, 87-1-303, MCA

NEW RULE III (12.11.1407) RYAN RESERVOIR (1) Ryan Reservoir is located in Cascade County.

(2) Ryan Reservoir is closed to all boating, sailing, floating, swimming, personal watercraft use, and waterfowl hunting.

(3) Fishing from shore is permitted ~~only in designated areas on Ryan Reservoir~~ except in areas where public access is prohibited as marked.

AUTH: 23-1-106, 87-1-303, MCA

IMP: 23-1-106, 87-1-303, MCA

3. The commission has amended ARM 12.11.501 as proposed.

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

COMMENT 1: One individual expressed concern that this action is part of a trend in Montana where those with financial backing can close off property to the public.

RESPONSE: Until recently, Cochrane, Ryan and Morony reservoirs have not been open to general public access. The completion of the Federal Energy Regulatory Commission (FERC) mitigation agreement, and the donation of an easement for land adjacent to these reservoirs allow new public access to the reservoirs. Concern for public safety with the new public access to the reservoirs prompted the adoption of these rules.

COMMENT 2: One individual stated that tax dollars contributed toward the existence of the walleye and sauger in the reservoirs and that the FERC mitigation plan does not cover loss of opportunity to fish for walleye and sauger in the reservoirs.

RESPONSE: Walleye and sauger were stocked by the Department of Fish, Wildlife and Parks (department) in the reservoirs, knowing they were closed to the public by Montana Power Company (MPC), with the idea and general public understanding that the fish would grow and be passed through the dams downstream to benefit a public fishery in the Missouri River. Fishing license dollars and the federal excise taxes on fishing equipment were used to fund this stocking. No state general tax dollars were used.

COMMENT 3: A number of individuals stated that they did not believe that the reason for the reservoir closure was public safety. Others said the reservoirs were only unsafe to individuals on or near shore. They thought boating on the reservoir is safe. Several individuals said they had never seen the water drop the 10 foot maximum that it can drop.

RESPONSE: In the new FERC license PPL Montana now has the authority to fluctuate the reservoirs up to 10 feet. Normal reservoir fluctuations are less than 5 feet. PPL Montana representatives cited mud flats, sand and mud bars in the reservoirs, unstable banks, debris concentrations, and turbulent water immediately above and below the dams as the hazards that create a public safety issue. PPL Montana's operation of the dams makes them responsible for the condition of these reservoirs and poses some liability for the company.

COMMENT 4: One riparian property owner stated that he has used the reservoir for years and intends to keep using it.

RESPONSE: If the proposed rule change is implemented a violation of the rule would be a misdemeanor. A violator would be subject to a fine of up to \$500. Boating on these reservoirs has been so light that it is not cost effective for department enforcement to patrol, but the enforcement will respond to complaints.

COMMENT 5: One individual thought that these reservoirs are no different than others. If these reservoirs are dangerous, then all reservoirs are just as dangerous.

RESPONSE: It is true that hazards are associated with all recreational water use. However, these reservoirs are different in that there are fluctuations of water levels that do not normally occur in nature. These fluctuations can lead to watercraft being stranded on the reservoir, individuals in the water being stranded or drowned, exposure of quicksand areas, and other hazards.

COMMENT 6: One individual said that the mitigation agreement was already outdated because of current events.

RESPONSE: It is true that one of the easements that should be available for public access currently is not contemplated in the available mitigation agreement because Homeland Security has closed all access across the dams for national security reasons. Hopefully, this closure will be of short duration.

COMMENT 7: One individual believed that the new fishing access sites and improvements to sites funded by the MPC/PPL Montana under the mitigation agreement were not of equal value to being able to recreate on the reservoirs.

RESPONSE: The many public citizens who have never been able to access these reservoirs for recreation but have been able to access the fishing access sites would probably disagree with that comment. The new fishing access site at Widow Coulee provides access to 15 miles of the Missouri River that until recently was closed to public access. Some of the mitigation funds went to develop the Lewis and Clark

Interpretive Center, a very popular attraction. Still other mitigation funds were used to develop public access to Rainbow Reservoir. Two more new fishing access sites will be developed on the Missouri River between Great Falls and Hardy in the next five years. When the mitigation plan is fully implemented, it will far exceed the opportunities historically available on the three reservoirs of concern.

COMMENT 8: One individual expressed concern that this reservoir closure was the beginning of more and more closures until all water is closed to recreation.

RESPONSE: The commission does not desire to close waters to the public without reason. In fact, the opposite is true. The commission does not wish to be any more restrictive than is absolutely necessary to protect public health, safety, welfare, and protect property. These waters have not been regulated before because they had no public access, therefore public safety was not an issue. Now, that there is public access and serious safety concerns exist on these waters, the commission is regulating them in the interest of public safety.

COMMENT 9: One individual stated that these waters have had limited access for 50 years and he had never seen any major safety issue.

RESPONSE: Possibly, no deaths have occurred on these reservoirs because there was limited access and those with access to the reservoirs were adjacent landowners and their friends and relatives who were familiar with the unsafe conditions of the waters. Now, the general public, who is not familiar with the waters, will have access. The commission hopes to avoid tragedies on these waters. Additionally, the FERC license allows PPL Montana to fluctuate reservoirs up to 10 feet posing a larger safety concern than the smaller fluctuations in the past.

COMMENT 10: One individual stated that the proposed restriction on waterfowl hunting does not make sense.

RESPONSE: The rules restrict human activity on the water. As long as any waterfowl hunting does not include human use of the reservoirs, it is allowed. For example the rule does not limit waterfowl hunting opportunities on adjacent land or prohibit dogs retrieving downed birds on the reservoirs.

COMMENT 11: Some individuals opposed the rule because they believe there are enough restrictions.

RESPONSE: It's true there are a number of restrictions around power facilities. These restrictions involve a very small percent of the waters in Montana.

COMMENT 12: One individual stated that the proposed rules went beyond the intent of the original agreement. He thought, unless there is clearly a danger, fishing from shore should be permitted.

RESPONSE: The commission agrees and has modified the proposed rules to permit fishing from shore except in areas that are marked for safety reasons.

COMMENT 13: Several individuals expressed resentment and disappointment at losing the ability to boat on the reservoir. One stated that the best fishing is from a boat. Another said that there are beautiful rock formations and wildlife that can be seen only from a boat. One individual believed that a waste of aesthetic and recreational values would occur by closing the reservoirs, especially since the reservoirs are in close proximity to Great Falls.

RESPONSE: These reservoirs have been closed to general public recreation at least since the construction of Cochrane Dam in 1958. Most of the 2,415 acre Lewis and Clark Heritage Greenway Conservation Easement donated by MPC to the State of Montana in 1999, and bordering the north side of these reservoirs is open, for public enjoyment of the area's flora and fauna and open views.

COMMENT 14: One individual read part of an article from the Great Falls Tribune in which the department director said there would be no closing of an 11,000 acre park.

RESPONSE: The subject of the Great Falls Tribune article was about surplus fishing access site lands throughout Montana. In this rulemaking, the commission is not closing the conservation easement lands.

COMMENT 15: One commentor stated complete opposition to the rule and said that limited access should take care of any danger.

RESPONSE: Limited access could minimize the number of individuals in danger from the hazards on these reservoirs; however, this rulemaking was initiated because public access will now be available and access can no longer be limited.

COMMENT 16: Several individuals stated that they have lived on the reservoirs for 20 or 30 years, and they didn't think the reservoirs were hazardous as they had never seen the water rise more than two feet.

RESPONSE: Most people who got on the reservoirs knew power company employees or one of the few private landowners bordering the reservoirs. They were with people who were familiar with the operation of the dams and the hazards in the reservoirs. This will no longer be the situation with most of

the north shore open for public access. Additionally, the operation of the dams for local peaking power has changed in recent years.

By: /s/ M. Jeff Hagener  
M. Jeff Hagener  
Commission Secretary

By: /s/ Martha Williams  
Martha Williams  
Rule Reviewer

Certified to the Secretary of State April 14, 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 IV )	AMENDMENT
pertaining to standards for )	
electrical conductivity and )	
sodium adsorption ratio and )	(WATER QUALITY)
classifications for )	
constructed coal bed methane )	
water holding ponds, and the )	
amendment of ARM 17.30.602, )	
17.30.706 and 17.30.715 )	
pertaining to definitions for )	
water quality standards, )	
informational requirements for )	
nondegradation significance/ )	
authorization review and )	
nonsignificance criteria )	

TO: All Concerned Persons

1. On August 29, 2002, the Board of Environmental Review published MAR Notice No. 17-171 regarding a notice of public hearing regarding the proposed adoption and amendment of the above-stated rules at page 2269, 2002 Montana Administrative Register, issue number 16. On December 26, 2002, the Board of Environmental Review published MAR Notice No. 17-187 regarding an amended notice of public hearing on the proposed adoption and amendment of the above-stated rules at page 3489, 2002 Montana Administrative Register, issue number 24. MAR Notice Nos. 17-171 and 17-187 were part of the same rulemaking proceeding.

2. The Board did not adopt New Rule I or the proposed amendments of ARM 17.30.715 from MAR Notice No. 17-171 or Alternative I of New Rule IV from MAR Notice No. 17-187. The Board deferred consideration of New Rules II and III and the proposed amendment of ARM 17.30.706 until its June 6, 2003 regularly scheduled meeting. The Board has adopted Alternative II of New Rule IV (17.30.670) and amended ARM 17.30.602 as proposed, but with the following changes from the amended notice, stricken matter interlined, new matter underlined:

ALTERNATIVE II

Rule IV (17.30.670) NUMERIC STANDARDS FOR ELECTRICAL CONDUCTIVITY (EC) AND SODIUM ADSORPTION RATIO (SAR)

(1) remains as proposed.

(2) ~~Except as provided in [New Rule III],~~ the The numeric standards for electrical conductivity (EC) and sodium adsorption ratio (SAR) for the mainstems of Rosebud Creek, the

Tongue, Powder, and Little Powder rivers from November 1 through March 1 are as follows:

(a) for Rosebud Creek and the Tongue River, the monthly average numeric water quality standard for EC is ~~2000~~ 1500  $\mu\text{S}/\text{cm}$  ~~{for an alternative value in the range of 1000 through 2000  $\mu\text{S}/\text{cm}$ }~~ and no sample may exceed an EC value of 2500  $\mu\text{S}/\text{cm}$ . and the The monthly average numeric water quality standard for SAR is 5.0 ~~{for an alternative value in the range of 3.0 through 5.0}~~ and no sample may exceed an SAR value of 7.5; and

(b) for the Powder River and the Little Powder River, the monthly average numeric water quality standard for EC is 2500  $\mu\text{S}/\text{cm}$  and no sample may exceed an EC value of 2500  $\mu\text{S}/\text{cm}$ . and the The monthly average numeric water quality standard for SAR is 6.5 ~~{for an alternative value in the range of 6.0 through 7.5}~~ and no sample may exceed an SAR value of 9.75.

(3) ~~Except as provided in [New Rule III],~~ the The numeric standards for EC and SAR for the mainstems of Rosebud Creek, the Tongue, Powder, and Little Powder rivers from March 2 through October 31 are as follows:

(a) for Rosebud Creek and the Tongue River, the monthly average numeric water quality standard for EC is 1000  $\mu\text{S}/\text{cm}$  ~~{for an alternative value in the range of 1000 through 1500  $\mu\text{S}/\text{cm}$ }~~ and no sample may exceed an EC value of 1500  $\mu\text{S}/\text{cm}$ . and the The monthly average numeric water quality standard for SAR is ~~3.5~~ 3.0 ~~{for an alternative value in the range of 3.0 through 5.0}~~ and no sample may exceed an SAR value of 4.5; and

(b) for the Powder River and Little Powder River, the monthly average numeric water quality standard for EC is 2000  $\mu\text{S}/\text{cm}$  ~~{for an alternative value in the range of 1600 through 2000  $\mu\text{S}/\text{cm}$ }~~ and no sample may exceed an EC value of 2500  $\mu\text{S}/\text{cm}$ . and the The monthly average numeric water quality standard for SAR is 5.0 ~~{for an alternative value in the range of 4.0 through 6.0}~~ and no sample may exceed an SAR value of 7.5.

(4) ~~Except as provided in [New Rule III],~~ ~~for~~ For all tributaries and other surface waters in the Rosebud Creek, Tongue, Powder, and Little Powder river watersheds, the monthly average numeric water quality standard for EC is 500  $\mu\text{S}/\text{cm}$  ~~{for an alternative value in the range of 500 through 2500  $\mu\text{S}/\text{cm}$ }~~ and no sample may exceed an EC value of 500  $\mu\text{S}/\text{cm}$ . and the The monthly average numeric water quality standard for SAR from March 2 through October 31 is ~~5.0~~ 3.0 ~~{for an alternative value in the range of 3.0 through 7.5}~~ and no sample may exceed an SAR value of 4.5. The monthly average numeric water quality standard for SAR from November 1 through March 1 is 5.0 and no sample may exceed an SAR value of 7.5.

(5) ~~All of the standards listed in (2) through (4) apply as an average value for each month {or as an instantaneous value}.~~ For the Tongue River Reservoir, the monthly average numeric water quality standard for EC is 1000  $\mu\text{S}/\text{cm}$  and no sample may exceed an EC value of 1500  $\mu\text{S}/\text{cm}$ . The monthly average numeric water quality standard for SAR is 3.0 and no sample may exceed an SAR value of 4.5.

(6) through (8) remain as proposed.

