

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are found at the end of each register.

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

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BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD  
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PUBLIC
adoption of New Rule I through	)	HEARING ON PROPOSED
New Rule VII regarding when	)	ADOPTION
salary deferrals under a	)	
cafeteria plan should be treated	)	
as compensation	)	

TO: All Concerned Persons

1. On October 5, 2005, at 10:00 a.m. a public hearing will be held in the Boardroom at 100 North Park Avenue, Suite 200 of the Montana Public Employee Retirement Administration building at Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Public Employees' Retirement Board 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 Public Employees' Retirement Board no later than 5:00 p.m. on September 21, 2005, to advise us of the nature of the accommodation that you need. Please contact Carolyn Miller, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; telephone (406) 444-7939; TDD (406) 444-1421; FAX (406) 444-5428; e-mail cmiller@mt.gov.

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

RULE I TREATING SALARY DEFERRALS UNDER A CAFETERIA PLAN AS COMPENSATION - POLICY AND OBJECTIVES (1) Pursuant to 19-2-1010, MCA, the public employees' retirement board (board) must administer the retirement systems under its purview "in a manner required to satisfy the applicable qualification requirements for a qualified governmental plan, as provided in the internal revenue code." The board has received favorable determination letters from the internal revenue service indicating that the retirement systems it administers have met this requirement and are qualified governmental plans under Internal Revenue Code (IRC) sections 401(a) and 414(d).

(2) The board's primary objective is to maintain the qualified status of the retirement systems it administers. In order to meet this objective, the board must comply with the IRC when determining what constitutes compensation.

AUTH: 19-2-403, MCA

IMP: 19-2-1001, 19-2-1005, 19-2-1010, 19-3-108, 19-5-101, 19-6-101, 19-7-101, 19-8-101, 19-9-104, and 19-13-104, MCA

RULE II TREATING SALARY DEFERRALS UNDER A CAFETERIA PLAN AS COMPENSATION - APPLICABILITY (1) This subchapter applies when considering whether a salary deferral permitted under an employer's cafeteria plan should be considered compensation for any of the board-administered retirement systems.

AUTH: 19-2-403, MCA

IMP: 19-2-1001, 19-2-1005, 19-2-1010, 19-3-108, 19-5-101, 19-6-101, 19-7-101, 19-8-101, 19-9-104, and 19-13-104, MCA

RULE III TREATING SALARY DEFERRALS UNDER A CAFETERIA PLAN AS COMPENSATION - BACKGROUND (1) Pretax deductions allowed by state and federal law are included in compensation as that term is defined in the following statutes:

- (a) 19-3-108, MCA (public employees' retirement system);
- (b) 19-5-101, MCA (judges' retirement system);
- (c) 19-6-101, MCA (highway patrol officers' retirement system);
- (d) 19-7-101, MCA (sheriffs' retirement system);
- (e) 19-8-101, MCA (game wardens' and peace officers' retirement system);
- (f) 19-9-104, MCA (municipal police officers' retirement system); and
- (g) 19-13-104, MCA (firefighters' unified retirement system).

(2) Under federal law, pretax deductions that may be included in the definition of compensation include elective contributions under an IRC section 125 cafeteria plan, but only to the extent the amounts would be includible in gross income but for IRC section 125(a). IRC section 415.

(3) The board is required to administer PERS, JRS, HPORS, SRS, GWPORS, MPORS, and FURS in a manner required to satisfy the applicable qualification requirements for a qualified governmental plan, as provided in the IRC. Therefore, the board adopts this subchapter to ensure that only elective contributions that would be includible in gross income but for the fact they were made under a bona fide cafeteria plan under IRC section 125 will be included as compensation for purposes of PERS, JRS, HPORS, SRS, GWPORS, MPORS, and FURS.

AUTH: 19-2-403, MCA

IMP: 19-2-1001, 19-2-1005, 19-2-1010, 19-3-108, 19-5-101, 19-6-101, 19-7-101, 19-8-101, 19-9-104, and 19-13-104, MCA

RULE IV PROCEDURES - COMPENSATION MUST BE TREATED CONSISTENTLY (1) To account for health, dental, vision, life or disability costs, the employer must include that increase, to the extent required by applicable federal and state law, in its calculation of the member's compensation for all purposes, including, but not limited to:

- (a) federal income taxes;

- (b) state income taxes;
- (c) Federal Insurance Contribution Act (FICA);
- (d) state unemployment insurance;
- (e) overtime under the Fair Labor Standards Act (FLSA);
- (f) overtime under Montana's Wage Protection Act;
- (g) shift differentials;
- (h) workers' compensation; and
- (i) benefits based on compensation, such as life or disability benefits based on a multiple or percentage of annual pay.

(2) If the employer does not include such an increase for all such purposes, the board will not consider the increase as an elective contribution under a cafeteria plan that would be includible in gross income but for IRC section 125, and will not include the increase as compensation for purposes of PERS, JRS, HPORS, SRS, GWPORS, MPORS, and FURS.

(3) If the board has any reason to doubt that the increase is being considered for all such purposes, the board has the right to obtain documentation up to and including an audit of any participating employer to ensure compliance with (1). If compliance with (1) cannot be verified by the board, the participating employer's 125 plan contribution will not be considered compensation for retirement system purposes.

AUTH: 19-2-403, MCA

IMP: 19-2-1001, 19-2-1005, 19-2-1010, 19-3-108, 19-5-101, 19-6-101, 19-7-101, 19-8-101, 19-9-104, and 19-13-104, MCA

RULE V PROCEDURES - PLANS THAT OFFER A CHOICE AMONG NONTAXABLE BENEFITS ONLY ARE NOT CAFETERIA PLANS (1) If an employer has a plan or program under which it contributes on behalf of its employees a certain dollar amount, which can be used by the employee to purchase optional nontaxable benefits, but there is no ability for the employee to receive the employer contribution in cash, the board will not consider the employer contribution an elective contribution under a cafeteria plan that would be includible in gross income but for IRC section 125, and will not include the employer contribution as compensation for purposes of PERS, JRS, HPORS, SRS, GWPORS, MPORS, and FURS.

AUTH: 19-2-403, MCA

IMP: 19-2-1001, 19-2-1005, 19-2-1010, 19-3-108, 19-5-101, 19-6-101, 19-7-101, 19-8-101, 19-9-104, and 19-13-104, MCA

RULE VI PROCEDURES - BONA FIDE CAFETERIA PLANS

(1) Elective employee contributions must be made to a bona fide cafeteria plan for that contribution to be eligible for treatment as compensation for purposes of PERS, JRS, HPORS, SRS, GWPORS, MPORS, and FURS.

(2) To be a bona fide cafeteria plan, the employer must establish and sponsor a written plan that includes the

requirements of IRC section 125 outlined in (3) through (12). The cafeteria plan must also be operated in compliance with the requirements of IRC section 125 outlined in (3) through (12). The board may, from time to time, review an employer's cafeteria plan documentation and require that an employer certify or provide evidence to the board that its cafeteria plan has been operating in compliance with IRC section 125.

(3) The written plan document must incorporate all of the operating rules prescribed in IRC section 125 and its regulations and must be formally adopted by the employer before the first day of the first plan year of the cafeteria plan.

(4) The written cafeteria plan document must contain operating rules covering each of the following topics:

- (a) a description of benefits available under the plan;
- (b) eligibility rules;
- (c) how the plan is funded and the maximum amount of employer and employee contributions;
- (d) the plan year;
- (e) timing of participant elections and how elections are made; and
- (f) irrevocability of participant elections.

(5) All participants in the cafeteria plan must be employees.

(a) Self-employed individuals cannot participate in the cafeteria plan; and

(b) Independent contractors cannot participate in the cafeteria plan.

(6) The cafeteria plan must allow participants to choose among two or more benefits consisting of cash and qualified benefits.

(7) Under an affirmative election, the employee must be permitted to elect, on an annual basis, whether to purchase qualified benefits under the cafeteria plan.

(8) Under a mandatory election, the cafeteria plan can mandate that, if an employee chooses a certain benefit, he must pay for it on a pretax basis; however, the employer cannot mandate both that the employee choose the benefit and that he pay for it on a pretax basis under the cafeteria plan.

(9) Under a waiver, an employee will be deemed to have elected qualified benefits under the cafeteria plan unless the employee signs a waiver, on an annual basis, of those benefits under the cafeteria plan.

(10) The cafeteria plan may offer only qualified benefits as defined under IRC section 125(f).

(a) Qualified benefits include:

(i) benefits that do not defer the receipt of compensation and are not included in gross income by reason of an express provision in chapter I of the IRC, including:

(A) coverage under an accident or health plan to the extent the coverage is excludable from income under IRC section 106 (including medical expense reimbursement accounts);

(B) group term life insurance excluded under IRC section 79; and

(C) benefits under a dependent care assistance program excluded under IRC section 129;

(ii) vacation days;

(iii) contributions to a 401(k) plan; and

(iv) adoption assistance excluded under IRC section 137.

(b) Qualified benefits do not include:

(i) fringe benefits governed by IRC section 132 (such as pretax parking and qualified employee discounts);

(ii) scholarships under IRC section 117;

(iii) educational assistance programs under IRC section 127; and

(iv) long-term care insurance.

(11) Elections made under the cafeteria plan must be irrevocable for an entire plan year, except to the extent mid-year election changes are permitted under IRC section 125 and its regulations.

(12) The cafeteria plan must satisfy the nondiscrimination requirements of IRC section 125.

AUTH: 19-2-403, MCA

IMP: 19-2-1001, 19-2-1005, 19-2-1010, 19-3-108, 19-5-101, 19-6-101, 19-7-101, 19-8-101, 19-9-104, and 19-13-104, MCA

RULE VII IMPLEMENTATION AND COMPLIANCE (1) A participating employer must demonstrate compliance with this subchapter as follows:

(a) The employer must submit to the board a copy of the employer's IRC section 125 plan document and the salary reduction or election form that must be completed by the employees wishing to participate.

(b) The salary reduction or election form must be the document that will be used for the enrollment period that precedes the next IRC section 125 plan year.

(c) This is a recurring, annual requirement for each affected employer.

(2) If an employer fails to provide the IRC section 125 plan document, the salary reduction or election form in a format that complies with this subchapter, or fails to use the salary reduction or election form during the enrollment period, then compensation for that employer shall not include the IRC section 125 plan's salary reduction amount.

(3) Board policy number BOARD Admin 03 titled "Treating Salary Deferrals Under a Cafeteria Plan as Compensation" contains several examples of both valid and invalid cafeteria plans, elections and waivers and should be referenced for further guidance.

AUTH: 19-2-403, MCA

IMP: 19-2-1001, 19-2-1005, 19-2-1010, 19-3-108, 19-5-101, 19-6-101, 19-7-101, 19-8-101, 19-9-104, and 19-13-104, MCA



STATEMENT OF REASONABLE NECESSITY: The Montana Public Employees' Retirement Board (Board) has recently become aware that various governmental agencies participating in Board-administered retirement systems may be improperly reporting medical premiums as compensation for retirement purposes.

Pursuant to the definitions of "compensation" found in sections 19-3-108, 19-5-101, 19-6-101, 19-7-101, 19-8-101, 19-9-104, and 19-13-104, MCA, medical insurance premiums may be considered compensation for retirement purposes only if the premium constitutes a "pretax deduction allowed by state and federal law". According to the Board's tax counsel, Ice Miller, salary deferrals for Internal Revenue Code section 125 cafeteria plans may be included in the definition of compensation. However, in order to be considered an IRC section 125 salary deferral, the cafeteria plan must be a "written plan under which (a) all participants are employees, and (b) the participants may choose among 2 or more benefits consisting of cash and qualified benefits."

The Board has adopted a policy addressing when salary deferrals made pursuant to cafeteria plans should be considered compensation for retirement purposes. The Board's policy is of great importance to the employers who participate in the retirement systems administered by the Board. Therefore, the Board believes it important that the policy also be adopted in the Board's administrative rules. The proposed rules essentially restate the Board's policy, with the deletion of several examples that are contained in the policy to assist with the consistent administration of the policy and these rules.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted by mail to Mike O'Connor, Executive Director, Public Employees' Retirement Board, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; FAX (406) 444-5428; e-mail moconnor@mt.gov and must be received no later than 5:00 p.m., October 6, 2005.

5. Carolyn Miller, Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana 59620-0131 has been designated to preside over and conduct the hearing.

6. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding public retirement rulemaking actions. Such written request may be mailed or delivered to Carolyn Miller, Montana Public Employee Retirement

Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; faxed to the office at (406) 444-5428; or e-mailed to [cmiller@mt.gov](mailto:cmiller@mt.gov), or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

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

/s/ Carole Carey  
Carole Carey, President  
Public Employees' Retirement Board

/s/ Kelly Jenkins  
Kelly Jenkins, General Counsel and  
Rule Reviewer

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

Certified to the Secretary of State on August 29, 2005.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the repeal	)	NOTICE OF PROPOSED
of ARM 2.21.501 through	)	REPEAL
2.21.507 pertaining to Jury	)	
Duty and Witness Leave	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On October 27, 2005, the Department of Administration proposes to repeal ARM 2.21.501 through 2.21.507 pertaining to Jury Duty and Witness Leave.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m. on October 11, 2005, to advise us of the nature of the accommodation that you need. Please contact Constance Enzweiler, State Personnel Division, Department of Administration, P.O. Box 200127, Helena, MT 59620-0127; telephone (406) 444-3794; Montana Relay Service 711; FAX (406) 444-0703; or e-mail [cenzweiler@mt.gov](mailto:cenzweiler@mt.gov).

3. The Department proposes to repeal the rules as follows:

2.21.501 INTRODUCTION found at ARM page 2-659.

AUTH: Sec. 2-18-102 and 2-18-604, MCA  
IMP: Sec. 2-18-619, MCA

2.21.502 DEFINITIONS found at ARM page 2-659.

AUTH: Sec. 2-18-102 and 2-18-604, MCA  
IMP: Sec. 2-18-619, MCA

2.21.503 RATE OF COMPENSATION found at ARM page 2-659.

AUTH: Sec. 2-18-102 and 2-18-604, MCA  
IMP: Sec. 2-18-619, MCA

2.21.504 BENEFITS ACCRUAL found at ARM page 2-659.

AUTH: Sec. 2-18-102 and 2-18-604, MCA  
IMP: Sec. 2-18-619, MCA

2.21.505 ABSENCES found at ARM page 2-659.

AUTH: Sec. 2-18-102 and 2-18-604, MCA  
IMP: Sec. 2-18-619, MCA

2.21.506 REQUEST TO BE EXCUSED FROM JURY DUTY found at ARM page 2-660.

AUTH: Sec. 2-18-102 and 2-18-604, MCA  
IMP: Sec. 2-18-619, MCA

2.21.507 CLOSING found at ARM page 2-660.

AUTH: Sec. 2-18-102 and 2-18-604, MCA  
IMP: Sec. 2-18-619, MCA

REASON: Through the passage of Senate Bill 117, the 58th regular session of the Montana Legislature amended the Montana Administrative Procedure Act at 2-4-102(11), MCA. The Legislature clarified that rules concerning the internal management of state government are excluded from the Montana Administrative Procedure Act provided they do not affect the private rights or procedures available to the public. The Department of Administration believes the jury duty and witness leave rules only concern the implementation of this leave for state employees; they have no effect on the general public. Therefore, in the interests of administrative efficiency and cost savings, it is necessary to repeal these rules from ARM.

4. Concerned persons may submit their data, views or arguments in writing to Constance Enzweiler, State Personnel Division, Department of Administration, P.O. Box 200127, Helena, MT 59620-0127; or e-mail [cenzweiler@mt.gov](mailto:cenzweiler@mt.gov). Comments must be received no later than 5:00 p.m., October 11, 2005.

5. If persons who are directly affected by the proposed repeal wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Constance Enzweiler, State Personnel Division, Department of Administration, P.O. Box 200127, Helena, MT 59620-0127; or e-mail [cenzweiler@mt.gov](mailto:cenzweiler@mt.gov) to be received no later than 5:00 p.m., October 11, 2005.

6. If the Department of Administration receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected is greater than 25 based on the number of state employees.

7. The Department of Administration maintains a list of interested persons who wish to receive notices of rulemaking

actions proposed by the department. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding personnel rules. Such written request may be mailed or delivered to Hal Peck, Department of Administration, State Personnel Division, P.O. Box 200127, Helena, MT 59620-0127; e-mailed to hpeck@mt.gov; or made by completing a request form at any rules hearing held by the Department of Administration.

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

By: /s/ Janet Kelly  
Janet Kelly, Director,  
Department of Administration

By: /s/ Dal Smilie  
Dal Smilie, Rule Reviewer

Certified to the Secretary of State August 29, 2005.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF PUBLIC HEARING  
of ARM 6.6.8501, 6.6.8502, ) ON PROPOSED AMENDMENT  
and 6.6.8507, relating to )  
viatical settlement agreements )

TO: All Concerned Persons

1. On October 4, 2005, at 10:00 a.m., a public hearing will be held in the 2nd floor conference room, State Auditor's Office, 840 Helena Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules pertaining to viatical settlement agreements.

2. The State Auditor's Office 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 office no later than 5:00 p.m., September 27, 2005, to advise us as to the nature of the accommodation needed. Please contact Darla Sautter, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601; telephone (406) 444-2726; facsimile (406) 444-3497; or e-mail to dsautter@mt.gov.

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

6.6.8501 DEFINITIONS In addition to the definitions in 33-20-1302, MCA, the following definitions apply to this subchapter:

(1) remains the same.

(2) "Attending physician" means the insured's physician, as defined in 33-20-1312(3), MCA.

(2) through (2)(b) remain the same but are renumbered (3) through (3)(b).

(c) having a level of disability similar to that described in ~~(1)(a)~~ (3)(a) as determined by the secretary of health and human services as of the date the viatical settlement contract was signed.

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

~~(4)(5)~~ "Life expectancy" means the mean of the number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by a physician or physicians considering medical records and appropriate experiential data. A physician making this determination must have a valid license to practice medicine or osteopathic medicine in this state or another state be the insured's attending physician.

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

~~(7)(8)~~ "Terminally ill" means having an illness that can reasonably be expected to result in death ~~and having a life expectancy of 24 months or less~~ as determined by the insured's attending physician.

AUTH: 33-1-313, 33-20-1315, MCA  
IMP: 33-20-1302, MCA

6.6.8502 LICENSE REQUIREMENTS (1) To obtain a license as a viatical settlement provider, a person shall apply to the department by filling out an application for a license as a viatical settlement provider ~~on a form in a format~~ prescribed by the commissioner and by supplying requested information. The application form must be accompanied by:

(a) through (c) remain the same.

(2) Except as provided in (3), To to obtain a an initial license as a viatical settlement broker, a person must: an individual shall apply to the department by filling out an application for a license as a viatical settlement broker on a form prescribed by the commissioner and by supplying requested information. The application form must be accompanied by:

~~(a) a registration fee in the amount of \$50;~~

~~(b) a copy of an executed bond as a surety; and~~

~~(c) a copy of an errors and omissions policy in an amount commensurate with a broker's exposure.~~

(a) apply to the department by filling out an application for a license as a viatical settlement broker in a format prescribed by the commissioner and by supplying requested information;

(b) pay a fee pursuant to 33-2-708, MCA;

(c) submit a copy of an executed bond as surety pursuant to (4);

(d) submit a copy of an errors and omissions policy in an amount commensurate with a broker's exposure;

(e) complete 24 credit hours of department-approved education in the subjects of life insurance, viaticals, and ethics; and

(f) pass the viatical settlement broker's examination designated by the department.

(3) To obtain an initial license as a viatical settlement broker, a resident or nonresident insurance producer who is licensed as an insurance producer with a life insurance line of authority in this state or in the insurance producer's home state and who has been licensed for at least one year must:

(a) provide written notice pursuant to 33-20-1303(2)(b)(ii), MCA, to the department that the insurance producer is acting as a viatical settlement broker, specifically identifying the date on which the insurance producer began acting as a viatical settlement broker;

(b) pay a fee pursuant to 33-2-708(1)(b)(viii), MCA; and

(c) acknowledge in writing that the insurance producer will operate as a viatical settlement broker in accordance

with Title 33, chapter 20, part 13, MCA, and the rules promulgated thereunder.

(3)(4) When required under (1) or (2), A a viatical settlement provider or a viatical settlement broker shall acquire and maintain a surety bond for violations of the insurance code. The bond must be in the amount of \$50,000 payable to the State of Montana. An applicant shall file a copy of the executed bond with the commissioner at the time of application.

(5) Except as provided in (6), a viatical settlement broker's license is subject to renewal by the licensee on or before the first anniversary of its issuance and on or before the expiration of a 24 month period for every biennium thereafter. A person renewing a viatical settlement broker's license under this rule must:

(a) pay a renewal fee pursuant to 33-2-708(1)(b)(vi), MCA;

(b) comply with the reporting requirements under Title 33, chapter 20, part 13, MCA, and the rules promulgated thereunder;

(c) satisfy the continuing education requirements for a viatical settlement broker pursuant to 33-20-1303(5), MCA; and

(d) file, in a format approved by the commissioner, certification as to the approved courses, lectures, seminars, and instructional programs successfully completed by that person pursuant to 33-20-1303(5), MCA, during the preceding biennium.

(6) A viatical settlement broker's license obtained under (3) is subject to renewal at the time the licensee's resident or nonresident life insurance producer's license is renewed. A person renewing a viatical settlement broker's license under this rule must:

(a) indicate the person's intent to continue acting as a viatical settlement broker on the person's life insurance producer license renewal form;

(b) comply with the reporting requirements under Title 33, chapter 20, part 13, MCA, and the rules promulgated thereunder;

(c) satisfy the continuing education requirements for a viatical settlement broker pursuant to 33-20-1303(5), MCA; and

(d) file, in a format approved by the commissioner, certification as to the approved courses, lectures, seminars, and instructional programs successfully completed by that person pursuant to 33-20-1303(5), MCA, during the preceding biennium.

(7) If a licensee fails to meet the applicable renewal requirements under (5) or (6), the person's viatical settlement broker's license will lapse. To reinstate a lapsed viatical settlement broker's license, a person must satisfy the applicable renewal requirements under (5) or (6) and pay the lapsed license reinstatement fee prescribed in 33-2-708(1)(b)(vi), MCA.

(4) remains the same, but is renumbered (8).



AUTH: 33-1-313, 33-20-1315, MCA  
IMP: 33-20-1303, MCA

6.6.8507 STANDARDS FOR EVALUATION OF REASONABLE PAYMENTS

(1) In order to assure that viators receive a reasonable return for viaticating an insurance policy, the following shall be minimum discounts when the insured is terminally ill:

Insured's Life Expectancy	Minimum Percentage of Net Death Benefit
Less than 6 months	80%
At least 6 but less than 12 months	70%
At least 12 but less than 18 months	65%
At least 18 but no greater than 24 months	60%
24 months or more	50%

~~(2) If the insured's life expectancy is 24 months or more. If the insured is not terminally ill or chronically ill, the viator must receive at least the greater of the cash surrender value or accelerated death benefit of the policy unless the viator is chronically ill.~~

~~(3) If the insured is chronically ill and has a life expectancy of greater than 24 months but not terminally ill, the viator must receive at least 30% of the net death benefit.~~

(4) Except where the cash surrender value or accelerated death benefit is paid, the percentage may be reduced by 5% for viaticating a policy for which the insurer of the policy has an A.M. Best rating that is at or below a marginal rating.

AUTH: 33-20-1315, MCA  
IMP: 33-20-1315, MCA

4. REASONABLE NECESSITY STATEMENT: It is necessary to amend ARM 6.6.8501, 6.6.8502, and 6.6.8507 to conform with the 2005 amendments to the Viatical Settlement Act and to clarify the rules pertaining to viatication of policies covering terminally and chronically ill insureds.

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 Darla Sautter, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or by facsimile (406) 444-3497, or by e-mail, addressed to dsautter@mt.gov, and must be received no later than October 12, 2005.

6. Don Harris has been designated to preside over and conduct the hearing.

7. The State Auditor's Office maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have

their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies whether the person wishes to receive notices regarding insurance rules, securities rules, or both. Such written requests may be mailed or delivered to the State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601, or by facsimile to (406) 444-3497, or e-mailed to dsautter@mt.gov, or may be made by completing a request form at any rules hearing held by the State Auditor's Office.

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

JOHN MORRISON, State Auditor  
and Commissioner of Insurance

By: /s/ Alicia Pichette  
Alicia Pichette  
Deputy Insurance Commissioner

By: /s/ Patrick M. Driscoll  
Patrick M. Driscoll  
Rule Reviewer

Certified to the Secretary of State on August 29, 2005.

BEFORE THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION  
OF THE STATE OF MONTANA

In the matter of the ) NOTICE OF PUBLIC HEARING  
proposed amendment of ARM ) ON PROPOSED AMENDMENT  
10.16.3010 relating to )  
special education )

TO: All Concerned Persons

1. On October 4, 2005 at 9:00 a.m. a public hearing will be held in the conference room of the OPI building at 1300 11th Avenue, Helena, Montana, to consider the amendment of the above-stated rule relating to special education.

2. The State Superintendent 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 State Superintendent's office no later than 5:00 p.m. on September 21, 2005 to advise us of the nature of the accommodation that you need. Please contact Beverly Marlow, Legal Division, P.O. Box 202501, Helena, MT 59620-2501, telephone: (406) 444-3172, TDD number: (406) 444-0235, FAX: (406) 444-2893, e-mail: bemarlow@mt.gov.

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

10.16.3010 CRITERIA FOR IDENTIFICATION OF A CHILD AGED THREE THROUGH FIVE HAVING A DEVELOPMENTAL DELAY WITH DISABILITIES AGES 3-5 (1) A student may be identified as ~~being a child with disabilities, without the specific category being identified,~~ having a developmental delay if the student is:

(a) 3 three, 4 four, or 5 five years old; and

~~(b) meets the criteria for one or more disabilities in ARM 10.16.3011 through 10.16.3022.~~

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

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

~~(b) the areas of development include one or more of the following areas:~~

(i) cognitive development; i

(ii) physical development; i

(iii) communication development; i

(iv) social and emotional development; i or

(v) adaptive functioning skills.

AUTH: 20-7-402, MCA

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

4. Statement of Reasonable Necessity: The State Superintendent is proposing amendments to this rule to ensure consistency with 20-7-402, MCA and the provisions of the Individuals with Disabilities Education Act (IDEA). Statutory provisions and regulations under IDEA provide that a child with disabilities may be identified under the category of "developmental delay" or, when appropriate, in any other category of disability identified in IDEA. The term, "child with disabilities," has one meaning under ARM 10.16.3010 and a very different definition under 20-7-402, MCA. Under 20-7-402, MCA "child with disabilities" means a child evaluated in accordance with the regulations of the IDEA as having a disability, while under ARM 10.16.3010 it means only some of those children, e.g., only those between the ages of 3 through 5 inclusive. In addition, the term "child with disabilities" is not recognized as a specific category of disability in IDEA. Therefore, the term "child with disabilities" as currently contained in ARM 10.16.3010 is inconsistent with IDEA. In order to comply with the intent of 20-7-402, MCA, amendments are necessary to the rule to align ARM language with IDEA.