17.30.602 DEFINITIONS (1) through (8) remain as proposed.

(9) "Electrical conductivity (EC)" means the ability of water to conduct an electrical current at 25°C. The electrical conductivity of water represents the amount of total dissolved ~~salts~~ solids in the water and is expressed as microSiemens/centimeter ( $\mu\text{S}/\text{cm}$ ) or micromhos/centimeter ( $\mu\text{mhos}/\text{cm}$ ) or equivalent units and is corrected to 25°C.

(10) through (32) remain as proposed.

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

Response to Comments on MAR Notice No. 17-171

COMMENT NO. 1: Several commentors recommended retaining the existing narrative water quality standards that apply to Electrical Conductivity (EC) and Sodium Adsorption Ratio (SAR) and not adopt numeric EC and SAR standards. These commentors stated that the proposed numeric standards are not consistent with scientific information regarding irrigation water quality and potential effects on Montana soils and crops. This is illustrated by the inability of the Department to develop clear, concise and consistent standards as demonstrated by the numerous changes that have been made during the development of the proposed standards.

RESPONSE: The process of developing water quality standards for EC and SAR in the Powder River Basin has been underway for more than two years. During that time, the Department reviewed previously existing water quality data, collected additional data and reviewed available information about crops and irrigation practices in the Basin. Initially, draft standards were prepared and distributed for comment to the agricultural community, environmental representatives and the coal bed methane (CBM) industry. Based on the comments and data received, the Department continued to revise its initial proposal as part of the process of developing scientifically defensible standards. The number of revisions during the development of the proposed standards indicates that the Department was engaged in an open and responsive process.

At this time, the Board believes that there is sufficient information about the effect of irrigation water salinity and SAR to establish water quality standards that are protective of existing and future beneficial uses. The U.S. Environmental Protection Agency submitted comments in support of the Board's position by stating: "Although the issues are complex, the science for some key factors imperfect, and the data on existing conditions incomplete, we believe the existing information is sufficient to support adoption of appropriate and protective standards now...." Despite the various changes to the rules that are being made in response

to comments, the Board believes that there is sufficient information to adopt numeric standards that are protective of designated uses. Given that numeric standards are necessary to clearly delineate an enforceable limit that is consistently applied by various permit writers, the Board does not agree that retaining the existing narrative standard is appropriate.

COMMENT NO. 2: Several commentors stated that the numeric standards for the Powder River are too low, because the natural quality of the River exceeds the proposed standards.

RESPONSE: The Board agrees. The EC standard for the Powder River during the irrigation season will be raised from 1900, as originally proposed, to 2000  $\mu\text{S}/\text{cm}$ . For the nonirrigation season, the EC standard will be raised from 2000, as originally proposed, to 2500  $\mu\text{S}/\text{cm}$ . In addition, the SAR standard will be 6.5 for the nonirrigation season. These modifications more nearly reflect natural conditions and will not impact irrigated agriculture.

COMMENT NO. 3: The formula for deriving a SAR standard for the Tongue River and Rosebud Creek during the irrigation season should be eliminated. The change is recommended after a review of the "Hanson" diagram. The diagram was the basis for the formula in MAR Notice No. 17-171 ( $\text{SAR} = (\text{EC} \times 0.0071) - 2.475$ ) that relates "permissible" SAR levels to EC. The review revealed that the diagram was incorrectly copied from the original scientific papers. Using the original papers the correct formula is  $\text{SAR} = (\text{EC} \times 0.0067) - 3.345$ . Rather than modify the rules to include the correct formula, it is recommended that the formula be eliminated from the rules for the following reasons:

(1) For the Tongue River and Rosebud Creek, the minimum EC to which the formula was applied in MAR Notice No. 17-171 was 350  $\mu\text{S}/\text{cm}$ . Using the formula resulted in a water quality standard for SAR of 0.5. However, long-term irrigation of comparable soils in the Yellowstone Valley using water with an EC less than 500  $\mu\text{S}/\text{cm}$  and a SAR of 2 has not caused noticeable damage to soils. If the correct formula is used, a SAR of 2 corresponds to an EC value of approximately 800  $\mu\text{S}/\text{cm}$ . Thus, the formula could only be used for EC values between 800 and 1000  $\mu\text{S}/\text{cm}$  (the EC standard). Due to the limited applicability of the formula to these streams, the uncertainty of the formula values, and the fact that eliminating the formula greatly simplifies the rules, the formula should not be used for the Tongue River and Rosebud Creek.

(2) For the Powder and Little Powder Rivers, the EC is nearly always above 1240  $\mu\text{S}/\text{cm}$ . At EC values greater than 1240  $\mu\text{S}/\text{cm}$ , the formula gives SAR values greater than 5. Since the maximum SAR irrigation standard for these Rivers is set at 5, the formula would serve no purpose for these streams.

(3) For the tributaries, the EC standard of 500  $\mu\text{S}/\text{cm}$  and the use of the formula would result in a SAR limit of 0.005. This value is well below a SAR of 2, which is not harmful in the Yellowstone Valley. Thus the formula should not be used.

RESPONSE: The Board agrees. Rather than use the formula, the Board is adopting specific SAR values for the various streams and rivers under consideration.

COMMENT NO. 4: Even though the Department concedes that EC and SAR are "harmful" parameters, the proposed rule treats these parameters differently from all other harmful parameters by exempting them from the nondegradation policy. The proposal exempts EC and SAR by providing a nonsignificance threshold that is the same as the proposed numeric water quality standards for EC and SAR. The Board should reject this proposal because it will not pass strict scrutiny by the courts and is therefore unconstitutional. Instead, the Board should adopt the irrigator's proposal that would set the nonsignificance threshold at 50% of the applicable standard, which is the threshold for all other harmful parameters.

Another commentor argued that EC and SAR should be designated as "toxic" for purposes of establishing a 15% nonsignificance threshold for nondegradation review.

RESPONSE: The Department has not conceded that EC and SAR should be classified as "harmful." Moreover, the Board does not agree that the rule should be changed to define EC and SAR as either "harmful" or "toxic." In MAR Notice No. 17-171, the Board explained that, given the natural fluctuations of EC and SAR in the Tongue and Powder River Basins, which often result in exceedances of the proposed numeric standards, the policy of maintaining existing "high quality" for these parameters is not justified. Regardless of the numeric threshold that could be imposed by the adoption of a 50% or 10% threshold, those thresholds will not prevent EC and SAR from naturally degrading water quality to the point where the numeric standards are exceeded. The Board also explained that imposing a numeric threshold based upon a percentage of the assimilative capacity would be virtually impossible to comply with or enforce. Given that slight changes in EC and SAR are extremely difficult to measure, a nonsignificance threshold based upon a percentage of the assimilative capacity would require continuous in-stream monitoring in order to distinguish between natural degradation and nonsignificant changes resulting from discharges. The impracticality of enforcing a numeric nondegradation threshold for these parameters argues persuasively against the adoption of such thresholds.

Based on the reasons given above, the Board does not believe that the narrative nonsignificance thresholds violate the Water Quality Act or the Constitution.

COMMENT NO. 5: Adoption of any numerical standards for EC and SAR would eliminate the potential for any discharge of CBM water.

RESPONSE: The revised rules would not eliminate the potential for CBM discharges. According to analyses performed by DEQ staff, the revised rules would allow for at least several thousand acre feet of CBM discharges to the Powder River without violating standards, even after the nondegradation threshold for flow is applied (i.e. 15% of the mean monthly flow). For the Tongue River, there could be from 10,000 to 15,000 acre feet of CBM discharges. Both of these numbers are based on the assumptions that discharge limitations will be based on the monthly 90th percentile flows and that the nondegradation thresholds for other parameters will not be limiting.

COMMENT NO. 6: Adoption of numerical standards for EC and SAR would potentially eliminate the allocation of any assimilative capacity to Wyoming.

RESPONSE: The purpose of water quality standards is not to allocate assimilative capacity, but to protect the designated uses of a water body. See 40 C.F.R. § 131.2 and 131.11. For this reason, the water quality standards being adopted by the Board do not allocate assimilative capacity among tribal lands, Montana, or the state of Wyoming. Rather, the standards being adopted will protect agricultural uses within the state, as well as the other designated uses of those state waters. If it becomes necessary to apportion the assimilative capacity of the water bodies for EC or SAR between the states, that process would likely take place in the context of an interstate total maximum daily load (TMDL) or an interstate agreement under the federal Clean Water Act (CWA).

COMMENT NO. 7: The proposed numerical standards for EC and SAR would create compliance problems for all current and future discharges.

RESPONSE: The numeric standards will not "create" compliance problems because, regardless of the type of water quality standard used (numeric or narrative), the designated uses of the water body require protection based upon compliance with an appropriate MPDES permit limit. The only difference between using the numeric standards rather than the existing narrative standard is that the precise level of protection would no longer be subject to differing interpretations in the context of future permitting decisions and enforcement actions.

Moreover, compliance with the numeric standards should not be a problem for new point sources, since no permit may be issued unless the department is assured that the permit limits can be met. See ARM 17.30.1311(1). For existing sources, which are primarily municipalities, the adoption of EC and SAR standards should have little or no effect, since those sources do not discharge large volumes of EC and SAR. In terms of

nonpoint sources and irrigation return flows, those sources are not subject to permit requirements so that compliance with permit limits will not be a problem. See ARM 17.30.1310. However, nonpoint sources and irrigation return flows are subject to compliance with water quality standards, regardless of whether those standards are numeric or narrative.

COMMENT NO. 8: Adopting the proposed numeric standards would require listing the streams in the area as impaired and developing a total maximum daily load (TMDL) for all of the streams.

RESPONSE: The adoption of numeric standards for EC and SAR will not mandate the listing of streams as impaired, but will serve as a basis for determining their impairment status. The mere fact that the waters in these Rivers may exceed the numeric standards is not the only factor considered in making this determination. The determination of whether or not a water body is impaired requires an extensive review of water quality information and an assessment of the sources and causes of pollution. If the quality of a water body does not meet one or more standards because of natural conditions, the water is not listed as impaired and does not need a TMDL. In fact, several water body segments in the Basin were listed as impaired and in need of a TMDL based on an interpretation of the narrative standards for salinity. Some of those waters were removed in the year 2000 list due to a lack of sufficient, credible data to support their listing. As a result, additional water body assessments have been conducted and, based upon the outcome of those assessments, TMDLs may be determined to be necessary. If a TMDL is necessary, the numeric standards being adopted for EC and SAR will facilitate the determination of appropriate load and waste load allocations during TMDL development.

COMMENT NO. 9: The proposal is not stringent enough during the nonirrigation season.

RESPONSE: The Board's proposed revisions to the EC and SAR standards will protect the sensitive crops grown in the Powder River Basin during the nonirrigation season. The standards during the nonirrigation season are somewhat less stringent but are believed to be protective of riparian vegetation and floodplain areas that could be flooded during the winter because of ice jams. The Board also believes that the proposed standards are protective of all aquatic life (fish as well as invertebrates). During some parts of the year, summer or winter, the water quality data show that the proposed standards have been exceeded and no information has been found that suggests the aquatic life has been impaired during those excursions.

COMMENT NO. 10: The proposed numeric standards should be modified because they do not include March during the irrigation season. Irrigation during March, especially on the tributaries, is common in the affected areas.

RESPONSE: The Board agrees and is modifying the rules to include the month of March in the irrigation season.

COMMENT NO. 11: The proposed standards will not protect uses in the Basin or downstream in the Yellowstone Valley. The standards should be set so that no increases in EC or SAR are allowed.

RESPONSE: The Board believes that the numeric standards will protect all beneficial uses of the Rivers and that implementation of the standards under the existing permit system will ensure that downstream uses will be protected. This belief is based on the information, data, and analyses contained in the paper titled Technical Basis for Draft EC and SAR Standards, Montana Department of Environmental Quality, July 2002, which is the basis for the standards, and modifications to the standards made in response to new information submitted during the comment period.

The Board also believes that the nondegradation requirements in the rules are adequate to protect the waters in the Basin during the periods when the quality of those waters is better than necessary to protect the designated uses (i.e., "high quality"). An absolute ban on any increase of EC and SAR is unnecessarily stringent since "high quality" waters by definition have some assimilative capacity for increases in a parameter while still fully supporting uses.

COMMENT NO. 12: Montana's existing narrative standards coupled with specific discharge limits based on guidelines are more flexible than numeric standards, and fully protect beneficial uses. According to statements of Wyoming's Department of Environmental Quality, the use of narrative standards using implementation guidance for establishing permit limits for coal bed natural gas discharges has been functioning well in Wyoming.

RESPONSE: The Board believes that numeric standards will simplify the permitting process and aid in maintaining a consistent approach to permitting discharges from CBM wells. It is also the Board's opinion that numeric standards are necessary to protect irrigated agriculture in the Powder River Basin from any impacts that may occur from such discharges. This belief is based on the information, data, and analyses contained in the paper titled Technical Basis for Draft EC and SAR Standards, Montana Department of Environmental Quality, July 2002, which is the basis for the standards, and modifications to the standards made in response to new information submitted during the comment period. In addition, without numeric standards, permits may be issued that are not protective of designated uses, due to individual interpretations of "flexible" guidelines.

The suggestion that guidelines be used for interpreting the existing narrative standards would likely require rulemaking under the Montana Administrative Procedure Act before the Department could apply those guidelines in its permitting decisions.



COMMENT NO. 13: Numeric standards should not be adopted until the development of a TMDL work is completed.