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 by mail to the Superintendent of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, or by e-mail to [opirules@mt.gov](mailto:opirules@mt.gov) and must be received no later than 5:00 p.m. on October 6, 2005.

6. Catherine K. Warhank, OPI Chief Legal Counsel has been designated to preside over and conduct the hearing.

7. The State Superintendent of Public Instruction maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the State Superintendent. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding special education or other school related rulemaking actions. Such written request may be mailed or delivered to Legal Division, Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, faxed to the office at (406) 444-2893, or may be made by completing a request form at any rules hearing held by the Superintendent of Public Instruction.

8. The bill sponsor requirements of 2-4-302, MCA, do not apply. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Linda McCulloch  
Linda McCulloch  
State Superintendent  
of Public Instruction

/s/ Catherine K. Warhank  
Catherine K. Warhank  
Rule Reviewer

Certified to the Secretary of State August 29, 2005.

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

In the matter of the adoption of ) NOTICE OF PUBLIC HEARING  
a new rule pertaining to a no ) ON PROPOSED ADOPTION  
wake zone on Georgetown Lake )

TO: All Concerned Persons

1. On October 12, 2005, at 7:00 p.m. a public hearing will be held at Washoe Fish Hatchery, 604 West Pennsylvania Street, Anaconda, Montana, to consider the adoption of a new rule pertaining to a no wake zone on Georgetown Lake.

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 department no later than September 21, 2005, to advise us of the nature of the accommodation that you need. Please contact Virginia Schmutz, Fish, Wildlife and Parks, 3201 Spurgin Road, Missoula, MT 59804; telephone (406) 542-5528; fax (406) 542-5529; email vschmutz@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I GEORGETOWN LAKE (1) Georgetown Lake is located in Deer Lodge and Granite counties.

(2) In Deer Lodge County, Georgetown Lake is limited to a controlled no wake speed as defined in ARM 12.11.101(1) in the following area:

(a) from the mouth of Stuart Mill Bay as marked by buoys and continuing to shore.

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

4. The commission received a petition for rulemaking for a no wake zone at Stuart Mill Bay, located on Georgetown Lake near Anaconda, Montana. The petition is granted, and the commission is proposing a no wake zone in Stuart Mill Bay as petitioned by Montana citizens. A no wake zone is necessary to protect public safety within the waters of Stuart Mill Bay. The bay is a very shallow body of water and there are obstructions located in the bay that are hazardous to motorized watercraft. Another concern is the conflict between float tube fishermen and the operation of motorized watercraft traveling at high rates of speed in Stuart Mill Bay. Stuart Mill Bay is fished heavily by float tube anglers in the evening hours when visibility is poor. The public, the department, and the commission have serious concerns that if boats continue to be allowed to enter the bay at high speeds, the boats could collide with a fisherman thus causing injury

or even death. Additionally, the department will be developing an area adjoining Stuart Mill Bay and placing a boat ramp in Stuart Mill Bay. This boat ramp and the development of the Stuart Mill Bay Campground will no doubt increase the use of Stuart Mill Bay. The commission hopes to prevent accidents and protect public safety by enforcing a no wake speed in this area.

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 Virginia Schmautz, Fish, Wildlife and Parks, 3201 Spurgin Road, Missoula, MT 59804; telephone (406) 542-5528; fax (406) 542-5529; email vschmautz@mt.gov and must be received no later than October 21, 2005.

6. Jeff Darrah, or another hearing officer appointed by the department, has been designated to 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 this 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, do not apply.

/s/ M. Jeff Hagener  
M. Jeff Hagener, Secretary  
Fish, Wildlife and Parks  
Commission

/s/ Rebecca Dockter  
Rebecca Dockter  
Rule Reviewer

Certified to the Secretary of State August 29, 2005

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

In the matter of the repeal ) NOTICE OF PROPOSED REPEAL  
of ARM 12.9.211 pertaining to )  
the abandonment of Teton- ) NO PUBLIC HEARING  
Spring Creek Bird Preserve ) CONTEMPLATED

TO: All Concerned Persons

1. On October 28, 2005, the Fish, Wildlife and Parks Commission (commission) proposes to repeal ARM 12.9.203 pertaining to the abandonment of the Teton-Spring Creek Bird Preserve.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 21, 2005, to advise us of the nature of the accommodation that you need. Please contact Laura Bratcher, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-7320; fax (406) 444-4952.

3. ARM 12.9.211, the rule proposed to be repealed, is on page 12-615 of the Administrative Rules of Montana.

AUTH: 87-1-301, 87-5-402, MCA  
IMP: 87-1-305, 87-5-401, MCA

4. The 2005 Legislature passed SB 503 which eliminated authorization for the Teton-Spring Creek Bird Preserve and its special archery season and repealed section 87-5-405, MCA, that established the Teton-Spring Creek Bird Preserve and its special archery season. Therefore, the legislative authority for ARM 12.9.211 which sets the boundaries for Teton-Spring Creek Bird Preserve no longer exists and the rule must be repealed. No public hearing is contemplated because the Legislature has already abandoned the preserve, and this rule repeal is essentially a "housekeeping" proposal which makes the department rules consistent with state law.

Currently, the department is preparing a Programmatic Environmental Assessment on game damage hunts with a focus on weapon restriction areas. Additionally, the department will analyze hunting and safety in the area of the former preserve. The department will not propose the use of weapons other than archery equipment before conducting an analysis of weapons and safety and allowing for public participation in this review process. Any hunting regulations will be annual rules adopted by the commission, incorporated into the Montana Hunting Regulations and printed in pamphlet form.



The Teton-Spring Creek Bird Preserve (preserve) has been in existence since 1923 when the Montana Legislature set aside a ten square mile area of the Teton/Spring Creek drainage as a State Game Preserve. The creation of this preserve was later codified at 87-5-405, MCA. The object of the preserve was to protect and enhance upland bird populations, particularly ring-necked pheasants, and to provide a source of birds that stock adjacent areas. The creation of game preserves as a mechanism to enhance game populations was common in Montana during the early 1900s. By 1936 Montana reached its peak number of 36 game preserves. However, by 1999, there were only 7 preserves still existing in the state.

Experience with game preserves and increased scientific knowledge of wildlife led to the reappraisal of older stocking concepts and the value of preserves. The minutes from a May 21, 1945, commission meeting summarized the results of these investigations, and stated, "preserves served poorly to stock adjacent areas (their original purpose) and in many cases were unnecessarily moving areas from public use."

5. Concerned persons may submit their data, views or arguments concerning the proposed repeal in writing to Gary Hammond, Management Bureau Chief for the Wildlife Division, P.O. Box 200701, Helena, MT 59620-0701, fax to (406) 444-4952, or email them to ghammond@mt.gov. Any comments must be received no later than October 6, 2005.

6. If persons who are directly affected by the proposed repeal wish to express their data, views and arguments orally or in writing at a public hearing, they must make written request for and submit this request along with any written comments they have to Gary Hammond, Management Bureau Chief for the Wildlife Division, P.O. Box 200701, Helena, MT 59620-0701. A written request for a hearing must be received no later than October 6, 2005.

7. If the commission receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The commission is unable to determine the number of persons directly affected by the proposed action because the users of U.S. Route 89 are among those affected. In the vicinity of the game preserve, there were 14 crash investigator's reports on the highway between 1997 and 2002 with "collision with wild animal" coded as the first and most harmful event recorded by the Montana Highway Patrol Records Bureau. Additionally between 1997 and 2002, Montana Department of Transportation

maintenance personnel reported 126 whitetail deer and 6 mule deer carcasses in the seven mile stretch between mile marker 42 and 49 on U.S. Route 89 through the preserve. While commission does not have all the data regarding public use of the highway, the commission has determined that ten percent of those persons directly affected is in excess of 25 persons.

8. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this 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.

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

By: /s/ M. Jeff Hagener  
M. Jeff Hagener, Secretary  
Fish, Wildlife and Parks  
Commission

By: /s/ Martha Williams  
Martha Williams  
Rule Reviewer

Certified to the Secretary of State August 29, 2005

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF PUBLIC HEARING ON  
of ARM 17.24.116 pertaining to ) PROPOSED AMENDMENT  
application requirements for )  
operating permit ) (HARD ROCK MINING)

TO: All Concerned Persons

1. On January 10 and 11, 2006, the Board of Environmental Review will hold public hearings to consider the proposed amendment of the above-stated rule. On January 10, 2006, the hearing will begin at 10:00 a.m. at Fellowship Hall, 213 West Centennial Avenue, Boulder, Montana. On January 11, 2006, the hearing will begin at 8:00 a.m. at the Fort Belknap Bingo Hall, Fort Belknap, Montana.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in these public hearings or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., December 19, 2005, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@mt.gov.

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

17.24.116 OPERATING PERMIT: APPLICATION REQUIREMENTS

(1) through (5) remain the same.

(6) The reclamation plan must conclusively demonstrate that, after the period of time allotted by 82-4-336(3), MCA, no treatment of surface or ground water for carcinogens or toxins will be required to meet water quality standards at the point of discharge. For the purposes of this section, completion of mining operations is defined in ARM 17.24.150(1) and (2).

AUTH: 82-4-321, MCA

IMP: 82-4-336, MCA

REASON: Article IX, Section 1, of Montana's Constitution provides that "[t]he State and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations." Article IX, Section 2, provides "[a]ll lands disturbed by the taking of natural resource shall be reclaimed."

Section 82-4-336(10), MCA provides that "[t]he reclamation plan must provide sufficient measures to ensure public safety and to prevent the pollution of air and water and the degradation of adjacent lands." Section 82-4-336(12), MCA provides that a reclamation plan must "provide measures to prevent objectionable postmining ground water discharges." Use

of the term "prevent" may preclude perpetual water treatment.

Perpetual water treatment will be necessary at a number of previously permitted mines. The Zortman and Landusky Mines, the Beal Mountain Mine, and the Golden Sunlight Mine will require perpetual water treatment. Perpetual water treatment may be necessary at the Black Pine and the Kendall Mines. Because of the bankruptcy of Pegasus Gold Corporation, the taxpayers will pay significant portions of the cost of perpetual water treatment at the Zortman and Landusky and Beal Mines.

Funding of the perpetual water treatment is provided through trust funds provided by the mining company and, where that is not sufficient, through trust funds established using tax funds. One difficulty with funding perpetual water treatment is that it is difficult to determine the cost of treatment prior to completion of mining because the post-mining concentration of pollutants cannot be projected precisely at the time of permit issuance when the amount of the reclamation bond is set. For example, at the Beal Mine, the chemistry of the pad solution evolved after closure, and the water treatment plan approved under the operating permit was not effective.

The amendment to ARM 17.24.116 is proposed to ensure that water pollution is prevented and to implement the requirement that reclamation is completed within two years of completion of mining. This rule would ensure the problems described above don't arise in the future by expressly prohibiting use of perpetual water treatment in a reclamation plan to meet water quality standards for toxins and carcinogens.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearings. Written data, views or arguments may also be submitted to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or emailed to ber@mt.gov, no later than 5:00 p.m., January 18, 2006. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. The Board of Environmental Review will preside over and conduct the hearings.

6. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage

tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board Secretary at Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; emailed to ber@mt.gov; or may be made by completing a request form at any rules hearing held by the Board.

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

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 August 29, 2005.

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

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 8.32.427 general ) ON PROPOSED AMENDMENT  
requirements for medication )  
aide training programs and )  
instructors )

TO: All Concerned Persons

1. On September 29, 2005, at 10:00 a.m., a public hearing will be held in room B-07 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment of the above-stated rule.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Nursing no later than 5:00 p.m., September 23, 2005, to advise us of the nature of the accommodation that you need. Please contact Andy Verbanac, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2340; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdnur@mt.gov.

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

8.32.427 GENERAL REQUIREMENTS FOR MEDICATION AIDE TRAINING PROGRAMS AND INSTRUCTORS (1) through (3) remain the same.

~~(4) The board approved examination shall be given at the board office. If travel to the board office presents a hardship, the board office will attempt to make alternate arrangements with the applicant's local job service office.~~

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

AUTH: 37-1-131, 37-8-202, MCA  
IMP: 37-8-101, 37-8-202, 37-8-422, MCA

REASON: There is reasonable necessity to amend the rule to clarify that the examination will not be administered only in Helena. Test sites will be arranged by the entity with which the department contracts to provide testing services. The test sites may or may not include the Board office and/or Job Service offices. Applicants will be advised of details relating to taking the exam when they apply for medication aide licenses. The locations of the test sites, which may change from time to time, need not be in rule. Such information is administrative in nature.

4. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdnur@mt.gov](mailto:dlibsdnur@mt.gov), and must be received no later than 5:00 p.m., October 7, 2005.

5. An electronic copy of this Notice of Public Hearing is available through the Department's and Board's site on the World Wide Web at [www.nurse.mt.gov](http://www.nurse.mt.gov). The Department strives to make the electronic copy of this Notice of Public Hearing 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, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The Board of Nursing maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Nursing administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to [dlibsdnur@mt.gov](mailto:dlibsdnur@mt.gov), or may be made by completing a request form at any rules hearing held by the agency.

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

8. Lorraine Schneider, attorney, has been designated to preside over and conduct this hearing.

BOARD OF NURSING  
KAREN POLLINGTON, RN, CHAIRPERSON

/s/ MARK CADWALLADER  
Mark Cadwallader  
Rule Reviewer

/s/ Keith Kelly  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 29, 2005

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

In the matter of the amendment	)	NOTICE OF PROPOSED
of ARM 36.25.210, increase	)	AMENDMENT
royalty rates for oil and gas	)	
leases on state school trust	)	NO PUBLIC HEARING
lands from current rates to	)	CONTEMPLATED
16.67%	)	

To: All Concerned Persons

1. On October 17, 2005, the State Board of Land Commissioners and Montana Department of Natural Resources and Conservation propose to amend ARM 36.25.210, which will increase royalty rates for oil and gas leases issued by the State Board of Land Commissioners on state school trust lands from current rates to 16.67%.

2. The Department of Natural Resources and Conservation will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the agency no later than 5:00 p.m. on October 7, 2005, to advise us of the nature of the accommodation that you need. Please contact Monte Mason, Minerals Management Bureau Chief, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-2074; FAX (406) 444-2684; or e-mail to mmason@mt.gov.

3. The rule as proposed to be amended provides as follows:

36.25.210 ROYALTIES (1) The lessee shall pay in cash or deliver in kind to the lessor at its option, on all oil and gas produced and saved from the leased premises and not used for light, fuel and operation purposes on the leased premises, a royalty. The royalty which shall be at the following rates unless, in regard to a particular lease, the department advertises in its lease sale notices that the royalty will be at a higher rate:

(a) On gas at the rate of ~~12 1/2~~ 16.67%;

(b) On oil at the rate of ~~13~~ 16.67%; and

(c) The royalty on gas, including casing-head gas and all gaseous substances, while the same is not sold or used off the premises shall be at the rate of \$400 per well each year or the amount of the annual rental provided in the lease, in lieu of the per well rate, whichever is the greater, payable on or before the annual anniversary date of the lease, ~~and as~~. As long as the leased lands contain a well capable of such production and such payment is made, the lease shall be considered a producing lease under the lease terms.



(2) The lessee shall pay royalties reserved to the state, in cash:

(a) on the reserved fraction of oil, the posted field price, or in lieu thereof, if no field price is posted, the fair market value in the field where produced on the day it is run into the pipeline or storage tanks; and

(b) on the reserved fraction of gas, the posted field price, or in lieu thereof, if no field price is posted, the fair market value at the well. In addition, the lessee shall pay to the state on the reserved fraction any bonus actually paid or agreed to be paid to the lessee for such oil or gas.

(3) All royalties, whether in money or in kind, shall be delivered to the state free of cost and deductions.

AUTH: 77-3-401, MCA

IMP: 77-1-202 and 77-1-301, MCA

REASON: There is reasonable necessity for amendment of this rule in order for state school trust lands to receive the fair market value of revenue for the oil and gas removed from their lands.

4. Concerned persons may submit their data, views or arguments concerning the proposed amendment, in writing, to Monte Mason, Minerals Management Bureau Chief, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-2074; FAX (406) 444-2684; or e-mailed to [mmason@mt.gov](mailto:mmason@mt.gov) and must be received no later than 5:00 p.m. on October 7, 2005.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Monte Mason, Minerals Management Bureau Chief, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-2074; FAX (406) 444-2684; or e-mailed to [mmason@mt.gov](mailto:mmason@mt.gov) and must be received no later than 5:00 p.m. on October 7, 2005.

6. An electronic copy of this Notice of Proposed Amendment is available through the department's site on the World Wide Web at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this 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.

7. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list

shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources or combination thereof. Such written request may be mailed or delivered to Legal Unit, Department of Natural Resources and Conservation, P.O. Box 201601, 1625 11th Avenue, Helena, MT 59620-1601, faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the agency.

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

BOARD OF LAND COMMISSIONERS

DEPARTMENT OF NATURAL  
RESOURCES AND CONSERVATION

By: /s/ Brian Schweitzer  
BRIAN SCHWEITZER  
Chair

By: /s/ Mary Sexton  
MARY SEXTON  
Director

By: /s/ Tom Butler  
Tom Butler  
Rule Reviewer

Certified to the Secretary of State August 29, 2005.

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 37.70.305,	)	ON PROPOSED AMENDMENT
37.70.406, 37.70.407,	)	
37.70.408, 37.70.601, and	)	
37.70.602 pertaining to	)	
pertaining to Low Income	)	
Energy Assistance Program	)	
(LIEAP)	)	

TO: All Interested Persons

1. On September 28, 2005, 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 September 19, 2005, 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@mt.gov.

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

37.70.305 APPLICATION (1) A new application for low income energy assistance must be made for each new heating season, or when a household changes residence during the heating season. An application is initiated by filing a signed written application on the form prescribed by the department at the office of the local contractor in the area where the applicant lives. If necessary, the contractor will provide assistance in completing the application form.

(2) through (6) remain the same.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.70.406 INCOME STANDARDS (1) Households with annual gross income at or below 150% of the ~~2004~~ 2005 U.S. department of health and human services poverty guidelines are eligible for low income energy assistance on the basis of income. Households with an annual gross income above 150% of the ~~2004~~ 2005 poverty

guidelines are ineligible for low income energy assistance, unless the household is automatically financially eligible for LIEAP benefits as provided in ARM 37.70.402 because all members of the household are receiving SSI, TANF-funded cash assistance, or county or tribal general assistance.

(2) The table of income standards for households of various sizes for the ~~2004-2005~~ 2005 heating season may be accessed at the department's website at ~~www.dphhs.state.mt.us~~ www.dphhs.mt.gov, or a copy may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Intergovernmental Human Services Bureau, PO Box 202956, Helena, MT 59620.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.70.407 CALCULATING INCOME (1) Excluded from income are the following types of unearned income and deductions:

(a) through (l) remain the same.

~~(m) all weekly incentive allowances paid under the Job Training Partnership Act, P.L. 97-300 of 1982;~~

~~(n) earnings or allowances paid to participants of any youth employment programs established under P.L. 95-524;~~

~~(o) incentive payments or reimbursement of training-related expenses made to work incentive program participants by the manpower agency;~~

(m) all earnings, work incentive allowances, reimbursement of training related expenses, and other allowances and payments made to a participant in any program under the Workforce Investment Act of 1998, 20 USC 9201 et seq.;

(p) remains the same but is renumbered (n).

~~(q)~~ (o) payments to individual volunteers under Title I (VISTA) of P.L. 93-113, pursuant to section 404(g) of that law;

(r) remains the same but is renumbered (p).

~~(s)~~ (q) one-time insurance payments, compensation for injury or payments from federal or state crime victim compensation programs ~~which do not exceed \$10,000;~~

(t) through (aa)(iii) remain the same but are renumbered (r) through (y)(iii).

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.70.408 RESOURCES (1) through (2) remain the same.

(3) The value of the family home and the proceeds from the sale of the family home are not included as a resource for 12 months from the date of sale of the family home.

(4) In state fiscal year ~~2005~~ 2006, a household will be eligible if its total countable nonbusiness resources do not exceed ~~\$8,608~~ \$8,840 for a single person, ~~\$12,913~~ \$13,262 for two persons and an amount equal to ~~\$12,913~~ \$13,262 plus ~~\$861~~ \$884 for each additional household member, up to a maximum of ~~\$17,218~~ \$17,683 per household. In addition, the household may have business assets whose equity value does not exceed \$12,500.

(5) The dollar limitations on nonbusiness resources listed elsewhere in this rule shall be adjusted annually by the department on July 1 ~~beginning in calendar year 2001~~ by increasing each limitation by an amount equal to the limitation amount for the previous year, multiplied by the lesser of:

(a) and (b) remain the same.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

37.70.601 BENEFIT AWARD (1) The benefit matrices in (1)(c) and (1)(d) are used to establish the benefit payable to an eligible household for a full heating season (October through April). The benefit varies by household income level, type of primary heating fuel, the type of dwelling (single family unit, multi-family unit, mobile home), the number of bedrooms in the dwelling, and the heating districts in which the household is located, to account for climatic differences across the state.

(a) and (b) remain the same.

(c) The following table of base benefit levels takes into account the number of bedrooms in a house, the type of dwelling structure, and the type of fuel used as a primary source of heating:

TABLE OF BENEFIT LEVELS

(i) SINGLE FAMILY

<del># BEDROOMS</del>	<del>NATURAL</del>					
	<del>GAS</del>	<del>ELECTRIC</del>	<del>PROPANE</del>	<del>FUEL OIL</del>	<del>WOOD</del>	<del>COAL</del>
ONE	<del>\$ 378</del>	<del>\$ 423</del>	<del>\$ 485</del>	<del>\$ 437</del>	<del>\$ 253</del>	<del>\$167</del>
TWO	550	615	706	636	368	243
THREE	749	837	962	866	501	331
FOUR	1,031	1,152	1,323	1,192	690	455

# BEDROOMS	<u>NATURAL</u>					
	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
ONE	\$ 362	\$ 407	\$ 469	\$ 374	\$ 251	\$ 166
TWO	526	592	683	544	365	241
THREE	717	806	930	742	497	328
FOUR	987	1,109	1,279	1,020	684	451

(ii) MULTI-FAMILY

<del># BEDROOMS</del>	<del>NATURAL</del>					
	<del>GAS</del>	<del>ELECTRIC</del>	<del>PROPANE</del>	<del>FUEL OIL</del>	<del>WOOD</del>	<del>COAL</del>
ONE	<del>\$320</del>	<del>\$357</del>	<del>\$ 411</del>	<del>\$ 465</del>	<del>\$214</del>	<del>\$141</del>
TWO	482	538	618	700	322	212
THREE	707	790	907	1,027	472	312

FOUR                    826                    923                    1,060                    1,200                    552                    364

# BEDROOMS	<u>NATURAL</u>					
	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	\$ 306	\$ 344	\$ 397	\$ 398	\$ 212	\$ 140
<u>TWO</u>	461	518	598	599	319	211
<u>THREE</u>	677	761	877	879	469	309
<u>FOUR</u>	790	889	1,025	1,028	547	361

(iii) MOBILE HOME

# BEDROOMS	<u>NATURAL</u>					
	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	\$319	\$356	\$409	\$386	\$213	\$141
<u>TWO</u>	466	521	598	565	312	206
<u>THREE</u>	618	690	793	749	413	273
<u>FOUR</u>	689	770	885	836	461	304

# BEDROOMS	<u>NATURAL</u>					
	<u>GAS</u>	<u>ELECTRIC</u>	<u>PROPANE</u>	<u>FUEL OIL</u>	<u>WOOD</u>	<u>COAL</u>
<u>ONE</u>	\$ 305	\$ 343	\$ 396	\$ 331	\$ 212	\$ 140
<u>TWO</u>	446	501	578	484	309	204
<u>THREE</u>	591	665	767	641	410	270
<u>FOUR</u>	660	742	856	715	458	302

(d) remains the same.

AUTH: Sec. 53-2-201, MCA  
IMP: Sec. 53-2-201, MCA

37.70.602 BENEFIT AWARDS: MISCELLANEOUS (1) and (2) remain the same.

(3) When a household changes residence or type of primary fuel during the heating season, the household may request to have its benefit award recomputed for the new circumstances. When the household changes residence, a new application must be filed. The benefit award for the new circumstances will be equal to the benefit award the household would have received had its original application been for the new circumstances prorated from the date of the change of residence or type of primary fuel. The unused portion of the original benefit award reverts to the department.

(4) remains the same.

AUTH: Sec. 53-2-201, MCA  
IMP: Sec. 53-2-201, MCA

3. The Low Income Energy Assistance Program (LIEAP) is a federally funded program to help low income households pay their home heating costs. The maximum income standards used to

determine whether a household is eligible for LIEAP benefits are contained in ARM 37.70.406. These income standards are computed as a specified percentage of the federal poverty guidelines issued annually by the U.S. Department of Health and Human Services (HHS). The standards currently in ARM 37.70.406 are based on the HHS poverty guidelines for 2004.

HHS updates the poverty guidelines each year to take into account increases in the cost of living. It has been the long standing practice of the Department to amend ARM 37.70.406 each year to provide that the most recent version of the poverty guidelines will be used to set the income standards and benefit amounts for the current heating season. The Department uses the most recent version of the guidelines because they are higher than the guidelines for the previous year. If the Department did not use the most current guidelines, some households might be ineligible for benefits or receive a smaller benefit due to inflationary increases in the household's income which do not reflect an increase in actual buying power.

ARM 37.70.305 governs the process of applying for LIEAP benefits. ARM 37.70.305(1) currently provides that a household must file a new application for each new heating season. The Department proposes to amend the rule to provide that a LIEAP household must also file a new application when the household changes residence during the heating season. This requirement is necessary because ARM 37.70.602(3) provides that when a household changes residence during the heating season it may have its benefit amount recomputed based on the new circumstances. In order for the Department's LIEAP contractor to determine accurately what the recomputed benefit will be, the contractor must have complete information about the household's new circumstances. The amount of the new benefit depends on a number of factors, such as type of primary heating fuel, type of dwelling, and number of bedrooms. Any or all of these factors may change when the household moves to a new residence. For example, if the household moves from a one bedroom house heated with fuel oil to a two bedroom house heated with propane, which is a more expensive type of heating fuel, the household may be entitled to a higher benefit.