RESPONSE: The adoption of numeric standards by the Board will assist the Department in determining whether or not the Tongue and Powder Rivers are in fact impaired and in need of a TMDL. Since the purpose of a TMDL is to ensure that water quality standards are being met, adopting the numeric standards is the logical first step in this process. The numeric standards should facilitate the TMDL process by identifying the appropriate level of water quality that must be maintained.

COMMENT NO. 14: One commentor stated that Montana's Constitution requires that pollution be prevented and also requires that existing beneficial uses of water be recognized and confirmed. Specifically, the right to a "clean and healthful" environment provided in Article II, Section 3 and Article IX, Section 1, and the constitutional provision recognizing and confirming existing water rights in Article IX, Section 3 of Montana's Constitution, require the Board to adopt numeric standards that protect the existing water rights of the Tongue River Water Users' Association (TRWUA). In addition, another commentor argued that the contract between the state of Montana and the TRWUA for the use of water in the Tongue River Reservoir indicates that the water rights being served under that contract must be protected.

RESPONSE: The numeric standards proposed by the Board were specifically developed to protect existing irrigation practices. As such, the standards will protect the existing water rights of the TRWUA.

COMMENT NO. 15: One commentor stated that the proposed standards for EC and SAR would not apply to other rivers and streams in Montana, as suggested by the Department, but only apply to the streams and rivers identified in the rule.

RESPONSE: As noted by the commentor, the Board is adopting numeric standards for EC and SAR only for those streams and rivers identified in the rule proposals. The use of the standards by the Department, however, may result in the application of these standards in other streams and rivers in Montana. Specifically, since the majority of streams in Montana have narrative criteria for EC and SAR, the Department will use existing information including the information and process that was used to develop the numeric standards for the Powder River Basin as a basis for translating the narrative criteria during its permitting actions. As a result, the application of these numeric standards for EC and SAR to other streams and rivers with similar characteristics in Montana may occur.

COMMENT NO. 16: The proposed definition of electrical conductivity should be amended to delete the word "salts" from the phrase "total dissolved salts" and replace it with

"solids." The phrase "total dissolved solids" is more inclusive and more correctly describes the water's ability to conduct electricity. It also reflects the common usage of the term and the fact that all of the historical data is in terms of "total dissolved solids."

RESPONSE: The Board agrees and has amended the rule as shown above.

COMMENT NO. 17: Coal bed methane development will be a boom and bust business that will cause social and economic problems to local communities.

RESPONSE: The Board has no authority to control the "boom and bust" cycles created by industry. The Board's only authority over any industry is its authority to protect state waters through the adoption of water quality standards, nondegradation requirements, and permit requirements applicable to all industrial discharges.

COMMENT NO. 18: Coal bed methane water should be re-injected, both to protect the surface waters and to recharge the ground water.

RESPONSE: The Board's authority to adopt water quality standards under 75-5-301, MCA, does not include the authority to require re-injection as the only means of disposal for a discharge. Rather, the Board is authorized to adopt water quality standards that, in effect, will establish the maximum allowable change in water quality that is still protective of all existing and designated uses. After water quality standards are adopted, a discharger has the option of treating its discharge or re-injecting the discharge to ground water as a means to achieve compliance with the newly adopted standards.

COMMENT NO. 19: Discharges of coal bed methane water will result in harm to Pallid Sturgeon and Paddlefish.

RESPONSE: The Pallid Sturgeon and Paddlefish are residents of the Yellowstone River and do not reside in the streams and rivers under consideration. Due to the dilution of the Tongue River when it merges with the Yellowstone River, coal bed methane discharges into the Tongue River will not cause changes in water quality that would be harmful to Pallid Sturgeon or Paddlefish.

Response to Comments on MAR Notice No. 17-187

COMMENT NO. 20: Maximum or instantaneous standards are necessary, in addition to average monthly standards, in order to protect irrigated agriculture and aquatic life from the effects of values that are higher than the means. Specifically, maximum SAR standards are necessary in order to protect against rain-on-sodic-soil events and maximum EC standards are necessary to protect against osmotic shock.

RESPONSE: The Board agrees that, in addition to average monthly standards, maximum standards are necessary to protect

designated uses from values that exceed the mean monthly values. Accordingly, the Board is adopting maximum instantaneous standards. These standards will protect irrigated agriculture and aquatic life during short-term elevations in EC and SAR values.

COMMENT NO. 21: The EC and SAR standards for both the irrigation and nonirrigation seasons should be set to reflect the ambient values in the Powder and Little Powder Rivers since the ambient values in these Rivers are often above the standards that are being proposed. Setting standards that are less than the ambient levels will unnecessarily restrict discharges.

RESPONSE: The Board disagrees. Under federal law, water quality standards must be established at levels that protect designated uses, regardless of the ambient quality of the water. For this reason, the ambient condition of the water, whether high or low quality, is not relevant in determining the appropriate level of water quality that will fully protect uses. Although the irrigators on the Powder and Little Powder Rivers currently use water from these Rivers without harmful effects, they do not irrigate with average ambient quality water. Instead, they use the water only on those occasions when the quality of water is known to be of high enough quality that it will not damage their crops or soils.

The standards that the Board is adopting have been established in a manner that will protect agriculture and aquatic life uses from any increase in the levels of EC and SAR that may occur during periods of relatively good quality water.

See also response to Comment No. 30.

COMMENT NO. 22: If the water in the Tongue River Reservoir is allowed to reach the proposed nonirrigation season standards for EC and SAR at 2000  $\mu\text{S}/\text{cm}$  and 5.0 respectively, then the water that is released from the Reservoir at the start of the irrigation season could exceed the irrigation season standards of 1000  $\mu\text{S}/\text{cm}$  and 3.5.

RESPONSE: The Board agrees. Due to this concern, the Board is adopting the proposed irrigation season standards of the Tongue River as year-round standards for the Reservoir.

COMMENT NO. 23: The proposed nonirrigation season standard for EC at 2000  $\mu\text{S}/\text{cm}$  for the Tongue River Reservoir is so high that it may reduce the abundance of zooplankton in the Reservoir. These organisms are the major food source for the fish in the Reservoir. We suggest that the standard be set at 1500  $\mu\text{S}/\text{cm}$  or less.

RESPONSE: The Board agrees. The Board is adopting the irrigation season standards of the Tongue River as the year-round standard for the Tongue River Reservoir.

COMMENT NO. 24: The proposed nonirrigation season standard for EC at 2000  $\mu\text{S}/\text{cm}$  for the Tongue River and Rosebud

Creek is so high that it may reduce the spawning or reproductive success of the fish in these streams. The nonirrigation season standard for EC should not exceed 1500  $\mu\text{S}/\text{cm}$  for these streams in order to protect fish eggs and young fish during the first 30 to 60 days after the eggs hatch, which is the time they are most sensitive.

RESPONSE: The Board agrees. The Board concludes that the nonirrigation season standard for EC at 1500  $\mu\text{S}/\text{cm}$  for the Tongue River and Rosebud Creek will not be harmful to fish or other aquatic life.

COMMENT NO. 25: The proposed EC standard of 500  $\mu\text{S}/\text{cm}$  and a SAR limit of 5.0 on tributaries is neither reasonable nor reflective of ambient conditions. The standards for the tributaries should be the same as standards for the streams into which the tributaries flow.

RESPONSE: The Board disagrees and believes that a more protective standard for the tributaries is necessary based upon the following. Spreader dike systems, which are used along the tributaries, depend on leaching of salts that accumulate as a result of partial or full irrigation systems using waters whose EC and SAR are largely unknown. The data provided by Dr. Frank Sanders, of CBM Associates, demonstrate that levels of EC and SAR during individual runoff events in ephemeral tributaries have a high degree of temporal variability. Furthermore, both EC and SAR levels in the runoff can be quite high for considerable lengths of time. Data from Wyoming demonstrates that EC levels as high as 8000  $\mu\text{S}/\text{cm}$  and SAR values up to 12 have occurred in ephemeral drainages. Any further increase in these parameters could pose a significant increase in the probability that irrigation with spreader dike systems along ephemeral tributaries is not sustainable.

Consequently, both the EC and SAR levels in runoff water in ephemeral tributaries must be maintained as low as possible, particularly since the levels of these water quality parameters are already high. The lowest possible EC is required to minimize the increase in soil salinity within the root zone that will occur between the episodic leaching events; the lowest possible SAR is required to facilitate the infiltration of the excess non-saline water needed for leaching during the episodic leaching event.

COMMENT NO. 26: The standard should be based on the median rather than the mean, because medians are not as sensitive to outliers which may be caused by unique and infrequently occurring conditions.

RESPONSE: The Board disagrees. The median should not be used for the very reason that it is not sensitive to "outliers" (values that are considerably different from most of the data). The use of medians instead of the means would allow increases in EC and SAR levels, which may affect agricultural use. The Board believes that limiting discharges based upon the mean is more protective of irrigation

sustainability than the median precisely because outliers will allow increases that may be harmful.

COMMENT NO. 27: The SAR standards for the Powder and Little Powder Rivers should be higher than 5.0 during the irrigation season because, according to the common infiltration risk threshold diagram, there is substantial assimilation capacity remaining in the SAR versus EC relationship under post 1990 conditions.

RESPONSE: The Board disagrees. The assimilative capacity based on the diagram does not take into account the impacts of rain. The impacts of rain are important because rain will lower the salinity of the surface soil more quickly than it will lower the SAR value. Consequently, what may be appropriate in regard to infiltration rates for certain soils, based on the EC and SAR of the irrigation water, can become harmful following rain. The average monthly SAR standard of 5.0 for the Powder River and the Little Powder River will limit the harmful effect of rain on assimilative capacity. Any SAR above 5.0 poses a risk to the sustainability of irrigated agriculture where rainfall occurs during planting season and during the early crop growth stages where crusting can prevent successful emergence of crop seedlings. It also poses significant risks in regard to reducing infiltration and increasing erosion and runoff on soils without full crop cover during the growing season and in the fall after annual crops are harvested.

COMMENT NO. 28: Any problem resulting from increased SAR can be effectively managed by surface dressing of various soil amendments such as gypsum or manure.

RESPONSE: The Board understands that the problems caused by modest increases in SAR could be overcome with various surface dressings. The costs to an individual farmer could range from \$50.00 to \$200.00 per acre. The Board does not agree that these costs should be born by the irrigators.

More importantly, 75-5-303(1), MCA, requires the protection of existing uses and the level of water quality necessary to protect those uses. Accordingly, the Board is statutorily constrained from allowing increases of SAR to the point that existing irrigation practices must be modified to accommodate lower water quality. Since the existing use of these waters does not require the application of "surface dressing," the Board will not allow increases of SAR that would require modifications to existing irrigation use.

COMMENT NO. 29: Soil crusting is an existing problem that may not be significantly reduced by the proposed SAR standard of 5.0.

RESPONSE: The Board agrees. This is one reason the average monthly water quality standard for SAR should not be higher than 5.0 during the irrigation season.

COMMENT NO. 30: Point source discharges should be allowed when such discharges contain better water quality than the ambient river conditions.

RESPONSE: The Board agrees. Section 75-5-306, MCA, generally provides that discharges are not required to treat their discharge to a purer condition than the natural conditions of the receiving water. Consequently, when the water quality standards are naturally exceeded, discharges which will not make the instream water quality worse are allowed.

COMMENT NO. 31: The nonirrigation season standards for Rosebud Creek should be the same as those for the irrigation season because much of the irrigation from Rosebud Creek is actually subirrigation where water is not applied to the soil surface but "wicks up" to the plant roots from a shallow aquifer that is recharged by water from the Creek.

RESPONSE: The Board disagrees. During the irrigation season, water is drawn up or "wicks" upward in the soils to replace water that is extracted by the plants or that evaporates from the soil surface. During the nonirrigation season, the plants are not extracting water and there is essentially no evaporation from the soil surface. Thus there is no "driving force" to move water up in the soil column.

In addition, during the nonirrigation season the water level in the creek is normally very low. In fact during this period zero flows are not uncommon. Due to the low levels of water in the stream channel, water tends to flow out of the soil and into the stream channel. Therefore, there is little chance that shallow aquifers will be recharged by water from Rosebud Creek during the nonirrigation season.

Finally, any potential increase in flow during the nonirrigation season resulting from CBM development is subject to Montana's nondegradation requirements. In order to be "nonsignificant" under Montana's rules implementing the nondegradation statutes, any increase in stream flow that would result from a "new or increased" discharge is limited to less than 15% of the mean monthly flow or less than 10% of the 7Q10 flow. Therefore, any potential increase in flow that would likely impact subirrigation would be limited based on a site-specific analysis during a nondegradation review of a proposed discharge.

COMMENT NO. 32: The most salt-sensitive crops grown in the Tongue River Basin are alfalfa and pinto beans, which do not begin to decrease in yield until the EC of the soil exceeds 2,000  $\mu\text{S}/\text{cm}$  (measured in a saturated paste extract).

RESPONSE: The Board disagrees. The beans that are grown in the Tongue River area have a threshold salinity of 1,000  $\mu\text{S}/\text{cm}$ .

This comment is likely based upon a North Dakota Extension Document (Managing Saline Soils in North Dakota SF-1084, dated November 1994). Table 5 in the North Dakota document shows 100% relative yield for pinto beans at an

electrical conductivity of a saturated paste of 2,000  $\mu\text{S}/\text{cm}$ . The threshold for salinity in Table 5 does not agree, however, with the lower threshold of about 1,000  $\mu\text{S}/\text{cm}$  shown in Figure 7 of the same document. In addition, the original report cited in the North Dakota document, used in support of both Figure 7 and Table 5 does not provide any data about pinto beans, or any other variety of beans, nor does it discuss threshold salinity.