The benefit also depends on the household's income, which may change if the household's composition changes when they move. For example, the household may now be sharing a residence with additional relatives or friends whose income would have to be considered in determining the household's benefit. Thus, in view of the number of factors involved in determining eligibility, it is necessary for the household to complete a new application so that the contractor will have complete and accurate information about the household's new circumstances. If the contractor recomputes the benefit based on a report of the move without a new application being required, it is possible that the contractor will not obtain information about all circumstances that have changed due to the move and may not

correctly redetermine the household's benefits. Thus, it is necessary to amend both ARM 37.70.305(1) and ARM 37.70.602(3) to require the filing of a new application when a household moves during the heating season.

ARM 37.70.407(1) lists types of income that are excluded in determining LIEAP eligibility. The Department proposes to amend section (1) by deleting subsections (m), (n), and (o), which currently provide for the exclusion of various types of allowances and payments received by participants in various work incentive programs and youth employment programs created by the Job Training Partnership Act (JTPA) that no longer exist. Since these programs no longer exist, there is no need to exclude payments from these programs. Therefore, these subsections are being replaced by a new subsection (m) which will provide for the exclusion of allowances, earnings, and payments made to participants in programs under the Workforce Investment Act of 1998, 29 USC 9201 et seq., which superceded JTPA. It is necessary to exclude these types of income because Section 181 of the Workforce Investment Act, 20 USC 9231, mandates that all allowances, earnings and payments to individuals participating in programs under the Act shall not be counted in determining eligibility for federally funded need based programs, which include LIEAP.

Additionally, the Department proposes to amend subsection (1)(s), which currently excludes one time insurance payments, compensation for injury, or payments from federal or state crime victim compensation programs, if the payments or compensation do not exceed \$10,000. Such one time payments are excluded because the household commonly uses them to repair or replace lost property or to pay for a one time expense rather than to pay ongoing living expenses, and hence the payments are not available to pay heating expenses. For example, payment from homeowners' insurance or motor vehicle insurance are generally used to repair or replace a home, car, or other property that has been damaged, destroyed, or stolen, and life insurance is commonly used to pay burial expenses. The Department proposes to delete the provision that the payment cannot exceed \$10,000 because the household may need more than \$10,000 to repair or replace lost property or to pay for a one time expense. If only the first \$10,000 of these one time payments is excluded, funds that are not available for routine living expenses because they are earmarked for another specific purpose, for example, rebuilding a home damaged by a flood or fire, will be counted as income and may make the household ineligible, which the Department believes is unfair. It should be noted that ARM 37.70.407(1)(s) only excludes these payments as income in the month of receipt. If all of the payment is not spent, the remainder will eventually be counted as a resource to the household.

In determining eligibility for LIEAP, the Department considers not only income but also what resources the household has that



can be used to pay heating costs. ARM 37.70.408 specifies the rules relating to resources. ARM 37.70.408(3) currently provides that the value of the family home and the proceeds from the sale of the family home are not counted as a resource in determining LIEAP eligibility. The proceeds of the sale of the home are excluded because very often the household plans to use the proceeds to buy a new home for the family, and hence the proceeds are not available to pay routine living expenses. The Department proposes to amend section (3) by specifying that the proceeds of the sale of a family home will not be counted for a period of 12 months from the date of sale. This limitation on the exclusion is necessary because the funds are available for other purposes if the household has not used them to buy another family home within a reasonable time. The Department believes 12 months is a reasonable amount of time for a family to find and purchase a new home if that is their intention.

Additionally, section (4) currently specifies the maximum amounts of nonbusiness resources that households of various sizes can have and still qualify for LIEAP in state fiscal year 2005. Section (5) currently states that the dollar limits on nonbusiness resources will be adjusted annually beginning in calendar year 2001. The purpose of the annual adjustment is to account for inflation. However, the statement in section (5) that the adjustment will begin in 2001 is no longer necessary, since that date is long past, so the phrase "beginning in calendar year 2001" is now being deleted. Section (5) further provides that the adjusted nonbusiness resource limits will be computed by multiplying the current dollar limits by the percentage increase in the national consumer price index (CPI) for the previous calendar year or by 3%, whichever is less. The CPI for 2004 was 2.7%, so the Department is increasing the dollar amounts for fiscal year 2006 by 2.7%, since that is less than 3%.

ARM 37.70.601 contains tables of benefit amounts which are used to establish the amount of benefits an eligible household will receive. As previously discussed, the amount of the household's benefit depends on multiple factors, including income level, type of primary heating fuel, the type of dwelling and number of bedrooms, and the heating district in which the household is located. The benefit amounts in the table are being revised based on the expected appropriation of federal funds for the Montana LIEAP program and other funds available to pay LIEAP benefits as explained below, as well as fuel cost projections for the upcoming heating season and an estimate of the number of households that will apply and be found eligible for LIEAP.

Based on the budget submitted by the Bush Administration, the Department estimates that Montana's federal LIEAP appropriation for the 2005-2006 heating season will be \$10,841,000. In addition to the federal appropriation, there are also \$412,597 of state funds appropriated by the 59th Montana Legislature in House Bill 2 for LIEAP and other funds such as LIEAP funds

carried over from 2004-2005 available to pay LIEAP benefits in 2005-2006. Thus, benefits for 2005-2006 are calculated based on total funding of \$11,824,912. This compares to a total funding of \$14,828,864 for 2004-2005, which included federal appropriations of \$12,781,838, \$695,361 in state funds appropriated for LIEAP by the 59th Montana Legislature in House Bill 332, and other funds such as Temporary Assistance for Needy Families (TANF) funds and LIEAP funds carried over from 2003-2004. Total LIEAP funding for 2005-2006 is therefore estimated to be \$3,003,952 less than funding for 2004-2005.

The Department estimates that 21,820 households will qualify for LIEAP benefits for the current heating season, which would be a 5% increase over the number of households that received LIEAP last year. This projected increase in the LIEAP caseload is based on the rate of growth in the caseload in past years and also takes into consideration the fact the more households may apply this year due to rising fuel prices. When fuel prices are lower, some households who are eligible for LIEAP may not apply for assistance, whereas they are more likely to seek assistance as the cost of heating their homes increases. Since the total funds available to pay benefits are less than last year, and the estimated number of eligible households is greater, benefits will be smaller for the 2005-2006 heating season than in the previous year. It is estimated that the average household will receive a LIEAP benefit for the current heating season which is \$127 less than last year's benefit.

4. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on October 6, 2005. Data, views or arguments may also be submitted by facsimile to (406)444-1970 or by electronic mail via the Internet to [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov). 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

Russ Cater for  
Acting Director, Public  
Health and Human Services

Certified to the Secretary of State August 29, 2005.

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

In the matter of the adoption )  
of Rules I through IV )  
pertaining to the Montana )  
Clean Indoor Air Act )

NOTICE OF PUBLIC HEARING  
ON PROPOSED ADOPTION

TO: All Interested Persons

1. On September 30, 2005, at 1:30 p.m., a public hearing will be held by Metnet Conference at the following Metnet sites: the Metnet studio and auditorium in the basement of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana; Montana State University at Billings, 214 N. Broadway, 1st Floor Conference Center, Billings, Montana; Montana State University, EPS Building, So. 7th & Grant, Burns Center, Room 126, Bozeman, Montana; Montana Tech, 1300 West Park Street, ELCB, Room 225, Butte, Montana; University of Montana Western Montana College, 710 South Atlantic, STC 2nd Floor, Board Room 201, Great Room 203, 204, Dillon, Montana; Great Falls College of Technology of Montana State University, 2100 16th Avenue S., Room B-133, Great Falls, Montana; Montana State University - Northern, 300 11th Street West, Hagener Science Center, Room 202, Havre, Montana; Flathead Valley Community College, 777 Grandview Drive, Learning Resource Cntr., Room 120, Kalispell, Montana; Miles Community College, 2715 Dickenson Street, Room 106, Miles City, Montana; and University of Montana, Corner of Arthur and Eddy, Gallagher Building, Room 104, Missoula, Montana to consider the proposed adoption 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 September 19, 2005, 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@mt.gov.

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

RULE I DEFINITIONS In addition to those terms defined in 50-40-103, MCA, the following terms, as used in Title 50, chapter 40, part 1, MCA, have the meaning set forth below:

(1) "Enclosed room", for purposes of the definition of "place of work" in 50-40-103, MCA, means an area with a wall on all sides, and does not include an area completely or partially open to the outside air such as a roofed shelter.

(2) "Private residence" means the personal living quarters of an individual, regardless of the legal status of the property.

AUTH: Sec. 50-40-110, MCA

IMP: Sec. 50-40-103 and 50-40-104, MCA

RULE II BARS, CERTIFICATION OF QUALIFICATION FOR EXCEPTION

(1) An establishment, as defined in 50-40-103, MCA, may apply to the department for a certificate indicating that the department has determined that it is a bar qualifying for the exception from the provisions of Title 50, chapter 40, part 1, MCA, as provided in 50-40-104(5), MCA.

(2) An application for certification may be obtained from the Department of Public Health and Human Services, Montana Tobacco Use Prevention Section, P.O. Box 202951, Helena, MT 59620-2951.

(3) A completed application must be submitted to the department at the address cited in (2). The signature and documentation required by the application will be verified by the department or its designee.

(4) If the department or its designee determines that the establishment does not qualify for the exception allowed by 50-40-104(5), MCA, written notice of that decision and the factual basis for the decision will be sent to the individual who submitted the application.

(5) A copy of each certificate that is granted, and of each decision to deny a certificate, will be filed by the department with the local board of health of the county in which the establishment is located.

AUTH: Sec. 50-40-110, MCA

IMP: Sec. 50-40-104 and 50-40-108, MCA

RULE III INSPECTIONS AND ENFORCEMENT (1) The department, a local health board and their respective designees may conduct inspections of:

(a) enclosed public places to determine if any violation of the Montana Clean Indoor Air Act, Title 50, chapter 40, parts 1 and 2, MCA has occurred; and

(b) public school property to determine compliance with 20-1-220, MCA, relating to smoking on public school property.

(2) For every inspection conducted, a written inspection report must be made and retained by the agency conducting the inspection.

(3) An establishment that serves food but purports to qualify as a bar within the definition contained in 50-40-103(5), MCA must upon request submit to the department, a local health board, or the designee of either, the documentation necessary to prove that at least 60% of the establishment's annual gross income comes from the sale of alcoholic beverages, gambling receipts, or both.

(4) Any violation of the Montana Clean Indoor Air Act or of 20-1-220, MCA must be reported to the local health board or

its designee and the county attorney of the county in which the violation occurred.

AUTH: Sec. 50-40-110, MCA

IMP: Sec. 20-1-220, 50-40-104 and 50-40-108, MCA

RULE IV COMPLAINT PROCEDURE REGARDING SMOKING VIOLATIONS

(1) An individual who believes that a violation of the Montana Clean Indoor Air Act or of 20-1-220, MCA has occurred may file a written complaint with the department or the local health board or its designee that describes the violation, provides the date of the violation and is signed by the complaining party.

(2) If a complaint is filed with the local health board, a copy of the complaint must be forwarded within five working days of its receipt to the Department of Public Health and Human Services, Montana Tobacco Use Prevention Section, P.O. Box 202951, Helena, MT 59620-2951.

(3) If a complaint is filed initially with the department or a designee of the department, a copy will be forwarded within five working days to the local health board of the county in which the violation allegedly occurred.

(4) Once a complaint is filed, the department or a designee of the department, which may include the local health department, will conduct an investigation to determine if a violation occurred.

(5) If the department or its designee, after an investigation, determines that a violation did occur, it will document the violation and file the documentation and the determination of the department or its designee with the office of the county attorney in the county where the violation occurred.

AUTH: Sec. 50-40-110, MCA

IMP: Sec. 20-1-220, 50-40-104 and 50-40-108, MCA

3. 2005 Laws of Montana, Chapter 268 (HB 643), passed by the 2005 Legislature, substantially revised the Montana Clean Indoor Air Act, primarily by mandating that the entire state's enclosed public areas and work places be smoke free, with some very narrow exceptions, including one for bars and casinos that expires at the end of September, 2009. 2005 Laws of Montana, Chapter 268 (HB 643) also expands the existing prohibition against smoking on the grounds and buildings of public schools, allowing tobacco use there only during an educational exercise for the purpose of showing the risks associated with smoking.

While the only penalties attached to violation of the anti-smoking statutes are criminal - misdemeanors - and therefore the province of local county attorneys, the department is charged with otherwise supervising and enforcing the law, as are the local health boards under the department's direction. Section 50-40-110, MCA, requires the department to adopt rules implementing the law, as revised by 2005 Laws of Montana,

Chapter 268 (HB 643). Because the law is very specific in its requirements, the need for rules to implement them is limited. However, some are nevertheless necessary. The need for each is set out below.

#### Rule I, Definitions

The two definitions included in this rule are necessary to settle interpretation issues already raised from several sources who were attempting to understand what the law required under certain specific circumstances. One concern was whether an outdoor but sheltered smoking area on the grounds of an inpatient health care facility whose staff members are required to supervise the smoking patients was subject to prohibitions of the Clean Indoor Air Act. The other was whether a family residence on a farm or ranch that was incorporated was, by virtue of the incorporation, subject to the smoking prohibitions of the Clean Indoor Air Act. Without the two interpretive definitions, confusion about those two issues would be recurring.

#### Rule II, Bars, Certification of Qualification for Exception

Bars, as defined in 2005 Laws of Montana, Chapter 268 (HB 643), include any establishment with a liquor license and in which at least 60% of the business' annual gross income is from the sale of alcoholic beverages, gambling receipts, or both. The Clean Indoor Air Act, as a result of the amendments, contains a general ban on smoking in enclosed public places, with an exception, until 2009, for bars that, in addition to meeting the 60% requirement referred to above, do not let smoke infiltrate into other areas of the building to which the ban still applies. While nothing in the Clean Indoor Air Act, as amended, requires a bar to get certification from the department that it qualifies for the exception from the ban, there is nevertheless a need for a mechanism to determine whether a given bar qualifies for the exception, both to meet the state's enforcement responsibility and to give bar owners some measure of assurance that they qualify. Therefore, Rule II establishes a nonmandatory procedure for a bar to apply for a certificate noting it qualifies for the exception.

#### Rule III, Inspections and Enforcement

Because the Clean Indoor Air Act now requires the department and local boards of health, under the department's supervision, to enforce the terms of the act, Rule III is needed to establish a procedural mechanism for conducting investigations to ensure compliance with the act and recording the inspection results, and to ensure that instances of noncompliance, after investigation, are referred to the local county attorney. The latter is necessary because the penalties for violations of the statute are criminal, although misdemeanors, and enforcement of them is the responsibility of the county attorneys rather than

the department.

Rule IV, Complaint Procedure Regarding Smoking Violations

Rule IV is needed to establish the process for a member of the public to bring a potential violation of the Clean Indoor Air Act to the attention of proper enforcement authorities. It also is necessary to ensure that both the department and the affected local health authorities are kept apprised of any potential violation of the act and to require a follow up investigation. In addition, in order to ensure proper enforcement, the rule requires that evidence of a violation must be referred to the county attorney, who has the authority to penalize the violator.

There is no fiscal impact by implementing these rules.

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 Gwen Knight, 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 October 6, 2005. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov). 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

Russ Cater for  
Acting Director, Public  
Health and Human Services

Certified to the Secretary of State August 29, 2005.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF ADOPTION  
of New Rules I through )  
III pertaining to implementation )  
of detention officer transfer to )  
sheriffs' retirement system )

TO: All Concerned Persons

1. On July 28, 2005, the Montana Public Employees' Retirement Board published notice of the proposed adoption of new RULE I through new RULE III for members of the Public Employees' and Sheriffs' Retirement Systems concerning the implementation of detention officer transfer to sheriffs' retirement system at page 1329 of the 2005 Montana Administrative Register, Issue Number 14.

2. The Public Employees' Retirement Board has adopted new RULE I, ARM 2.43.1210; new RULE II, ARM 2.43.1211; and new RULE III, ARM 2.43.1212 exactly as proposed.

3. The following comment was received and appears with the Public Employees' Retirement Board's response.

COMMENT 1: A letter was received from Don Judge, Special Representative of Teamsters Local 190, Helena, Montana, stating that Proposed Rule I(1)(a) complies with the intent of Senate Bill 370; that Proposed Rule I(2) and (3) adequately address the Teamsters' concerns regarding the timely completion of training by detention officers; and that, in the Teamsters' opinion, Proposed Rules II and III adequately address the Montana Sheriffs and Peace Officers' Association's concerns with respect to record-keeping and reporting; and thanking the Public Employees' Retirement Board for addressing the concerns.

RESPONSE: The Board concurs with the statements contained in the Teamsters' correspondence.

/s/ Carole Carey  
Carole Carey, President  
Public Employees' Retirement Board

/s/ Kelly Jenkins  
Kelly Jenkins, General Counsel and  
Rule Reviewer



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

Certified to the Secretary of State on August 29, 2005.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE  
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT  
of ARM 6.6.504, 6.6.505, )  
6.6.506, 6.6.507, 6.6.507A, )  
6.6.507B, 6.6.507C, 6.6.508, )  
6.6.508A, 6.6.509, 6.6.510, )  
6.6.511, 6.6.519, 6.6.520, )  
6.6.521, 6.6.608, 6.6.612, )  
6.6.613, and the adoption of )  
new rules I through III )  
pertaining to medicare )  
supplements )

TO: All Concerned Persons

1. On July 14, 2005, the State Auditor's Office published MAR Notice No. 6-160 pertaining to medicare supplements, at page 1131 of the 2005 Montana Administrative Register, issue no. 13 and on August 25, 2005, published MAR Notice No. 6-162, an amended notice, at page 1131 of the 2005 Montana Administrative Register, issue no. 16.

2. The Department has amended the following rules exactly as proposed: ARM 6.6.504, 6.6.505, 6.6.506, 6.6.507A, 6.6.507B, 6.6.508, 6.6.509, 6.6.510, 6.6.519, 6.6.520, 6.6.521, 6.6.608, 6.6.612, and 6.6.613.

3. The Department has amended the following rules as proposed, but with the following changes, stricken material interlined, new material underlined:

6.6.507 MINIMUM BENEFIT STANDARDS (1) through (1)(a)(ix) remain as proposed.

(2) Termination of a medicare supplement policy or certificate must be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of medicare part D benefits will not be considered in determining a continuous loss.

(3) remains as proposed.

(a) if such suspension occurs and if the policyholder or certificateholder loses entitlement to such medical assistance, such policy or certificate must be automatically reinstated effective as of the date of the termination of such entitlement if the policyholder or certificateholder provides notice of loss of such entitlement within 90 days after the date of such loss and pays the premium attributable to the period, ~~effective as of the date of termination of such entitlement.~~

(b) through (4)(c)(ii)(C) remain as proposed.

AUTH: 33-1-313, 33-22-904 and 33-22-905, MCA

IMP: 33-15-303, 33-22-902, 33-22-904 and 33-22-905, MCA

6.6.507C GUARANTEED ISSUE FOR ELIGIBLE PERSONS

(1) through (1)(b)(iii) remain as proposed.

(c) if an eligible person who originally purchased an issue-age rated plan and then applies for another issue-age plan from ~~the same~~ any issuer on a guaranteed issue basis, that issuer must rate the replacement policy or certificate using the age at which the original policy or certificate being replaced was rated.

(2) through (2)(f) remain as proposed.

(g) the individual enrolls in a medicare part D plan during the initial enrollment period and, at the time of enrollment in part D, was enrolled under a medicare supplement policy that covers outpatient prescription drugs and the individual terminates enrollment in the medicare supplement policy and submits evidence of enrollment in medicare part D along with the application for a policy described in ~~(5)(d)(ii)(e)~~.

(3) through (5) remain the same.

(a) an eligible person defined in (2)(a), (b), ~~or~~ or (c) or (d) is entitled to the issuance of a medicare supplement policy with any level of benefits up to the level of the previous policy without underwriting offered by any issuer. If such an eligible person chooses a medicare supplement policy with a higher level of benefits than the previous policy, the issuer may underwrite the new policy;

(b) subject to (5)(c), an eligible person defined in ~~(2)(d)(e)~~ is entitled to the issuance of the same medicare supplement policy in which the eligible person was most recently enrolled, if available from the issuer, or, if not so available, a policy described in (5)(a); ~~and~~

(d) and (d)(i) remain as proposed but are renumbered (c) and (c)(i).

(ii) at the election of the policyholder, an A, B, C, ~~D~~ E, F (including F with high deductible), ~~G~~ K, or L policy that is offered by any issuer;

~~(c)(d)~~ subject to (5)(d), an eligible person defined in ~~(2)(e)~~ and (f) is entitled to the issuance of any medicare supplement policy offered by any issuer;

(e) an eligible person defined in (2)(g) is entitled to the issuance of a medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K, or L, and that is offered and is available for issuance to new enrollees by the same issuer that issued to individual's medicare supplement policy with outpatient prescription drug coverage. However, if the eligible person wishes to enroll in an A, B, C, F (including high deductible F), K, or L and that issuer does not offer that plan, then the eligible person is entitled to have that

plan issued by any issuer who makes it available for sale to new enrollees in Montana.

(6) through (6)(b) remain as proposed.

AUTH: 33-1-313, 33-22-904 and 33-22-905, MCA  
IMP: 33-22-902, 33-22-904 and 33-22-905, MCA

6.6.508A FILING AND APPROVAL OF POLICIES AND CERTIFICATES AND PREMIUM RATES (1) through (6)(a) remain as proposed.

(7) An issuer may not ~~present for filing, or and approval, file~~ a rate structure for its medicare supplement policies and certificates issued after ~~{the effective date of the amendment of this rule}~~ January 1, 2006, based upon a structure or methodology with any groupings of attained ages greater than one year. The ratio between rates for successive ages must ~~increase smoothly~~ exhibit a smooth pattern as age increases.

AUTH: 33-1-313, 33-22-904, 33-22-905 and 33-22-906, MCA  
IMP: 33-22-904 and 33-22-906, MCA

6.6.511 SAMPLE FORMS OUTLINING COVERAGE (1) through (2)(f) (PLAN E, PART A) remain as proposed.

PLAN E

MEDICARE (PART B) - MEDICAL SERVICES - ~~PER BENEFIT PERIOD~~ PER CALENDAR YEAR

\*Once you have been billed \$[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First \$[100] of Medicare approved amounts*	\$0	\$0	\$[100] (Part B deductible)
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	\$0
Part B Excess Charges (Above Medicare approved amounts)	\$0	\$0	All costs
BLOOD First 3 pints	\$0	All costs	\$0
Next \$[100] of Medicare approved amounts*	\$0	\$0	\$[100] (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	\$0
CLINICAL LABORATORY SERVICES -- TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES ---Medically necessary skilled care services and medical supplies	100%	\$0	\$0
---Durable medical equipment First \$[100] of Medicare approved amounts*	\$0	\$0	\$[100] (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	\$0

PLAN E

OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL - NOT COVERED BY MEDICARE, Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year	\$0	\$0	\$250
Remainder of charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum
***PREVENTIVE MEDICARE CARE BENEFIT-NOT COVERED BY MEDICARE Some annual physical and preventive tests and services administered or ordered by your doctor when not covered by Medicare First \$120 each calendar year Additional charges	\$0 \$0	\$120 \$0	\$0 All costs

\*\*\*Medicare benefits are subject to change. Please consult the latest Guide to Health Insurance for People with Medicare.

(2)(g) PLAN F or HIGH DEDUCTIBLE PLAN F, MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD, and PLAN F or HIGH DEDUCTIBLE PLAN F, MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR remain as proposed.

PLAN F or HIGH DEDUCTIBLE PLAN F

PARTS A & B

SERVICES	MEDICARE PAYS	[AFTER YOU PAY \$[1730] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO \$[1730] DEDUCTIBLE,**] YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES ---Medically necessary skilled care services and medical supplies	100%	\$0	\$0
---Durable medical equipment First \$[100] of Medicare approved amounts*	\$0	\$[100](Part B deductible)	\$0
Remainder of Medicare approved amounts	80%	20%	\$0

OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	[AFTER YOU PAY \$[1730] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO \$[1730] DEDUCTIBLE,**] YOU PAY
FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year	\$0	\$0	\$250
Remainder of charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

(2)(h) PLAN G - MEDICARE (PART A) through (2)(j) PLAN I - MEDICARE PARTS A & B, OTHER BENEFITS - NOT COVERED BY MEDICARE remain as proposed.

(k) PLAN J or HIGH DEDUCTIBLE PLAN J

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

[\*\*This high deductible plan pays the same benefits as plan J after one has paid a calendar year \$[1730] deductible. Benefits from the high deductible plan J will not begin until out-of-pocket expenses are \$[1730]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate ~~outpatient prescription drug deductible or the plan's separate~~ foreign travel emergency deductible.]

SERVICES	MEDICARE PAYS	[AFTER YOU PAY \$[1730] DEDUCTIBLE, **] PLAN PAYS	[IN ADDITION TO [1730] DEDUCTIBLE, **] YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days	All but \$[6.6.511(1)(a)]	\$(6.6.511(1)(a)) (Part A deductible)	\$0
61st thru 90th day	All but \$[6.6.511(1)(b)] a day	\$(6.6.511(1)(b)) a day	\$0
91st day and after: While using 60 lifetime reserve days	All but \$[6.6.511(1)(c)] a day	\$(6.6.511(1)(c)) a day	\$0
Once lifetime reserve days are used: Additional 365 days Beyond the additional 365 days	\$0 \$0	100% of Medicare eligible expenses \$0	\$0*** All costs
Continued on next page			



SERVICES	MEDICARE PAYS	[AFTER YOU PAY \$[1730] DEDUCTIBLE, **] PLAN PAYS	[IN ADDITION TO \$[1730] DEDUCTIBLE, **] YOU PAY
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days  21st thru 100th day  101st day and after	All approved amounts  All but \$[6.6.511(1)(d)] a day  \$0	\$0  Up to \$[6.6.511(1)(d)] a day  \$0	\$0  \$0  All costs
<b>BLOOD</b> First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
<u>HOSPICE CARE</u> <u>Available as long as your doctor certifies you are terminally ill and you elect to receive these services</u>	<u>All but very limited coinsurance for outpatient drugs and inpatient respite care</u>	\$0	<u>Balance</u>

\*\*\*NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN J or HIGH DEDUCTIBLE PLAN J

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

\*Once you have been billed \$[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

[\*\*This high deductible plan pays the same as plan J after one has paid a calendar year \$[1730] deductible. Benefits from the high deductible plan J will not begin until out-of-pocket expenses are \$[1730]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate ~~outpatient prescription drug deductible or the plan's separate foreign travel emergency deductible.~~]

SERVICES	MEDICARE PAYS	[AFTER YOU PAY \$[1730] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO \$[1730] DEDUCTIBLE,**] YOU PAY
<del>HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services</del>	<del>All but very limited coinsurance for outpatient drugs and inpatient respite care</del>	\$0	Balance
MEDICAL EXPENSES- IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First \$[100] of Medicare approved amounts* Remainder of Medicare approved amounts	\$0  Generally 80%	\$[100] (Part B deductible)  Generally 20%	\$0  \$0
Part B excess charges (above Medicare approved amounts)	\$0	100%	\$0
BLOOD First 3 pints Next \$[100] of medicare approved amounts* Remainder of medicare approved amounts	\$0 \$0 \$0	All costs \$[100] (Part B deductible) 20%	\$0 \$0 \$0
CLINICAL LABORATORY SERVICES - TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

(2)(k) PLAN J OR HIGH DEDUCTIBLE PLAN J, PARTS A & B through (m) PLAN L, PARTS A & B remain the same.