Dr. Bauder, Professor of Soil and Water Quality, Montana State University, has confirmed that the genus/species of the pinto beans grown along the Tongue River is Phaseolus vulgaris L, which is identified in salt tolerance tables as Bean, common. According to these tables, the common bean has a threshold salinity of 1,000  $\mu\text{S}/\text{cm}$ . This value is the basis for the EC standard for the Tongue River in Montana.

COMMENT NO. 33: The basis for the assumed leaching fraction of 15% for conventional irrigation is not documented.

RESPONSE: The authors of the standard references on salinity and irrigation have concluded, based on their professional judgement, that it is reasonable to assume that conventional irrigation results in a leaching fraction of 15% to 20%. In addition, a study in California was done where the leaching fractions were measured in nine fields from 1977 through 1981. The soil textures in these fields varied from very fine sand to silty clay. Crops included barley, alfalfa, wheat, sugarbeets, cotton, sorghum, bermuda grass, lettuce and cantaloupe. The leaching fractions by crop ranged from 0.02 to 0.42, and the leaching fraction by field ranged from 0.07 to 0.27. The Board believes that 15% to 20% is a good approximation of the average leaching fraction that is occurring in the Tongue River Basin.

COMMENT NO. 34: The proposed EC and SAR standards for the Powder River will allow increases that will negatively impact people who use water from the Buffalo Rapids Irrigation District to irrigate crops and their yards, and those who use this water for domestic purposes.

RESPONSE: The Board disagrees. The mean values of EC and SAR in the Powder River at Locate (the nearest point for which we have data) for the period from 1990 through 2000 are about 1800  $\mu\text{S}/\text{cm}$  and 4 respectively. The standards that are being adopting for the irrigation season are 2000  $\mu\text{S}/\text{cm}$  and 5 respectively. Any increase allowed by the standards will not have any measurable effect on Buffalo Rapids Irrigation District water users.

COMMENT NO. 35: Any increase in the concentration of sodium will hasten the inevitable destruction of the irrigated soils. There is no flushing of these soils because the water quality is not sufficient to take out the salts that have accumulated since irrigation began. The irrigators probably are not aware that the accumulation of salt in the soils is not going to get better. Even if water from CBM wells is not

discharged into the Tongue River, there will continue to be accumulations of sodium in the soil because all the water being used for irrigation contains it.

RESPONSE: The Board disagrees that flushing of salt from the soils does not occur. According to the comment, irrigation along the Tongue River near Miles City would cause toxic concentrations in the soil (nothing would grow) in about 15 years if no leaching is taking place. For the Powder River, with a mean salinity of about 1800  $\mu\text{S}/\text{cm}$ , it would only require five years to achieve toxic levels in the soil if no leaching occurs. However, irrigation has been underway in these areas for nearly 100 years. Based upon the historic use of irrigation waters in this area, adequate leaching has and is occurring in the irrigated lands of the Tongue and Powder River Valleys. The proposed water quality standards will allow successful irrigation indefinitely, provided the current leaching fractions are maintained.

Sodium levels in the soils naturally fluctuate in response to drought and changes in management. Consequently, one should expect the sodium levels in the soils now to be higher than they were a few years ago before the current drought started.

COMMENT NO. 36: The water quality standards for the tributaries should be higher in the nonirrigation season similar to the standards for the Tongue and Powder Rivers. Moreover, the standards should be established at different levels for ephemeral tributaries as opposed to perennial tributaries.

RESPONSE: The Board disagrees that the standards for the tributaries should be different for perennial and ephemeral streams because the characteristics of ephemeral and perennial streams are intermixed in the tributaries within the Basin. That is, many streams have some sections that are perennial and other sections that are ephemeral. Water that is discharged into a section of a tributary that is perennial, for example, is likely to flow into another section of the stream that is ephemeral. In addition, much of the water discharged during the nonirrigation season is likely to be "stored" as ice and flow downstream during the irrigation season. For this reason, the Board does not agree that the standards for tributaries should be higher in the nonirrigation season.

COMMENT NO. 37: The proposed standards of the Department are too high. Only the "compromise standards" developed by the irrigators will protect all uses.

RESPONSE: The Board disagrees. The standards being adopted have been modified in some respects from those that were originally proposed by the Department. The major changes include lowering the nonirrigation season standards for the Tongue River Reservoir, lowering the SAR standards for the Tributaries and the adoption of maximum or "instantaneous" standards. As a result, the standards being adopted are



similar to the proposed "compromise standards" of the irrigators.

As Dr. Bauder explained, small differences in the standards, such as the difference between a SAR standard of 3 and a standard of 3.5, are not significant in terms of protecting uses. The Board believes that the standards being adopted are based on a sound rationale that will protect uses.

COMMENT NO. 38: Flow-based permitting should only be allowed during the nonirrigation season.

RESPONSE: The Board disagrees. The flows are usually so low during the nonirrigation season that very little water could be discharged regardless of what flows are used to calculate discharge limits. Thus, adoption of flow based standards for use only during the nonirrigation season would serve little purpose.

See response to Comment No. 43.

COMMENT NO. 39: CBM development will increase the sodium content of the Yellowstone River to the point that communities such as Glendive will have to remove sodium from their drinking water.

RESPONSE: The Board disagrees. Given that 50% of the time the flow of the Yellowstone at Sidney is above 7,500 cubic feet per second and the average sodium concentration is about 60 micrograms per liter (mg/L). If we assume that 50,000 CBM wells were each discharging 2.5 gallons per minute at a given time (which is very unlikely) at an average concentration of 400 mg/L the resulting sodium concentration in the Yellowstone River would be increased to 78 mg/L. This concentration is well below the level that would cause any problems. Thus, treatment would not be required.

COMMENT NO. 40: The Department's proposed standards are so high that more efficient sprinkler irrigation, which usually achieves leaching fractions less than 15%, will not be possible without damage to irrigated land.

RESPONSE: The Board disagrees. The Department's proposed standards would allow relatively small increases in the EC and SAR of the water used in the Lower Tongue River Valley and practically immeasurable increases in the Yellowstone Valley. In the Tongue River Valley, the increases would result in water quality similar to the upper levels of EC and SAR that occur in river waters used by farmers in the Tongue River Drainage. Irrigation waters with similar or poorer quality have been used successfully in other irrigated regions of the west. The changes are so small that no changes in management of sprinkler irrigation systems will be necessary. If it is practical to sprinkler irrigate a particular field now, it will still be practical after the increases allowed by the standards occurs.

COMMENT NO. 41: A field in the Tongue River Valley near Miles City has recently shown spots where salt is accumulating

after about 100 years of successful irrigation. This is partially due to CBM discharges and partially due to the drought. The problem will become worse if the proposed standards are adopted.

RESPONSE: Since there is no data to support the theory that CBM discharges have caused any measurable changes in the quality of the lower Tongue River, the Board cannot determine whether CBM discharges have contributed to the problem of this irrigator. However, the standards being adopted by the Board will protect irrigated land from any new proposals to discharge CBM water in the Tongue River.

COMMENT NO. 42: Under state and federal law, the proposed water quality standards must protect designated uses and allow no degradation of existing uses. The evidence submitted by Montana FWP indicates that the proposed water quality standards do not protect warm water fisheries. In addition, the evidence provided by Drs. Bauder and Munn indicate that the proposed standards do not protect soils and irrigated crops under all circumstances. Finally, the proposed standards violate the nondegradation requirements, because they allow as much as a 200% increase over current salinity in the Tongue River. Since the proposed standards do not protect designated uses in all circumstances, those standards violate the federal CWA and implementing regulations and Montana's Water Quality Act.

RESPONSE: As indicated in the responses, the Board has modified the proposed standards in response to the comments of FWP regarding zooplankton in the Tongue River Reservoir by adopting a year-round average monthly standard for EC at 1000  $\mu\text{S}/\text{cm}$  for the Tongue River Reservoir. The Board has also modified the nonirrigation season standard for EC on the Tongue River and Rosebud Creek.

Dr. Bauder's concern is that standards based on mean monthly values do not limit spikes in the parameters. He contends that such spikes, or relatively short-term high values, could be harmful to irrigation uses. The Board has addressed this issue by adopting both mean monthly and maximum standards.

Dr. Munn shares Dr. Bauder's concern and in addition feels that flow based standards will not be protective because of the wide natural fluctuations in flows. This concern is addressed in the response to Comment No. 43.

Finally, although the rules allow salinity increases above background of as much as 200% under the nondegradation provision and numeric standards, this would only occur during the nonirrigation season. During the irrigation season, the nondegradation provisions and numeric standards closely reflect existing quality in the lower Tongue River and, consequently, prohibit any significant increase over background levels caused by CBM discharges.

As stated in the proposed notice of rulemaking, the nondegradation provision was established in recognition that significant increases of salinity levels occur throughout the

year due to natural fluctuations of EC in the River. Since these fluctuations occur naturally, adopting a nondegradation requirement that allows only a de minimis change above existing quality will not prevent natural fluctuations of EC from going far beyond the de minimis value. Regardless, the nondegradation provision being adopted will maintain all designated and existing uses in compliance with state and federal law.

COMMENT NO. 43: The proposed standards do not protect designated uses because the provisions for flow-based permitting do not ensure that designated uses are protected at all times. For example, no standard is set that addresses worst-case, low-flow events, and the rule is silent on the way the flow-based permit will be monitored and measured. The fact that occasional high flows in the Tongue River may render discharges of CBM water less harmful is not a reason to allow year-round flow-based discharges. Finally, it is arbitrary to abandon the current use of the 7Q10 limitation that is applied in all other MPDES permits, given the Department's reliance on the 7Q10 as an appropriate means to protect water quality. The purpose of the Montana and federal water quality laws is to protect water quality and beneficial uses, not to encourage the discharge of more pollutants. If flow-based permitting is allowed, one commentor suggested that a requirement for real-time flow meters be adopted.

RESPONSE: The Board does not agree that the requirement for a flow-based analysis to determine compliance with all applicable water quality standards will fail to protect designated uses. The language in the rule contemplates that the ultimate goal of the flow-based analysis is to ensure that water quality standards and nondegradation requirements are met. Rather than needlessly limit discharges by applying a worst-case restriction during periods of high flow, the rule requires the Department to allow more discharges during high-flow events, provided that all water quality standards and nondegradation requirements are met. Although the rule does not mandate the use of the 7Q10 or real-time flow meters, as requested by the comments, the rule does not prohibit their use. For example, the Department may determine that the 7Q10 is an appropriate limit during months that have demonstrably low-flows. Given that the Department's use of the flow-based analysis must ultimately ensure that all water quality standards are met, the rule guarantees that all beneficial uses will be fully protected.

COMMENT NO. 44: The amended rule proposed by the Department is unconstitutional on its face because it sets standards and provides for nondegradation exemptions that may allow harm to water quality and beneficial uses (i.e., agriculture, fisheries and aquatic ecosystems) without serving a compelling state interest. There is no compelling state interest in adopting standards to suit the needs of the CBM

industry, particularly when treatment and alternative disposal methods exist.

Furthermore, Montana's Constitution imposes a duty on the state and all persons to ensure that a clean and healthful environment is protected. That duty is fulfilled by adopting the irrigator's proposed standards and rejecting the Department's proposed standards.

RESPONSE: The Board disagrees. First, the Department's proposed numeric water quality standards are established at levels that will protect all of the designated and existing uses of the water, including the water's use for the support of aquatic life and agricultural purposes. Second, the Department's nonsignificance proposal does not exempt EC and SAR from nondegradation review. Rather, the Department's proposal specifies a narrative threshold for determining nonsignificance that, similar to the numeric standards, will protect existing uses by prohibiting any measurable effect on those uses.

Moreover, the Board considered and rejected the alternative of establishing a 50% or 10% nonsignificance threshold for EC and SAR similar to the proposal contained in the irrigator's petition. In MAR Notice No. 17-171, the Board explained that, given the natural fluctuations of EC and SAR in the Tongue and Powder Rivers, which often result in exceedances of the proposed numeric standards, the policy of maintaining existing "high quality" for these parameters is not justified. Regardless of the numeric threshold that could be imposed by the adoption of a 50% or 10% threshold, those thresholds will not prevent EC and SAR from naturally degrading water quality to the point where the numeric standards are exceeded. The Board also explained that imposing a numeric threshold based upon a percentage of the assimilative capacity would be virtually impossible to comply with or enforce. Given that slight changes in EC and SAR are extremely difficult to measure, a nonsignificance threshold based upon a percentage of the assimilative capacity would require continuous in-stream monitoring in order to distinguish between natural degradation and nonsignificant changes resulting from discharges. The impracticality of enforcing a numeric threshold for these parameters argues persuasively against the adoption of such thresholds.

Upon review of the data, the Board acknowledges that the rationale for adopting a narrative nondegradation threshold, because natural fluctuations of EC and SAR will often exceed the numeric standards, is not applicable to the Tongue River. However, the second reason is applicable and supports rejecting a nonsignificance threshold based upon a percentage of the assimilative capacity. As stated above, a nonsignificance threshold based upon a percentage of the assimilative capacity would be difficult to determine and enforce. Applying a de minimis threshold would require continuous instream monitoring in order to distinguish between natural increases, increases caused by seepage from newly

constructed CBM ponds, and "nonsignificant" increases caused by a new discharge.

Based on the reasons given above, the Board does not believe that the numeric standards and nonsignificance thresholds proposed by the Department violate the constitutional duty to "maintain and improve a clean and healthful environment." The standards and criteria are intended to protect and maintain all designated uses of the waters while recognizing that there is little that can be done to "improve" natural fluctuations of water quality.

COMMENT NO. 45: The Department's reason for the non-severability clause fails to establish a rational basis for striking all of the water quality protections in the proposed rules in the event that one of the provisions is declared invalid. Typically, a court will not invalidate an entire regulatory scheme if one part is declared invalid when the stricken provision is not integral to the regulation as a whole. This is particularly so when the non-severability clause will leave Montana with no protection against the pollutants being regulated under the proposed rules. For example, the flow-based provision in the rules could be declared invalid without invalidating the numeric standards themselves. On the other hand, if the court defers to a non-severability clause, then the entire rule would be stricken and, by default, the narrative standards would apply. The Department has implicitly acknowledged through the initiation of these rules that the narrative standards are inadequate. Therefore, the ultimate result of adopting a non-severability clause would be to lessen water quality protection in the event one portion of the regulation is declared invalid.

RESPONSE: In MAR Notice No. 17-187, the Board explained that the purpose of the non-severability clause is to preserve the Board's primary objective of adopting numeric standards that will protect all existing and designated uses of the waters without unnecessarily restricting discharges that will not harm those uses. The Board is concerned that, if a court invalidates the nonsignificance thresholds for EC and SAR, the result would likely be the imposition of numeric nonsignificance thresholds for these parameters under a court-ordered remedy. As explained above, the Board has considered and rejected the option of adopting numeric nonsignificance thresholds based upon the impracticality of enforcing those thresholds and the fact that the waters naturally degrade to a point that they often exceed the standards throughout any given year. For this reason, the Board is adopting the non-severability clause because without it a court might impose a threshold that is not warranted due to the natural conditions of the streams.

COMMENT NO. 46: The standards proposed by the Montana Department of Fish, Wildlife, and Parks are based on improper assumptions, limited data, and faulty methodology for the development of water quality criteria.

RESPONSE: We agree that the process used by Department of Fish, Wildlife, and Parks (FWP) to develop criteria does not meet all of the requirements set forth by EPA for criteria development. The FWP information can only be used to suggest criteria, not to define them. The Board is not relying solely on this information but feels that it supports the adoption of a year-round EC standard of 1000  $\mu\text{S}/\text{cm}$  for the Tongue River Reservoir. Likewise, it supports the desire of the Board to be conservative in the adoption of a nonirrigation season EC standard of 1500  $\mu\text{S}/\text{cm}$  for the Tongue River and Rosebud Creek.

COMMENT NO. 47: The Miles City station should not be considered representative of Tongue River water quality. This station is downstream from the diversion of T & Y Irrigation District and consequently has less flow and higher SARs during the irrigation season. The Brandenburg Bridge station provides a more representative measurement of water quality than the Miles City station.

RESPONSE: We recognize that there may be changes in the water quality of the Tongue River from the Brandenburg Bridge station to the Miles City station. Pumpkin Creek enters the Tongue River below the T & Y diversion and at the mouth of Pumpkin Creek during the irrigation season it had an average EC of 2094  $\mu\text{S}/\text{cm}$  (64 samples) and an average SAR of 9.6 (42 samples) during the 1970s and 1980s. The actual sources of the changes in the quality of the Tongue River in this reach will be addressed during the development of a TMDL.

COMMENT NO. 48: The standards might require clean up of ranch reservoirs.

RESPONSE: Existing ranch reservoirs/ponds are not regulated by this proposed rulemaking.

COMMENT NO. 49: The numeric standards are more stringent than narrative federal standards.

RESPONSE: Both the numeric standards and narrative standards are intended to protect beneficial uses. The state is adopting numeric standards, not because they are more stringent, but because they are easier to administer and enforce.

COMMENT NO. 50: The flow-based approach is impractical. Using this approach will make it difficult to develop discharge limitations and to monitor compliance with those limitations.

RESPONSE: We agree that using the flow-based approach will make it more difficult to develop discharge limitations and to monitor compliance with those limitations. This does not mean that this approach is impractical. DEQ is using this approach in some permits now. The Board believes that DEQ is competent to administer the flow-based approach.

COMMENT NO. 51: Many commentors urged the Board to adopt strict numeric standards for EC and SAR. Other commentors

urged the Board to adopt more liberal numeric standards in the absence of proof that such liberal standards would actually cause harm to beneficial uses.

**RESPONSE:** The adoption of numeric standards for EC and SAR involves an assessment of risks to beneficial uses. The Board is adopting numeric standards that provide a high level of confidence that the standards protect beneficial uses, as supported by scientific studies of the effects on crops and soils. By adopting standards that are within the range of levels of EC and SAR that occur naturally in the streams in the Powder River Basin, the Board believes that the effects on aquatic life and riparian vegetation will be minimal. The Board is not required to adopt a liberal numeric standard because of the lack of definite scientific studies that such a liberal standard will not harm beneficial uses.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

John F. North  
JOHN F NORTH  
Rule Reviewer

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

Certified to the Secretary of State, April 14, 2003.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the ) NOTICE OF AMENDMENT  
amendment of ARM 8.11.101 and )  
8.11.115 pertaining to fees )  
and renewals for licensed ) (Licensed Addiction  
addiction counselors ) Counselors)

TO: All Concerned Persons

1. On February 27, 2003 the Department of Labor and Industry published MAR Notice No. 8-11-5 regarding the public hearing on the proposed amendment of the above-stated rules relating to fees and renewals for licensed addiction counselors at page 281 of the 2003 Montana Administrative Register, issue number 4.

2. On March 28, 2003, a public hearing on the proposed amendment of the above-stated rules was conducted in Helena. No public comments were received.

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

DEPARTMENT OF LABOR AND INDUSTRY  
CHEMICAL DEPENDENCY COUNSELORS

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

/s/ MARK CADWALLADER  
Mark Cadwallader,  
Alternate Rule Reviewer

Certified to the Secretary of State April 14, 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 Rules I through IX and the	)	AMENDMENT AND REPEAL
amendment of ARM 37.27.102	)	
and the repeal of ARM	)	
37.86.2213 pertaining to	)	
chemical dependency and abuse	)	
treatment services	)	

TO: All Interested Persons

1. On February 13, 2003, the Department of Public Health and Human Services published MAR Notice No. 37-270 regarding the public hearing on the proposed adoption, amendment and repeal of the above-stated rules relating to chemical dependency at page 200 of the 2003 Montana Administrative Register, issue number 3.

2. The Department has adopted rules I [37.27.901], II [37.27.904], III [37.27.916], IV [37.27.920], V [37.27.926], VI [37.27.921], VII [37.27.908], VIII [37.27.912] and IX [37.27.907] as proposed.

3. The Department has amended ARM 37.27.102 and repealed ARM 37.86.2213 as proposed.

4. No comments or testimony were received.

5. The Department intends that these amendments and repeal will be applied retroactively to July 1, 2002.

Dawn Sliva  
Rule Reviewer

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

Certified to the Secretary of State April 14, 2003.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF ADOPTION  
of New Rules I (42.18.205), )  
II (42.18.206), III (42.18.207), )  
IV (42.18.208), V (42.18.209), )  
and VI (42.18.210) relating to )  
certification requirements )

TO: All Concerned Persons

1. On March 13, 2003, the department published MAR Notice No. 42-2-712 regarding the proposed adoption of the above-stated rules relating to certification requirements at page 382 of the 2003 Montana Administrative Register, issue no. 5.

2. No comments were received. Therefore, the department adopts the rules as proposed.

3. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at [http://www.state.mt.us/revenue/rules\\_home\\_page.htm](http://www.state.mt.us/revenue/rules_home_page.htm), under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

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

Certified to Secretary of State April 14, 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<br>Subject                    | 1. Consult ARM topical index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute<br>Number and<br>Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.   |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2002. This table includes those rules adopted during the period January 1, 2003 through March 31, 2003 and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 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 2002 Montana Administrative Registers.

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## BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in March 2003, appear. Vacancies scheduled to appear from May 1, 2003, through July 31, 2003, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of April 9, 2003.

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

BOARD AND COUNCIL APPOINTEES FROM MARCH 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Appellate Defender Commission (Administration) Mr. Michael Sherwood Missoula Qualifications (if required): attorney	Governor	reappointed	3/20/2003 1/1/2006
Judge Richard A. Simonton Glendive Qualifications (if required): district judge	Governor	McCarter	3/20/2003 1/1/2006
Board of Architects (Labor and Industry) Mr. Tobias Stapleton Billings Qualifications (if required): licensed architect	Governor	Peterson	3/27/2003 3/27/2006
Board of Dentistry (Labor and Industry) Dr. George Olsen Missoula Qualifications (if required): dentist	Governor	not listed	3/29/2003 3/29/2008
Board of Livestock (Livestock) Mr. George Hammond Hardin Qualifications (if required): cattle producer	Governor	reappointed	3/1/2003 3/1/2009
Ms. Meg Smith Divide Qualifications (if required): cattle producer	Governor	reappointed	3/1/2003 3/1/2009
Coal Board (Commerce) Mr. Kurt Hilyard Conrad Qualifications (if required): representative of education and District 3	Governor	Price	3/25/2003 1/1/2007

BOARD AND COUNCIL APPOINTEES FROM MARCH 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Coal Board (Commerce) cont. Ms. Janice Riebhoff Belgrade	Governor	reappointed	3/25/2003 1/1/2007
Qualifications (if required):	representative of	education and	District 2
Mr. John Sutton Butte	Governor	reappointed	3/25/2003 1/1/2007
Qualifications (if required):	engineer and	representative of	District 2
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services)			
Mr. Jason Billehus Missoula	Governor	Grover	3/7/2003 1/1/2007
Qualifications (if required):	primary	consumer	
Ms. Melissa Clark Great Falls	Governor	Kidd	3/7/2003 1/1/2005
Qualifications (if required):	primary	consumer	
Ms. Jannis Conselyea Helena	Governor	reappointed	3/7/2003 1/1/2004
Qualifications (if required):	representative of	Department of	Public Health and Human Services
Ms. Sylvia Danforth Miles City	Governor	reappointed	3/7/2003 1/1/2004
Qualifications (if required):	services	provider	
Ms. Marlene Disburg Helena	Governor	reappointed	3/7/2003 1/1/2004
Qualifications (if required):	representative of	vocational	rehabilitation

BOARD AND COUNCIL APPOINTEES FROM MARCH 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services) cont.			
Ms. JoAnn Dotson Helena	Governor	reappointed	3/7/2003 1/1/2004
Qualifications (if required): Title IV representative			
Ms. Kim Evermann Helena	Governor	reappointed	3/7/2003 1/1/2004
Qualifications (if required): representative of the Older Americans Act			
Ms. Bernadette Franks-Ongoy Helena	Governor	reappointed	3/7/2003 1/1/2004
Qualifications (if required): representative of the Montana Advocacy Program			
Mr. Keven Halsey Libby	Governor	reappointed	3/7/2003 1/1/2007
Qualifications (if required): primary consumer			
Mr. Kevin Kosmann Billings	Governor	reappointed	3/7/2003 1/1/2007
Qualifications (if required): parent of a developmentally disabled adult and a secondary consumer			
Rep. Bob Lawson Whitefish	Governor	reappointed	3/7/2003 1/1/2004
Qualifications (if required): legislator			
Ms. Paula Lester Butte	Governor	Phillips	3/7/2003 1/1/2007
Qualifications (if required): primary consumer			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services) cont.			
Ms. Karen Lundby Miles City	Governor	Terry	3/7/2003 1/1/2007
Qualifications (if required): parent of developmentally disabled adult and a secondary consumer			
Sen. Bea McCarthy Anaconda	Governor	reappointed	3/7/2003 1/1/2004
Qualifications (if required): legislator			
Mr. Dan McCarthy Helena	Governor	reappointed	3/7/2003 1/1/2004
Qualifications (if required): representative of the Office of Public Instruction			
Mr. Darwin Nelson Helena	Governor	Tocher	3/7/2003 1/1/2007
Qualifications (if required): primary consumer			
Ms. Barbara Olind Baker	Governor	Kuster	3/7/2003 1/1/2005
Qualifications (if required): parent of a developmentally disabled adult and a secondary consumer			
Ms. Suzie Twedt Great Falls	Governor	reappointed	3/7/2003 1/1/2007
Qualifications (if required): parent of a developmentally disabled adult and a secondary consumer			
Dr. R. Timm Vogelsberg Missoula	Governor	reappointed	3/7/2003 1/1/2004
Qualifications (if required): university program representative			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Developmental Disabilities Planning and Advisory Council (Public Health and Human Services) cont.			
Ms. Ramona Weber Billings	Governor	reappointed	3/7/2003 1/1/2007
Qualifications (if required): primary consumer			
Directors of the State Compensation Insurance Fund (Administration)			
Mr. Ed Henrich Fairmont	Governor	reappointed	3/24/2003 4/28/2007
Qualifications (if required): representative of private enterprise and a policyholder			
Ms. Mardi Madsen Billings	Governor	reappointed	3/24/2003 4/28/2007
Qualifications (if required): representative of private enterprise			
Mr. Jack Morgenstern Lewistown	Governor	Knedler	3/24/2003 4/28/2005
Qualifications (if required): representative of private enterprise and a policyholder			
Mr. Derek Scoble Clancy	Governor	reappointed	3/24/2003 4/28/2007
Qualifications (if required): representative of private enterprise and a policyholder			
Drought Advisory Commission (Natural Resources and Conservation)			
Ms. Catherine Love Helena	Governor	not listed	3/25/2003 0/0/0
Qualifications (if required): non-voting member			
Missouri River Basin Advisory Council (Natural Resources and Conservation)			
Ms. Diane Brandt Glasgow	Governor	not listed	3/4/2003 3/4/2005
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Missouri River Basin Advisory Council (Natural Resources and Conservation) cont. Mr. Bud Clinch Helena Qualifications (if required): DNRC director	Governor	not listed	3/4/2003 3/4/2005
Mr. John Foster Lewistown Qualifications (if required): public member	Governor	not listed	3/4/2003 3/4/2005
Mr. Tom Huntley Sidney Qualifications (if required): public member	Governor	not listed	3/4/2003 3/4/2005
Mr. Buzz Mattelin Brockton Qualifications (if required): public member	Governor	not listed	3/4/2003 3/4/2005
Mr. Ron Miller Glasgow Qualifications (if required): public member	Governor	not listed	3/4/2003 3/4/2005
Mr. Steve Page Glasgow Qualifications (if required): public member	Governor	not listed	3/4/2003 3/4/2005
Mr. Don Pfau Lewistown Qualifications (if required): public member	Governor	not listed	3/4/2003 3/4/2005
Mr. Jim Rector Glasgow Qualifications (if required): public member	Governor	not listed	3/4/2003 3/4/2005