AUTH: 33-1-313 and 33-22-904, MCA

IMP: 33-15-303, 33-22-901, 33-22-902, 33-22-903, 33-22-904, 33-22-905, 33-22-906, 33-22-907, 33-22-908, 33-22-909, 33-22-910, 33-22-911, 33-22-921, 33-22-922, 33-22-923 and 33-22-924, MCA

4. The Department has adopted the following new rules exactly as proposed: New Rules I (ARM 6.6.524), II (ARM 6.6.525), and III (ARM 6.6.526).

5. These rules are effective on September 9, 2005, except that issuers are permitted to continue to use currently approved forms as allowed by the Medicare Modernization Act through December 31, 2005. Insurers may offer any authorized plan upon approval by the state auditor.

6. A public hearing was held on August 8, 2005, to consider the proposed amendment and adoption of these rules. Malinda Shafman, Ins. Agt. MLA Svcs., Inc., and Sean Slanger, Blue Cross Blue Shield of MT., attended the hearing, but did not offer oral comment. Additional comments were received prior to the closing of the comment period, and appear with the State Auditor's Office, Department of Insurance [hereinafter "department"] responses.

COMMENT 1: The amendment to ARM 6.6.507(2) states that, "Receipt of medicare part D benefits will be considered in determining a continuous loss;" however, the NAIC model regulation provides that part D benefits "will not" be considered.

RESPONSE 1: The department agrees that the word "not" was inadvertently omitted through typographical error, and it has been inserted.

COMMENT 2: To correctly reflect the NAIC model regulation, the medicare part B table in the plan E outline of coverage should refer to "Medical Services--Per Calendar Year" rather than "Medical Services--Per Benefit Period." Comment numbers two through five all relate to technical changes to the NAIC Medicare Supplement Model regulation that the NAIC issued on January 12, 2005, after the model was published. These technical changes were inadvertently omitted from the first proposed rule and have now been added.

RESPONSE 2: The department agrees and has made the change.

COMMENT 3: To correctly reflect the NAIC model regulation, in the outline of coverage for plan F/high deductible plan F, the "Plan Pays" and "You Pay" column headings in some of the tables lack proper bracketing. All of these column headings

should be bracketed as follows: "[AFTER YOU PAY \$[1690] DEDUCTIBLE,\*\*] PLAN PAYS" and "[IN ADDITION TO \$[1690] DEDUCTIBLE, \*\*] YOU PAY."

RESPONSE 3: The department agrees and has made that change, except that "\$1690" should be "\$1730."

COMMENT 4: To correctly reflect the NAIC model regulation, in the plan J/high deductible plan J outline, reference to the outpatient prescription drug deductible should be removed from the last sentence of the bold, bracketed paragraph above the part A and part B tables.

RESPONSE NO. 4: The department agrees and has made those changes.

COMMENT 5: To correctly reflect the NAIC model regulation, in the plan J/high deductible plan J outline, hospice care should appear at the end of the part A table rather than the top of the part B table.

RESPONSE 5: The department agrees and has made that change.

COMMENT 6: There is redundant language in ARM 6.6.507(3)(a), which should be removed. The phrase "effective as of the date of termination of entitlement" is repeated twice.

RESPONSE 6: The department agrees and has made that change.

COMMENT 7: The proposed language in ARM 6.6.508A(7), which provides in part, "The ratio between rates for successive ages must increase smoothly as age increases," is not technically correct. The following language is more appropriate: "The ratio between rates for successive ages must exhibit a smooth pattern as age increases." The proposed regulation, as currently written, requires rates to increase at an increasing rate; rates should instead increase at a decreasing rate.

RESPONSE 7: The actuary for the department has reviewed this language and agrees, so this change has been made.

COMMENT 8: The language in ARM 6.6.508A(7) which states that "an issuer may not present for filing, or approval, a rate structure for its medicare supplement policies and certificates issued after the [effective date of the amendment of this rule] based upon a structure or methodology [...]," is ambiguous. An insurer may be uncertain as to whether or not the rate filing must actually be approved before the effective date of the rule or just "filed." In addition, the proposed effective date does not give insurers enough time to comply with the new rule regarding age bans.

RESPONSE 8: The department has extended the compliance date for this particular rule to January 1, 2006, and removed the

words, "or approval." Rates filed after January 1, 2006, will not be approved unless they comply with ARM 6.6.508A(7). Policies issued after January 1, 2006, must comply with the new attained rating rule.

COMMENT 9: The definition of "medicare eligible expenses" in ARM 6.6.505(2)(g) omits the words "medically necessary," and those words are included in the NAIC model language. It should be made clear that no expenses for health care services will be covered if those expenses are not medically necessary.

RESPONSE 9: The rule language that is the subject of this comment was not changed or altered in MAR Notice No. 6-160 and therefore cannot be changed in this adoption notice. This definition has been the rule in Montana for several years and has not caused any problem that the department is aware of. The "reasonable" language is sufficient and, in any case, most medicare supplement benefits are paid only after medicare has made a "medically necessary" determination.

COMMENT 10: The proposed deletion in ARM 6.6.505(2)(i), in the definition of "sickness," should not be made because the new definition is broader than the NAIC model language, it "impermissibly changes the standardized benefit package," and it violates the "fundamental goal of uniformity."

RESPONSE 10: The department does not agree that the proposed change in this definition alters the standardized benefit packages. Federal law requires that the states adopt "a regulatory program that provides for application of standards, with respect to each medicare supplement policy issued in that State, that are equal to or more stringent than those specified in section 1882 of the Social security Act." [42 CFR 403.222] [Emphasis added] The states are free to adopt regulations that are more stringent.

Furthermore, this agency may not implement administrative rules that conflict with existing statute. The department has determined that the existing definition of sickness, which conformed to the NAIC model definition, in fact, conflicts with the definition of preexisting condition in the medicare supplement chapter at 33-22-904, MCA. That statute requires that a preexisting condition may not be defined "more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within 6 months before the effective date of coverage." The NAIC model definition of sickness may create the impression that insurers can circumvent Montana's statutory prohibition against excluding preexisting conditions by permitting insurers to deny coverage for an illness because it "first manifested itself" before the effective date of the policy [i.e., cancer, heart disease], even though no medical advice or treatment had been sought, and in fact, the policyholder was not aware of the illness, prior to the effective date of the policy. The department has received

complaints from consumers that led to the conclusion that the previous definition of sickness conflicts with statute. Furthermore, the department has consistently applied the applicable statute [33-22-904, MCA], not the definition of sickness in the administrative rule, when called upon to review these complaints.

COMMENT 11: One insurance company urges the department not to adopt the amendment proposed in ARM 6.6.507C(1)(c), because it is not consistent with federal regulations, will lead to fewer companies offering issue age policies, and may impact issue age premiums.

RESPONSE 11: The amendment in ARM 6.6.507C(1)(c) states that persons who originally purchased an issue-age plan, and then became eligible for guaranteed issue of another product, would be entitled to have the new plan's rate calculated according to the issue age of the original policy. The department determined that in order to ensure that guarantee issue rights of eligible persons remain fair and equitable, a fair rate should also be protected. As discussed in comment number 10, states have the right to enact rules that are more stringent. Also, the department disagrees that this rule would have a disparate impact on the availability of issue age policies or issue age rates. Only very narrow categories of persons are eligible for guaranteed issue. Only one insurance company expressed this opinion.

In reviewing this particular rule, the department noted an error in the original drafting that is being corrected in the adoption notice. To be consistent with other language in the rule describing guaranteed issue rights, the text of ARM 6.6.507C(1)(c) should read "from any issuer," (except for certain persons who are eligible because of enrollment in part D, as is fully explained in comment number 12).

COMMENT 12: ARM 6.6.507C(5)(d)(ii) should not vary from the model language. This rule concerns the guaranteed issue rights of persons who have a medicare supplement plan that includes prescription drug coverage. If those persons decide to enroll in part D, they cannot keep their current supplement coverage that includes drugs. Montana's proposed rule expands the guaranteed issue rights of these persons to include any standardized medicare supplement plan offered by any issuer. The NAIC model language and the federal regulations restrict the guaranteed issue rights of this group to the same plan from the same issuer, but excluding the drug coverage, or plan A, B, C, F, (including high deductible F), K or L that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's medicare supplement policy with outpatient prescription drug coverage. This guaranteed issue right is primarily limited to the open enrollment period for part D. The federal law did not contemplate and it is not necessary for these persons to switch carriers in order to preserve their coverage. In order

to maintain uniformity with the other states, Montana should limit the plan options available for this group of eligibles to the plans listed in the model.

RESPONSE 12: The department agrees that unlike other categories of persons eligible for guaranteed issue, the individuals who enroll in part D will have the option of keeping their existing medicare supplement plan, with the drug coverage removed or they will be able to choose from a list of other plans with a range of coverage options. Switching carriers may not be necessary to preserve their right to continuing coverage. However, some carriers are using this period of change caused by the MMA to stop offering some traditional medicare supplement coverage, and they may close their H, I, and J "without drugs" books of business, leaving those individuals who enrolled in Part D with few viable options.

Therefore, the department is amending ARM 6.6.507C to allow this category of persons who enroll in Part D to purchase A, B, C, F (including high deductible F), K or L from any issuer, only if their current insurer does not offer those plans.

COMMENT 13: With respect to the effective date of the proposed amendments and the new rules I and II, some of the provisions are not effective under federal law until January 1, 2006. Please consider adding language to the proposed rules to provide that "insurers are permitted to continue to use currently approved forms as appropriate through December 31, 2005. Insurers may offer any authorized plan upon approval by the state auditor." This approach addresses the fact that some changes to forms should not be required until the medicare part D program begins in 2006, but would also permit insurers that offer plans K and L to begin to file the necessary forms for approval.

RESPONSE 13: The department agrees and has made this change.

JOHN MORRISON, State Auditor  
and Commissioner of Insurance

By: /s/ Alicia Pichette  
Alicia Pichette  
Deputy Insurance Commissioner

By: /s/ Patrick M. Driscoll  
Patrick M. Driscoll  
Rule Reviewer

Certified to the Secretary of State on August 29, 2005.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 8.32.402 licensure by )  
examination, ARM 8.32.403 )  
reexamination - registered nurse, )  
ARM 8.32.404 reexamination - )  
practical nurse, and ARM 8.32.413 )  
conduct of nurses )

TO: All Concerned Persons

1. On April 14, 2005 the Board of Nursing published MAR Notice No. 8-32-66 regarding the public hearing on the proposed amendment of the above-stated rules relating to licensure by examination, reexamination - registered nurse, reexamination - practical nurse and conduct of nurses at page 516, 2005 Montana Administrative Register, issue no. 7.

2. A public hearing on the notice of proposed amendment on the above-stated rules was held on May 5, 2005. No comments or testimony were received.

3. The Board amends ARM 8.32.402, 8.32.403, 8.32.404 and 8.32.413 exactly as proposed.

BOARD OF NURSING  
KAREN POLLINGTON, RN, CHAIRPERSON

/s/ KEITH KELLY  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER  
Mark Cadwallader  
Rule Reviewer

Certified to the Secretary of State August 29, 2005.



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

In the matter of the amendment of ) NOTICE OF AMENDMENT,  
ARM 8.32.403, reexamination - ) ADOPTION AND REPEAL  
registered nurse, ARM 8.32.404 )  
reexamination - practical nurse, )  
ARM 8.32.405 licensure by )  
endorsement, and ARM 8.32.408 )  
temporary practice permit, the )  
adoption of NEW RULE I )  
pertaining to abatement of fees, )  
NEW RULE II and NEW RULE III )  
pertaining to foreign educated )  
applicants, and the repeal of )  
ARM 8.32.406 licensure for foreign )  
nurses )

TO: All Concerned Persons

1. On June 16, 2005, the Board published MAR Notice No. 8-32-67 regarding the public hearing on the proposed amendment, adoption and repeal of the above-stated rules relating to reexamination - registered nurse, reexamination - practical nurse, licensure by endorsement, temporary practice permit, abatement of fees, foreign educated applicants and licensure for foreign nurses at page 866 of the 2005 Montana Administrative Register, issue no. 11.

2. A public hearing on the notice of the proposed amendment, adoption and repeal on the above-stated rules was held on July 8, 2005.

3. The Board of Nursing (Board) has thoroughly considered all of the comments made. A summary of the comments received (grouped by rule) and the Board's responses are as follows:

8.32.408 TEMPORARY PRACTICE PERMIT

Comment 1: Section (3) of ARM 8.32.408 should be amended to read as follows [new material underlined]: "An applicant for licensure by endorsement in Montana may be granted a temporary permit to practice professional or practical nursing provided the applicant has submitted a completed application as described in ARM 8.32.405(1)(c) and (d) and that the initial screening of the application by board staff shows no current discipline as identified in ARM 8.32.405(2) in the last two years". The commenter believes that unless (c) and (d) are added, endorsement applicants may believe they are entitled to a license without having their initial and subsequent license(s) and license status(es) verified by Board staff or

without having their education program verified by Board staff.