BOARD AND COUNCIL APPOINTEES FROM MARCH 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Missouri River Basin Advisory Council (Natural Resources and Conservation) cont. Mr. Boone A. Whitmer Wolf Point Qualifications (if required): public member	Governor	not listed	3/4/2003 3/4/2005
Montana Arts Council (Education) Ms. Ann Cogswell Great Falls Qualifications (if required): public member	Governor	reappointed	3/11/2003 2/1/2008
Mr. Richard Halmes Billings Qualifications (if required): public member	Governor	reappointed	3/11/2003 2/1/2008
Ms. Betti C. Hill Helena Qualifications (if required): public member	Governor	Klein	3/11/2003 2/1/2008
Mr. Stan Lynde Helena Qualifications (if required): public member	Governor	Jones	3/11/2003 2/1/2008
Ms. Jackie Parsons Browning Qualifications (if required): public member	Governor	reappointed	3/11/2003 2/1/2008
Montana Facility Finance Authority (Commerce) Mr. John Bartos Corvallis Qualifications (if required): public member	Governor	reappointed	3/6/2003 1/1/2007



BOARD AND COUNCIL APPOINTEES FROM MARCH 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Facility Finance Authority (Commerce) Mr. John B. Dudis Kalispell Qualifications (if required): attorney	Governor	Hanson	3/6/2003 1/1/2007
Rep. Joe Quilici Butte Qualifications (if required): public member	Governor	Jansa	3/6/2003 1/1/2007
Montana Vocational Rehabilitation Council (Public Health and Human Services) Mr. Dennis Moore Billings Qualifications (if required): federally mandated parent organization position	Director	Luraas	3/3/2003 3/3/2005
Montana Voluntary Employee Beneficiary Association Advisory Council (Administration) Ms. Coleen Balzarini Great Falls Qualifications (if required): none specified	Director	not listed	3/1/2003 3/1/2005
Mr. Tom Bilodeau Helena Qualifications (if required): none specified	Director	not listed	3/1/2003 3/1/2005
Ms. Sheila Cozzie Helena Qualifications (if required): none specified	Director	not listed	3/1/2003 3/1/2005
Mr. Don Kinman Helena Qualifications (if required): none specified	Director	not listed	3/1/2003 3/1/2005

BOARD AND COUNCIL APPOINTEES FROM MARCH 2003

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Voluntary Employee Beneficiary Association Advisory Council (Administration) cont.			
Mr. Glen Leavitt Helena	Director	not listed	3/1/2003 3/1/2005
Qualifications (if required):	none specified		
Ms. Beth McLaughlin Helena	Director	not listed	3/1/2003 3/1/2005
Qualifications (if required):	none specified		
Mr. Thomas Schneider Helena	Director	not listed	3/1/2003 3/1/2005
Qualifications (if required):	none specified		
Mr. Todd Watkins Kalispell	Director	not listed	3/1/2003 3/1/2005
Qualifications (if required):	none specified		
State Lottery Commission (Administration)			
Mr. Donald Sterhan Billings	Governor	Lake	3/20/2003 1/1/2005
Qualifications (if required):	public member		
Youth Justice Council (Justice)			
Ms. Shirley Brown Helena	Governor	Hunter	3/17/2003 6/15/2003
Qualifications (if required):	representative of a public agency dealing with delinquency prevention		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Aging Advisory Council (Public Health and Human Services) Ms. Roberta Feller, Stockett Qualifications (if required): public member	Governor	7/18/2003
Ms. Eloise England, Heart Butte Qualifications (if required): public member	Governor	7/18/2003
Ms. Wesleta Branstetter, Billings Qualifications (if required): public member	Governor	7/18/2003
Board of Banking (Administration) Mr. Robert J. Gersack, Billings Qualifications (if required): state bank officer for a large sized bank	Governor	7/1/2003
Board of Barbers (Commerce) Mr. Terrance Luff, Billings Qualifications (if required): practicing barber	Governor	7/1/2003
Board of Cosmetology (Commerce) Mr. John Reichelt, Billings Qualifications (if required): licensed cosmetologist	Governor	7/1/2003
Board of Funeral Services (Commerce) Mr. Douglas D. Lowry, Big Timber Qualifications (if required): licensed mortician	Governor	7/1/2003
Board of Hearing Aid Dispensers (Commerce) Ms. Marlene Tash, Dillon Qualifications (if required): public member	Governor	7/1/2003
Ms. Cindy Burk, Helena Qualifications (if required): hearing aid dispenser without a master's degree	Governor	7/1/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Hearing Aid Dispensers (Commerce) cont. Dr. Paul J. Byorth, Billings Qualifications (if required): otolaryngologist	Governor	7/1/2003
Ms. Beckie Hoffmann, Butte Qualifications (if required): hearing aid dispenser without a master's degree	Governor	7/1/2003
Board of Nursing (Commerce) Ms. Sharon L. Dschaak, Wolf Point Qualifications (if required): licensed practical nurse	Governor	7/1/2003
Board of Nursing (Labor and Industry) Ms. Connie K. Schultz, Glasgow Qualifications (if required): registered nurse	Governor	7/1/2003
Board of Nursing Home Administrators (Commerce) Ms. Lori Henderson, Havre Qualifications (if required): nursing home administrator	Governor	5/28/2003
Board of Pharmacy (Commerce) Ms. Colette Bernica, Great Falls Qualifications (if required): public member	Governor	7/1/2003
Board of Physical Therapy Examiners (Commerce) Dr. B. John Heetderks, Belgrade Qualifications (if required): physician	Governor	7/1/2003
Ms. Brenda T. Mahlum, Missoula Qualifications (if required): physical therapist	Governor	7/1/2003
Ms. Judy Cole, Hysham Qualifications (if required): public member	Governor	7/1/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Plumbers (Commerce) Ms. Jo Hawkins, Helena Qualifications (if required): public member	Governor	5/4/2003
Mr. Greg Butts, Helena Qualifications (if required): sanitary engineer	Governor	5/4/2003
Mr. Robert Metcalf, Bozeman Qualifications (if required): journeyman plumber	Governor	5/4/2003
Mr. Stephen R. Nelson, Great Falls Qualifications (if required): master plumber	Governor	5/4/2003
Board of Plumbers (Labor and Industry) Ms. Margaret Laknar, Dillon Qualifications (if required): public member	Governor	5/4/2003
Board of Professional Engineers and Land Surveyors (Commerce) Mr. Haley Beaudry, Butte Qualifications (if required): professional engineer	Governor	7/1/2003
Mr. Warren P. Scarrah, Bozeman Qualifications (if required): professional engineer and instructor	Governor	7/1/2003
Ms. Paulette Ferguson, Missoula Qualifications (if required): public member	Governor	7/1/2003
Mr. Ronald W. Allen, Bozeman Qualifications (if required): professional and practicing land surveyor	Governor	7/1/2003
Board of Public Accountants (Commerce) Ms. Beryl Argall Stover, Missoula Qualifications (if required): certified public accountant	Governor	7/1/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Radiologic Technologists (Commerce) Ms. Jane Christman, Dutton Qualifications (if required): radiologic technologist	Governor	7/1/2003
Board of Real Estate Appraisers (Commerce) Mr. David Heine, Kalispell Qualifications (if required): real estate appraiser	Governor	5/1/2003
Ms. Janeth Martin, Helena Qualifications (if required): public member	Governor	5/1/2003
Board of Realty Regulation (Commerce) Mr. John Beagle, Sidney Qualifications (if required): real estate broker	Governor	5/9/2003
Ms. Teddye Beebe, Libby Qualifications (if required): public member	Governor	5/9/2003
Board of Research and Commercialization (Commerce) Mr. Terry Spalinger, Helena Qualifications (if required): public member	Governor	7/1/2003
Board of Sanitarians (Commerce) Ms. Denise Moldroski, Livingston Qualifications (if required): registered sanitarian	Governor	7/1/2003
Board of Veterinary Medicine (Commerce) Dr. Jean Lindley, Miles City Qualifications (if required): licensed veterinarian	Governor	7/31/2003
Board of Water Well Contractors (Natural Resources and Conservation) Mr. Kevin Haggerty, Bozeman Qualifications (if required): licensed water well contractor	Governor	7/1/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Commission on Community Service (Governor) Ms. Nancy Coopersmith, Helena Qualifications (if required): representing K-12 education	Governor	7/1/2003
Mr. George Dennison, Missoula Qualifications (if required): representing higher education	Governor	7/1/2003
Major John Walsh, Helena Qualifications (if required): representing the Department of Military Affairs	Governor	7/1/2003
Mr. Donald Kettner, Glendive Qualifications (if required): representing private citizens	Governor	7/1/2003
Committee on Telecommunications Access Services for Persons with Disabilities (Public Health and Human Services) Mr. Eric Eck, Helena Qualifications (if required): representative of the Public Service Commission	Governor	7/1/2003
Mr. Thomas P. McGree, Helena Qualifications (if required): representing the InterLATA interchange carriers	Governor	7/1/2003
Mr. Norman Eck, Helena Qualifications (if required): non-disabled senior citizen	Governor	7/1/2003
Ms. Lynn Harris, Missoula Qualifications (if required): representing licensed audiologists	Governor	7/1/2003
Mr. Gary Duncan, Helena Qualifications (if required): representative of the largest local exchange company in Montana	Governor	7/1/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
District Court Council (Supreme Court) Judge Edward P. McLean, Missoula Qualifications (if required): none specified	elected	6/30/2003
Ms. Lori Maloney, Butte Qualifications (if required): nonvoting member	Supreme Court	6/30/2003
Electronic Government Advisory Council (Administration) Mr. David A. Galt, Helena Qualifications (if required): state agency representative	Governor	6/18/2003
Sen. Duane Grimes, Clancy Qualifications (if required): representing the Senate	Senate President	6/18/2003
Rep. Karl A. Waitschies, Peerless Qualifications (if required): not listed	House Speaker	6/18/2003
Mr. M. Jeff Hagener, Helena Qualifications (if required): state agency representative	Governor	6/18/2003
Mr. James E. Reno, Billings Qualifications (if required): local government official	Governor	6/18/2003
Mr. Greg Gianforte, Bozeman Qualifications (if required): public member	Governor	6/18/2003
Mr. Gene Vuckovich, Anaconda Qualifications (if required): public member	Governor	6/18/2003
Family Education Program Savings Oversight Committee (Commissioner of Higher Education) Mr. Ed Jasmin, Bigfork Qualifications (if required): representative of the Board of Regents	Governor	7/1/2003



VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Family Education Savings Program Oversight Committee (Commissioner Higher Education) cont. Ms. Sarah Kelly, Helena Qualifications (if required): public member	Governor	7/1/2003
Flathead Basin Commission (Governor) Ms. Marilyn Wood, Bigfork Qualifications (if required): public member	Governor	6/30/2003
Mr. Paul Smiley, Kalispell Qualifications (if required): public member	Governor	6/30/2003
Mr. Gary Wicks, Polson Qualifications (if required): public member	Governor	6/30/2003
Independent Living Council (Public Health and Human Services) Ms. Donna M. Scott, Billings Qualifications (if required): represents business and consumers	Director	7/23/2003
Information Technology Board (Administration) Ms. Gail Gray, Helena Qualifications (if required): representing a state agency	Governor	7/1/2003
Mr. Mike McGrath, Helena Qualifications (if required): representing a state agency	Governor	7/1/2003
Ms. Lois A. Menzies, Helena Qualifications (if required): representing the Legislative Branch	Director	7/1/2003
Rep. Jay Stovall, Billings Qualifications (if required): none specified	PSC	7/1/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Information Technology Board (Administration) cont. Mr. Bill Slaughter, Helena Qualifications (if required): representing a state agency	Governor	7/1/2003
Justice Jim Nelson, Helena Qualifications (if required): none specified	Chief Justice	7/1/2003
Ms. Linda McCulloch, Helena Qualifications (if required): none specified	Public Instruction	7/1/2003
Mr. Richard A. Crofts, Helena Qualifications (if required): none specified	Board of Regents	7/1/2003
Sen. William E. (Bill) Glaser, Huntley Qualifications (if required): none specified	Senate President	7/1/2003
Mr. Mike Gustafson, Billings Qualifications (if required): representing the private sector	Governor	7/1/2003
Rep. Linda L. Holden, Valier Qualifications (if required): none specified	House Speaker	7/1/2003
Ms. Jan Sensibaugh, Helena Qualifications (if required): representing a state agency	Governor	7/1/2003
Mr. Kurt Alme, Helena Qualifications (if required): representing a state agency	Governor	7/1/2003
Ms. Mary Sexton, Choteau Qualifications (if required): representing local government	Governor	7/1/2003
Mr. William Kennedy, Billings Qualifications (if required): representing local government	Governor	7/1/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Information Technology Board (Administration) cont. Ms. Wendy Keating, Helena Qualifications (if required): representing a state agency	Governor	7/1/2003
Information Technology Managers Council (Administration) Mr. Tony Herbert, Helena Qualifications (if required): deputy CIO for operations	Director	7/1/2003
Mr. Barney Benkelman, Helena Qualifications (if required): representing Fish, Wildlife, and Parks	Director	7/1/2003
Mr. Hank Voderberg, Helena Qualifications (if required): representing Department of Administration	Director	7/1/2003
Mr. Gary Wulf, Helena Qualifications (if required): representing Department of Commerce	Director	7/1/2003
Ms. Dana Corson, Helena Qualifications (if required): representing Judicial Branch	Director	7/1/2003
Mr. Art Pembroke, Helena Qualifications (if required): representing Lewis and Clark County	Director	7/1/2003
Mr. David Nagel, Helena Qualifications (if required): representing Department of Labor and Industry	Director	7/1/2003
Ms. Tori Hunthausen, Helena Qualifications (if required): representing Legislative Audit Division	Director	7/1/2003
Mr. Hank Trenk, Helena Qualifications (if required): representing Legislative Services Branch	Director	7/1/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Information Technology Managers Council (Administration) cont. Ms. Kathy James, Helena Qualifications (if required): representing Department of Livestock	Director	7/1/2003
Mr. Homer Young, Helena Qualifications (if required): representing Department of Military Affairs	Director	7/1/2003
Ms. Carleen Layne, Helena Qualifications (if required): representing Montana Arts Council	Director	7/1/2003
Mr. Bob Auer, Helena Qualifications (if required): representing Department of Natural Resources and Conservation	Director	7/1/2003
Ms. Dulcy Hubbert, Helena Qualifications (if required): representing Office of Political Practices	Director	7/1/2003
Mr. Bob Morris, Helena Qualifications (if required): representing Office of Public Instruction	Director	7/1/2003
Mr. Joel Oelfke, Helena Qualifications (if required): representing Public Service Commission	Director	7/1/2003
Mr. Michael Randall, Helena Qualifications (if required): representing Department of Transportation	Director	7/1/2003
Mr. Dan Ellison, Helena Qualifications (if required): representing Department of Revenue	Director	7/1/2003
Mr. Jeff Brandt Qualifications (if required): deputy CIO for policy and planning	Director	7/1/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Information Technology Managers Council (Administration) cont. Mr. Mike Jacobson, Helena Qualifications (if required): representing Department of Agriculture	Director	7/1/2003
Mr. Ken Kops, Helena Qualifications (if required): representing State Auditor's Office	Director	7/1/2003
Mr. Dan Chelini, Helena Qualifications (if required): representing Department of Corrections	Director	7/1/2003
Ms. Amy Sassano, Helena Qualifications (if required): representing Governor's Office	Director	7/1/2003
Ms. Edwina Dale, Helena Qualifications (if required): representing Higher Education	Director	7/1/2003
Ms. Doreen Boyer, Helena Qualifications (if required): representing Historical Society	Director	7/1/2003
Mr. Steve Tesinsky, Helena Qualifications (if required): representing Department of Justice	Director	7/1/2003
Mr. Mike Allen, Helena Qualifications (if required): representing Legislative Fiscal Division	Director	7/1/2003
Mr. Mike Carroll, Helena Qualifications (if required): representing State Library	Director	7/1/2003
Mr. Paul Gilbert, Helena Qualifications (if required): representing State Lottery	Director	7/1/2003
Mr. Mark Sheehan Qualifications (if required): representing Montana State University	Director	7/1/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Information Technology Managers Council (Administration) cont. Mr. Dan Forbes, Helena Qualifications (if required): representing Department of Public Health and Human Services	Director	7/1/2003
Ms. Lynn Keller, Helena Qualifications (if required): representing Secretary of State	Director	7/1/2003
Mr. Rocky Brown, Helena Qualifications (if required): representing State Fund	Director	7/1/2003
Mr. Dave Marshall Qualifications (if required): representing University of Montana	Director	7/1/2003
Interagency Coordinating Council for State Prevention Programs (Public Health and Human Services)		
Mr. William Snell, Billings Qualifications (if required): representing prevention programs and services	Governor	7/1/2003
Ms. Alison Counts, Belgrade Qualifications (if required): representing prevention programs and services	Governor	7/1/2003
Judicial Standards Commission (Justice)		
Judge Edward P. McLean, Missoula Qualifications (if required): none specified	Chief Justice	6/30/2003
Ms. Patty Jo Henthorn, Big Timber Qualifications (if required): public member	Governor	7/1/2003
Mental Disabilities Board of Visitors (Governor)		
Ms. Kathleen Driscoll Donovan, Hamilton Qualifications (if required): consumer with experience with the Montana public mental health system	Governor	7/1/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Mental Disabilities Board of Visitors (Governor) cont. Ms. Cindy Dolan, Great Falls Qualifications (if required): consumer of mental health services and experience with Montana public mental health system	Governor	7/1/2003
Ms. Gay Moddrell, Kalispell Qualifications (if required): consumer of developmental disabilities services	Governor	7/1/2003
Microbusiness Advisory Council (Commerce) Mr. Richard C. King, Havre Qualifications (if required): representing experts in revolving loan funds administration	Governor	6/30/2003
Mr. Duane Kurokawa, Wolf Point Qualifications (if required): representing the banking industry and Congressional District 2	Governor	6/30/2003
Mr. Stephen Mehring, Great Falls Qualifications (if required): representing revolving loan funds and Congressional District 2	Governor	6/30/2003
Ms. Billie Lee, Ronan Qualifications (if required): representing small cities and Congressional District 1	Governor	6/30/2003
Ms. Candace Eide, Glendive Qualifications (if required): representing low income populations and Congressional District 2	Governor	6/30/2003
Ms. Karyn Brown, Plevna Qualifications (if required): representing microbusiness owners and cities under 15,000	Governor	6/30/2003
Mr. Dan Manning, Somers Qualifications (if required): representing Congressional District 1	Governor	6/30/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Agricultural Heritage Commission (Agriculture) Mr. Dennis L. DeVries, Polson Qualifications (if required): member of a conservation district board of supervisors	Governor	6/30/2003
Mr. Jack Dietrich, Billings Qualifications (if required): representative of a regional or statewide land trust	Governor	6/30/2003
Mr. Chris King, Winnett Qualifications (if required): rancher active in a regional or local agricultural organization	Governor	6/30/2003
Mr. Ken Maki, Great Falls Qualifications (if required): rancher active in a state agricultural organization	Governor	6/30/2003
Mr. Randy Smith, Glen Qualifications (if required): rancher active in a regional or local agricultural organization	Governor	6/30/2003
Mr. Thornton A. Liechty, Evaro Qualifications (if required): forest landowner	Governor	6/30/2003
Mr. Steve Luebeck, Butte Qualifications (if required): representative of a regional or statewide conservation organization	Governor	6/30/2003
Mr. Art Neill, Whitehall Qualifications (if required): representative of a regional or statewide conservation organization	Governor	6/30/2003
Montana Consensus Council (Governor) Ms. Jane Jelinski, Bozeman Qualifications (if required): public member	Governor	6/30/2003



VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Consensus Council (Governor) cont. Sen. Bob Keenan, Bigfork Qualifications (if required): public member	Governor	6/30/2003
Lt. Governor Karl Ohs, Harrison Qualifications (if required): ex-officio member	Governor	6/30/2003
Ms. Peggy Trenk, Helena Qualifications (if required): public member	Governor	6/30/2003
Ms. Anne Hedges, Helena Qualifications (if required): public member	Governor	6/30/2003
Mr. Jon Sesso, Butte Qualifications (if required): public member	Governor	6/30/2003
Rep. Monica J. Lindeen, Huntley Qualifications (if required): public member	Governor	6/30/2003
Mr. Alan Rollo, Great Falls Qualifications (if required): public member	Governor	6/30/2003
Dr. Nelson Wert, Townsend Qualifications (if required): public member	Governor	6/30/2003
Ms. Sarah Van de Wetering, Missoula Qualifications (if required): public member	Governor	6/30/2003
Ms. Mary Whittinghill, Helena Qualifications (if required): public member	Governor	6/30/2003
Mr. LeRoy Not Afraid, Crow Agency Qualifications (if required): public member and a Native American	Governor	6/30/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Consensus Council (Governor) cont. Mr. Brad Powell, Missoula Qualifications (if required): public member	Governor	6/30/2003
Montana Economic Development Action Group (Governor) Ms. Diane Brandt, Glasgow Qualifications (if required): none specified	Governor	7/1/2003
Mr. Jon Marchi, Polson Qualifications (if required): none specified	Governor	7/1/2003
Mr. Tom Scott, Billings Qualifications (if required): none specified	Governor	7/1/2003
Mr. Don Peoples, Butte Qualifications (if required): none specified	Governor	7/1/2003
Mr. John Olson, Sidney Qualifications (if required): none specified	Governor	7/1/2003
Mr. Mark A. Simonich, Helena Qualifications (if required): none specified	Governor	7/1/2003
Mr. Steve Roth, Big Sandy Qualifications (if required): none specified	Governor	7/1/2003
Rep. Carol C. Juneau, Browning Qualifications (if required): none specified	Governor	7/1/2003
Ms. Susan Humble, Great Falls Qualifications (if required): none specified	Governor	7/1/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Economic Development Action Group (Governor) cont. Mr. Dave Gibson, Helena Qualifications (if required): none specified	Governor	7/1/2003
Mr. Dave Bayless, Bozeman Qualifications (if required): none specified	Governor	7/1/2003
Ms. Rosalie Sheehy Cates, Missoula Qualifications (if required): none specified	Governor	7/1/2003
Mr. Ian Davidson, Great Falls Qualifications (if required): none specified	Governor	7/1/2003
Mr. Gene Fenderson, Helena Qualifications (if required): none specified	Governor	7/1/2003
Mr. Charlie Grenier, Columbia Falls Qualifications (if required): none specified	Governor	7/1/2003
Mr. Roger Peterson, Billings Qualifications (if required): none specified	Governor	7/1/2003
Ms. Dee Russell, Bozeman Qualifications (if required): none specified	Governor	7/1/2003
Ms. Virginia Sloan, Kalispell Qualifications (if required): none specified	Governor	7/1/2003
Mr. Bruce Whittenberg, Billings Qualifications (if required): none specified	Governor	7/1/2003
Mr. Turner Askew, Whitefish Qualifications (if required): none specified	Governor	7/1/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Fetal Alcohol Syndrome Advisory Council (Public Health and Human Services) Mr. Thomas Price, Eureka Qualifications (if required): parent of two FAS affected children and is an outgoing member of DDPAC	Governor	6/13/2003
Ms. Carole Lankford, Pablo Qualifications (if required): Confederated Salish and Kootenai Tribal Council representative	Governor	6/13/2003
Ms. Mary Behrendt, Columbia Falls Qualifications (if required): high school instructor in Family and Consumer Science	Governor	6/13/2003
Ms. Kathy Boutilier, Helena Qualifications (if required): school nurse	Governor	6/13/2003
Ms. Rebecca Burt, Great Falls Qualifications (if required): therapeutic foster parent	Governor	6/13/2003
Ms. Leita Cook, Helena Qualifications (if required): specialist for FAS diagnosis	Governor	6/13/2003
Mr. Billford Curley, Sr., Lame Deer Qualifications (if required): Northern Cheyenne tribal representative	Governor	6/13/2003
Dr. Suzanne Dixon, Great Falls Qualifications (if required): behavioral developmental pediatrician	Governor	6/13/2003
Ms. Allison Failing, Poplar Qualifications (if required): Fort Peck Tribal Council representative	Governor	6/13/2003
Ms. Jacalyn Ironmaker, Box Elder Qualifications (if required): specialist in human services with concentration in chemical dependency	Governor	6/13/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Fetal Alcohol Syndrome Advisory Council (Public Health and Human Services) cont. Ms. Diane Jeanotte, Billings Qualifications (if required): participant in the Four State FAS Consortium	Governor	6/13/2003
Dr. John Johnson, Helena Qualifications (if required): director of medical genetics at Shodair Hospital	Governor	6/13/2003
Dr. Ted Laine, Missoula Qualifications (if required): pediatrician with a special interest in neonatology	Governor	6/13/2003
Ms. Irene Lake, St. Ignatius Qualifications (if required): site manager for the University of New Mexico Fetal Alcohol Prevention Program on the Flathead Reservation	Governor	6/13/2003
Mr. Mike Lande, Billings Qualifications (if required): officer of the Indian Health Board of Billings	Governor	6/13/2003
Ms. Crystal LaPlante, Browning Qualifications (if required): Blackfeet Nation Tribal Council representative	Governor	6/13/2003
Ms. Terry McAnally, Poplar Qualifications (if required): Fort Peck Tribal Council representative	Governor	6/13/2003
Ms. Myrna Medicine Horse, Crow Agency Qualifications (if required): Crow Tribal Council representative	Governor	6/13/2003
Ms. Jill Plummage, Harlem Qualifications (if required): Fort Belknap Agency Tribal Council representative	Governor	6/13/2003
Ms. Cindy Schamberg, Libby Qualifications (if required): executive director of Families in Partnership	Governor	6/13/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Fetal Alcohol Syndrome Advisory Council (Public Health and Human Services) cont. Ms. Sandy Sorrell, Pablo Qualifications (if required): Confederated Salish and Kootenai Tribal Council representative	Governor	6/13/2003
Ms. Linda Tarinelli, Bozeman Qualifications (if required): coordinator/director of the Young Parents Program in Bozeman	Governor	6/13/2003
Mr. Richard Williams, Bozeman Qualifications (if required): parent of an alcohol affected child	Governor	6/13/2003
Ms. Margaret Ann Yellow Kidney, Browning Qualifications (if required): representative of the Blackfeet Nation	Governor	6/13/2003
Montana Heritage Preservation and Development Commission (Historical Society) Mr. F. W. Howell, West Yellowstone Qualifications (if required): managing a facility catering to tourists	Governor	5/23/2003
Ms. Mary Oliver, Ennis Qualifications (if required): businessperson	Governor	5/23/2003
Montana Historical Society Board of Trustees (Historical Society) Dr. Thomas A. Foor, Missoula Qualifications (if required): archeologist	Governor	7/1/2003
Mr. William M. Holt, Lolo Qualifications (if required): public member	Governor	7/1/2003
Ms. Vicki A. McCarthy, Billings Qualifications (if required): public member	Governor	7/1/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Mint Committee (Agriculture) Mr. Bill Kleinhans, Somers Qualifications (if required): mint grower	Governor	7/1/2003
Mr. Ken Smith, Kalispell Qualifications (if required): mint grower	Governor	7/1/2003
Montana Organic Commodity Advisory Council (Agriculture) Mr. David Oien, Conrad Qualifications (if required): handler	Director	7/29/2003
Ms. Judy Owsowitz, Whitefish Qualifications (if required): producer	Director	7/29/2003
Mr. Robert Boettcher, Big Sandy Qualifications (if required): producer	Director	7/29/2003
Mr. Robert Quinn, Big Sandy Qualifications (if required): producer	Director	7/29/2003
Montana Potato Advisory Committee (Agriculture) Mr. Bill Buyan, Sheridan Qualifications (if required): none specified	Director	5/20/2003
Mr. Art Mangels, Dillon Qualifications (if required): none specified	Director	5/20/2003
Montana Power Authority (Natural Resources and Conservation) Sen. Gary C. Aklestad, Shelby Qualifications (if required): public member	Governor	7/2/2003
Chief Justice Jean A. Turnage, Polson Qualifications (if required): public member	Governor	7/2/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana State Veterans Cemetery Advisory Council (Military Affairs) Mr. Mickey Nelson, Helena Qualifications (if required): technical expert	Director	5/1/2003
Ms. Alma Dickey, Helena Qualifications (if required): Disabled American Veterans Auxiliary	Director	5/1/2003
Ms. Alma Dickey, Helena Qualifications (if required): Prisoners of War	Director	5/1/2003
Mr. Fred Olson, Fort Harrison Qualifications (if required): Veterans of Foreign Wars	Director	5/1/2003
Ms. Rose Marie Storey, Helena Qualifications (if required): American Legion Auxiliary	Director	5/1/2003
Mr. George Paul, Helena Qualifications (if required): Military Order of the Cooties	Director	5/1/2003
Mr. Jim Heffernan, Helena Qualifications (if required): Marine Corps League	Director	5/1/2003
Mr. Raymond Read, Helena Qualifications (if required): American Legion	Director	5/1/2003
Mr. Raymond Read, Helena Qualifications (if required): Vietnam Veterans of America	Director	5/1/2003
Mr. M. Herbert Goodwin, Helena Qualifications (if required): First Special Service Force	Director	5/1/2003
Mr. Robert C. McKenna, Helena Qualifications (if required): technical expert	Director	5/1/2003



VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana State Veterans Cemetery Advisory Council (Military Affairs) cont. Mr. James F. Jacobsen, Helena Qualifications (if required): none specified	Director	5/1/2003
Mr. George Poston, Helena Qualifications (if required): Disabled American Veterans	Director	5/1/2003
Major John Walsh, Helena Qualifications (if required): Department of Military Affairs	Director	5/1/2003
Ms. Eve Longfellow, Helena Qualifications (if required): Veterans of Foreign Wars Auxiliary	Director	5/1/2003
Mr. William Hill, Helena Qualifications (if required): Military Order of the Purple Heart	Director	5/1/2003
Mr. Don Buffington, Conrad Qualifications (if required): 40 & 8	Director	5/1/2003
Motorcycle Safety Advisory Committee (Office of Public Instruction) Mr. Dal Smilie, Helena Qualifications (if required): representative of a motorcycle riding group	Governor	7/1/2003
Mr. Ladd Paulson, Billings Qualifications (if required): peace officer	Governor	7/1/2003
Petroleum Tank Release Compensation Board (Environmental Quality) Ms. Mary Ann Sharon, Dillon Qualifications (if required): public member	Governor	6/30/2003
Mr. Tim Hornbacher, Helena Qualifications (if required): service station dealer	Governor	6/30/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Reserved Water Rights Compact Commission (Natural Resources and Conservation) Mr. Gene Etchart, Glasgow Qualifications (if required): Governor's appointee	Governor	6/1/2003
Mr. Jack Salmond, Choteau Qualifications (if required): Governor's appointee	Governor	6/1/2003
Rep. Robert Thoft, Stevensville Qualifications (if required): Governor's appointee	Governor	6/1/2003
Ms. Tara DePuy, Livingston Qualifications (if required): Governor's appointee	Governor	6/1/2003
River Recreation Advisory Council (Fish, Wildlife, and Parks) Sen. Bill Tash, Dillon Qualifications (if required): none specified	Director	7/1/2003
Mr. Robin Cunningham, Gallatin Gateway Qualifications (if required): none specified	Director	7/1/2003
Mr. Tim Mulligan, Whitehall Qualifications (if required): none specified	Director	7/1/2003
Rep. Gail Gutsche, Missoula Qualifications (if required): none specified	Director	7/1/2003
Rep. Diane Rice, Harrison Qualifications (if required): none specified	Director	7/1/2003
Mr. Mike Penfold, Billings Qualifications (if required): none specified	Director	7/1/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
River Recreation Advisory Council (Fish, Wildlife, and Parks) cont. Mr. Marty Baker, Missoula Qualifications (if required): none specified	Director	7/1/2003
Mr. Larry Clark, Philipsburg Qualifications (if required): none specified	Director	7/1/2003
Mr. Larry Copenhaver, Helena Qualifications (if required): none specified	Director	7/1/2003
Mr. David Decker, Wise River Qualifications (if required): none specified	Director	7/1/2003
Mr. Mike Ewing, Bozeman Qualifications (if required): none specified	Director	7/1/2003
Mr. John Gangemi, Bigfork Qualifications (if required): none specified	Director	7/1/2003
Mr. Dudley Improta, Missoula Qualifications (if required): none specified	Director	7/1/2003
Mr. Russ Kipp, Dillon Qualifications (if required): none specified	Director	7/1/2003
Ms. Cindy Kittredge, Cascade Qualifications (if required): none specified	Director	7/1/2003
Mr. Steve Leubeck, Butte Qualifications (if required): none specified	Director	7/1/2003
Mr. Jerry Nichols, Superior Qualifications (if required): none specified	Director	7/1/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
River Recreation Advisory Council (Fish, Wildlife, and Parks) cont. Mr. Steve Ortez, Great Falls Qualifications (if required): none specified	Director	7/1/2003
Ms. Julia Page, Gardiner Qualifications (if required): none specified	Director	7/1/2003
Mr. Jim Rainey, Bozeman Qualifications (if required): none specified	Director	7/1/2003
Ms. Amy Sullivan, Helena Qualifications (if required): none specified	Director	7/1/2003
Mr. Mike Whittington, Billings Qualifications (if required): none specified	Director	7/1/2003
State Banking Board (Commerce) Ms. Barbara Skelton, Billings Qualifications (if required): public member	Governor	7/1/2003
State Electrical Board (Commerce) Mr. Todd Stoddard, Dillon Qualifications (if required): licensed electrician	Governor	7/1/2003
State Library Commission (Education) Ms. Rosemary Garvey, Butte Qualifications (if required): public member	Governor	5/22/2003
Mr. David Johnson, Billings Qualifications (if required): public member	Governor	5/22/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State-Tribal Economic Development Commission (Governor) Mr. Tim Zimmerman, Billings Qualifications (if required): representing the Little Shell Tribe	Governor	6/30/2003
Mr. John Healy, Harlem Qualifications (if required): representing the Fort Belknap Tribe	Governor	6/30/2003
State-Tribal Economic Development Commission (Indian Affairs) Mr. Lawrence Big Hair, Jr., Crow Agency Qualifications (if required): representative of the Crow Tribe	Governor	6/30/2003
SummitNet Executive Council (Administration) Ms. Lois A. Menzies, Helena Qualifications (if required): state agency representative	Governor	6/30/2003
Mr. Scott Buswell, Helena Qualifications (if required): representative of the Office of Public Instruction	Governor	6/30/2003
Ms. Janet Kelly, Miles City Qualifications (if required): local government representative	Governor	6/30/2003
Mr. Richard A. Crofts, Helena Qualifications (if required): Commissioner of Higher Education	Governor	6/30/2003
Ms. Karen Strege, Helena Qualifications (if required): state agency representative	Governor	6/30/2003
Mr. Dan Ellison, Helena Qualifications (if required): state agency representative	Governor	6/30/2003
Mr. Scott Darkenwald, Helena Qualifications (if required): representative of the Department of Administration	Governor	6/30/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Teachers' Retirement Board (Administration) Mr. Scott A. Dubbs, Lewistown Qualifications (if required): teacher/member	Governor	7/1/2003
Tourism Advisory Council (Commerce) Ms. Donna Madson, West Yellowstone Qualifications (if required): representing Yellowstone Country	Governor	7/1/2003
Mr. Ed Heinrich, Fairmont Qualifications (if required): representing Goldwest Country	Governor	7/1/2003
Mr. Clark Whitehead, Lewistown Qualifications (if required): representing a federal agency and Russell Country	Governor	7/1/2003
Mr. Richard J. Young, Poplar Qualifications (if required): representing Missouri River Country and tribal government	Governor	7/1/2003
Mr. Kim Champney, Billings Qualifications (if required): representative from Custer Country	Governor	7/1/2003
Youth Justice Council (Justice) Mr. Dan Anderson, Helena Qualifications (if required): representing a public agency dealing with high risk youth	Governor	6/15/2003
Mr. Marko Lucich, Butte Qualifications (if required): representing the Juvenile Probation Association	Governor	6/15/2003
Rev. Steven Rice, Miles City Qualifications (if required): public member	Governor	6/15/2003
Mr. Spencer Sartorius, Helena Qualifications (if required): representing educational services	Governor	6/15/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Justice Council (Justice) cont. Ms. Peggy Beltrone, Great Falls Qualifications (if required): representing local government officials	Governor	6/15/2003
Sen. Jeff Mangan, Great Falls Qualifications (if required): representing the legislature	Governor	6/15/2003
Mr. Steve Nelson, Bozeman Qualifications (if required): represents nonprofit organization dealing with delinquency prevention	Governor	6/15/2003
Mr. Ron Whitmoyer, East Helena Qualifications (if required): representing local school administration	Governor	6/15/2003
Ms. Misti Robertson, Billings Qualifications (if required): representing law enforcement	Governor	6/15/2003
Ms. Winnie Ore, Helena Qualifications (if required): representing Department of Corrections	Governor	6/15/2003
Ms. Shanna Bulik-Chism, Great Falls Qualifications (if required): representing a public agency dealing with detention services	Governor	6/15/2003
Ms. Katie Yother, Miles City Qualifications (if required): representing youth and those involved in juvenile justice system	Governor	6/15/2003
Mr. Brock Albin, Bozeman Qualifications (if required): representing defense of youth in the court system	Governor	6/15/2003

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2003 through JULY 31, 2003

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Justice Council (Justice) cont. Ms. Sally Stansberry, Missoula Qualifications (if required): represents nonprofit organization dealing with delinquency prevention	Governor	6/15/2003
Ms. Carmen Hotvedt, Helena Qualifications (if required): representing youth and volunteers	Governor	6/15/2003
Mr. Marc Aune, Missoula Qualifications (if required): representing youth and those involved in the juvenile justice system	Governor	6/15/2003
Mr. Tracy King, Harlem Qualifications (if required): representing Native American programs	Governor	6/15/2003
Mr. Tony Wagner, Browning Qualifications (if required): representative of a nonprofit organization concerned with prevention	Governor	6/15/2003
Mr. Joe Johnson, Butte Qualifications (if required): youth representative	Governor	6/15/2003
Mr. Don Munro, Browning Qualifications (if required): youth representative	Governor	6/15/2003
Ms. Beverley Boyd, Helena Qualifications (if required): representative of the Youth Court System	Governor	6/15/2003
Ms. Shirley Brown, Helena Qualifications (if required): representative of a public agency dealing with delinquency prevention	Governor	6/15/2003