Response 1: The proposal/recommendation is a substantive one relating to a part of the rule that was not noticed for proposed amendment. The Board believes the recommendation would need to be included in a hearing notice to give the public at large an opportunity to comment on the recommended change. The Board also believes it may be appropriate for it to review its rules in the future, including ARM 8.32.408, to determine whether the rules contain staff duties relating to the processing of applications (e.g., verifying information provided by the applicant on the application form) that would be more appropriately included in an office policy and procedure manual than in rule. It is not necessary for the rules to contain the internal office procedures by which license applications are processed. The Board elects to amend ARM 8.32.408 exactly as published at this time.

NEW RULE II (ARM 8.32.429) FOREIGN EDUCATED APPLICANTS FOR REGISTERED NURSE LICENSURE

Comment 2: Subsection (3)(a) should be changed to read: "...fulfill the requirements of ARM 8.32.405" (instead of 8.32.405(1)(a)(b)(c)). Also, subsections (3)(b) and (c) of New Rule II should be deleted because the requirements would be covered by the reference to ARM 8.32.405, in total. The commenter stated that the rule, as written, does not provide for verification of licensure and exam results by staff or payment of the application fee.

Response 2: Including a reference to ARM 8.32.405, in total, in New Rule II could be confusing because ARM 8.32.405 includes provisions relating to applicants for practical nurse licensure. New Rule II only relates to applicants for registered nurse licensure. In addition, ARM 8.32.405 includes other provisions that are not applicable to New Rule II. Application fees are set by ARM 8.32.425. The rules are cumulative so there is no need for additional reference to fees in New Rule II. The Board also believes it may be appropriate for it to review its rules in the future, including ARM 8.32.405, to determine whether the rules contain staff duties relating to the processing of applications (e.g., verifying information provided by the applicant on the application form) that would be more appropriately included in an office policy and procedure manual than in rule. It is not necessary for the rules to contain the internal office procedures by which license applications are processed. The Board elects to adopt New Rule II exactly as published.

Comment 3: During preparation of the Notice of Amendment, Adoption, and Repeal, staff noticed a typographical error in the acronym for the Commission on Graduates from Foreign Nursing Schools (CGFNS), in New Rule II(2)(c)(iii).

Response 3: The typographical error has been corrected.

NEW RULE III (ARM 8.32.430) FOREIGN EDUCATED APPLICANTS FOR PRACTICAL NURSE LICENSURE

Comment 4: Subsection (3)(b) should be deleted because the requirements are covered by the reference to ARM 8.32.405, in total. The board is repealing ARM 8.32.406 so the reference to it in ARM 8.32.405(1)(h) should be changed to New Rules II and III or the numbers assigned to the new rules.

Response 4: The comment stating that ARM 8.32.405(1)(h) contains a reference to the rule being repealed, is well-taken. Rule ARM 8.32.405(1)(h) will be amended in this notice to make it consistent with New Rules II and III. The internal reference to ARM 8.32.405, in total, is overly broad. The Board believes that rather than delete (3)(b) from the rule, the better approach is to review its rules further with the objective of proposing amendments to delete references to staff duties such as verifying information provided by applicants and other duties relating to the processing of applications and recommend to the department that such information be included instead in a policy and procedure manual for staff. It is not necessary for the rules to contain the internal office procedures by which license applications are processed. The Board elects not to make the requested changes at this time.

Comment 5: The second sentence in (1) should be amended to read: ". . . . The term includes, but is not limited to, applicants or candidates who studied nursing in the United States through either a distance learning program offered by or through a foreign educational institution or whose nursing education involved a collaboration between a foreign educational institution and an educational institution ~~or program~~ in the United States, so long as the credential was conferred by the foreign educational institution". Certain text was mistakenly omitted and as a result, the sentence makes no sense as written.

Response 5: The Board agrees that text was omitted and elects to adopt New Rule III as amended to correct the error.

4. After consideration of the comments, the Board amends ARM 8.32.403, ARM 8.32.404, ARM 8.32.408 and adopts NEW RULE I (ARM 8.32.428) exactly as proposed.

5. After consideration of the comments, the Board has amended ARM 8.32.405, NEW RULE II (ARM 8.32.429), and NEW III (ARM 8.32.430), with the following changes, stricken matter interlined, new matter underlined:

8.32.405 LICENSURE BY ENDORSEMENT (1) through (1)(g) remain the same.

(h) if the applicant's education was obtained in a foreign country, the applicant must also meet the conditions of ~~ARM 8.32.406~~ ARM 8.32.429 and 8.32.430.

(2) through (4) remain the same.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-304, MCA

NEW RULE II (ARM 8.32.429) FOREIGN EDUCATED APPLICANTS FOR REGISTERED NURSE LICENSURE (1) through (2)(c)(ii) remain as proposed.

(iii) a credentials review verifying the applicant's nursing education credentials and comparing the applicant's foreign nursing education with the U.S. nursing education standards. The board may deny licensure to a foreign educated applicant if denial is deemed by the board to be warranted by the ~~CCFNA~~ CGFNS credentials evaluation service (CES) report.

(3) and (4) remain as proposed.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-8-101, 37-8-405, 37-8-415, MCA

NEW RULE III (ARM 8.32.430) FOREIGN EDUCATED APPLICANTS FOR PRACTICAL NURSE LICENSURE (1) For purposes of this rule, "foreign educated" applicants are those individuals whose nursing education credential was conferred by an educational institution located outside the United States or its jurisdictions. The term includes, but is not limited to, applicants or candidates who studied nursing in the United States through either a distance learning program offered by or through a foreign educational institution or whose nursing education involved a collaboration between a foreign educational institution and an educational institution ~~or program~~ in the United States, so long as the credential was conferred by the foreign educational institution.

(2) through (4) remain as proposed.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-8-101, 37-8-405, 37-8-415, MCA

6. After consideration of the comments, the Board has repealed ARM 8.32.406 exactly as proposed.

BOARD OF NURSING  
KAREN POLLINGTON, RN, CHAIRPERSON

/s/ MARK CADWALLADER  
Mark Cadwallader  
Rule Reviewer

/s/ Keith Kelly  
Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 29, 2005

BEFORE THE DEPARTMENT OF MILITARY AFFAIRS  
OF THE STATE OF MONTANA

In the matter of the )  
adoption of New Rules I ) NOTICE OF ADOPTION  
through VI relating to )  
reimbursement for life )  
insurance premiums paid by )  
Montana reserve component )  
service members serving )  
outside Montana in a )  
contingency operation )

TO: All Concerned Persons

1. On July 28, 2005, the Montana Department of Military Affairs published MAR Notice No. 34-5 regarding the proposed adoption of the above-stated rules at page 1362 of the 2005 Montana Administrative Register, Issue No. 14.

2. The Department of Military Affairs has adopted the following new rules with the following changes, stricken matter interlined, new matter underlined:

- Rule I (ARM 34.7.101)
- Rule II (ARM 34.7.102)
- Rule III (ARM 34.7.103)
- Rule IV (ARM 34.7.104)
- Rule V (ARM 34.7.105)
- Rule VI (ARM 34.7.106)

NEW RULE I (34.7.101) DEFINITIONS For purposes of this chapter, the following definitions ~~apply~~ applies:

(1) ~~"Active duty" has the meaning provided in 38 USC 1965(1)(A) and generally means full time duty in the armed forces, other than active duty for training.~~

(2) ~~"Contingency operation" means an assignment within the provisions of 10 USC 101(a)(13).~~

(3) ~~"National guard" has the meaning provided in 10 1 101, MCA.~~

(4) ~~"Reserve" means a member of a reserve component, as defined in 38 USC 101, of the United States armed forces.~~

(5) ~~"Service member" means a member of the national guard or reserve.~~

(6) "Servicemembers' group life insurance (SGLI)" means the group life insurance program established by 38 USC 1965 through 1980.

AUTH: ~~Ch. 604, L. 2005 10-1-1104, MCA~~  
IMP: ~~Ch. 604, L. 2005 10-1-1104, MCA~~

NEW RULE II (34.7.102) ELIGIBILITY (1) remains as proposed.

AUTH: ~~Ch. 604, L. 2005~~ 10-1-1104, MCA  
IMP: ~~Ch. 604, L. 2005~~ 10-1-1104, MCA

NEW RULE III (34.7.103) LIMITATIONS ON REIMBURSEMENT  
(1) and (2) remain as proposed.

AUTH: ~~Ch. 604, L. 2005~~ 10-1-1104, MCA  
IMP: ~~Ch. 604, L. 2005~~ 10-1-1104, MCA

NEW RULE IV (34.7.104) APPLICATION FOR REIMBURSEMENT  
(1) and (2) remain as proposed.

AUTH: ~~Ch. 604, L. 2005~~ 10-1-1104, MCA  
IMP: ~~Ch. 604, L. 2005~~ 10-1-1104, MCA

NEW RULE V (34.7.105) EXPIRATION TERMINATION DATE; FURTHER APPROPRIATION REQUIRED (1) ~~The rules implemented under this chapter ARM 34.7.101 through 34.7.106 expire~~ terminate June 30, 2008, unless further appropriation is made by the Montana legislature for continuance of the reimbursement program.

AUTH: ~~Ch. 604, L. 2005~~ 10-1-1104, MCA  
IMP: ~~Ch. 604, L. 2005~~ 10-1-1104, MCA

NEW RULE VI (34.7.106) TERMINATION DATE; UNITED STATES ASSUMES PAYMENT OF PREMIUMS OR INCREASES DEATH GRATUITY

(1) ~~The rules implemented under this chapter ARM 34.7.101 through 34.7.106~~ terminate on the last day of the first month in which the United States government provides \$250,000 in death benefit to the designated beneficiary of a service member killed on active duty in a contingency operation through:

(a) through (1)(c) remain as proposed.

AUTH: ~~Ch. 604, L. 2005~~ 10-1-1104, MCA  
IMP: ~~Ch. 604, L. 2005~~ 10-1-1104, MCA

3. During the comment period the Department received two comments suggesting editorial changes to the new rules.

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

Comment 1: The State Administration and Veterans' Affairs Interim Committee's Legislative Services attorney noted that NEW RULE I unnecessarily repeated statutory language in violation of 2-4-305(2), MCA.

Response: The Department agrees and has deleted the superfluous language.

Comment 2: The State Administration and Veterans' Affairs Interim Committee's Legislative Services attorney noted that NEW RULES V and VI spoke of "implementing" rules, and that it was unclear what "this chapter" referred to.

Response: The Department agrees that this language is not as clear as desired and has rephrased the rules.

/s/ Karen Revious  
Karen Revious, Administrator

/s/ James P. Moran  
James P. Moran, Attorney  
Rule Reviewer

Certified to the Secretary of State, August 29, 2005.

VOLUME NO. 51

OPINION NO. 8

INSURANCE - An insurance carrier of an individual involved in a traffic accident is entitled to receive copies of accident reports and supplemental information;

POLICE DEPARTMENTS - Law enforcement personnel must release reports of accident investigations to persons specifically listed in statutes;

SHERIFFS - Law enforcement personnel must release reports of accident investigations to persons specifically listed in statutes;

MONTANA CODE ANNOTATED - Sections 44-5-101 to -602, -103(2)(d), -303, 61-7-109, -114.

HELD: The insurance carrier of an individual involved in a traffic accident is entitled to receive copies of the accident report and supplemental information, including witness statements, whether or not the insurance carrier is referred to or named in the accident report.

August 17, 2005

Mr. Gary Matthews, Speaker  
Montana House of Representatives  
P.O. Box 201706  
Helena, MT 59620-1706

Dear Mr. Speaker:

You have requested my opinion concerning the following question, which I have rephrased as follows:

Is an insurance carrier of an individual involved in a traffic accident entitled to receive copies of the accident report and supplemental information, including witness statements, whether or not the insurance carrier is referred to or named in the accident report?

The definition of confidential criminal justice information includes all criminal justice information made confidential by law. Mont. Code. Ann. § 44-5-103(2)(d). Montana law specifically makes accident reports confidential information. Mont. Code Ann. § 61-7-114. The dissemination of confidential criminal justice information is governed by the provisions of the Montana Criminal Justice Information Act of 1979 (The Act). Mont. Code Ann. § 44-5-101 to -602. The Act states that dissemination of confidential criminal justice information is restricted "to criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that the demands of individual privacy do not clearly exceed the merits of public



disclosure." Mont. Code Ann. § 44-5-303 (emphasis supplied).

Montana has adopted the Uniform Accident Reporting Act (Reporting Act). The Reporting Act requires that any driver involved in a motor vehicle accident or any law enforcement officer who investigates a motor vehicle accident in which a person is injured or killed or in which damage to property exceeds \$1,000, file a written report with the Department of Justice (DOJ) within ten days. Mont. Code Ann. § 61-7-109. Section 61-7-114 of the Reporting Act provides guidance to the DOJ on the purpose, handling, and dissemination of these reports.

61-7-114. Accident reports confidential. (1) All required accident reports and supplemental reports must be without prejudice to the individual reporting and must be for the confidential use of the department or other governmental agencies for accident prevention, roadway design, motor carrier safety monitoring purposes, or for the administration of the laws of this state relating to the deposit of security and proof of financial responsibility by persons driving or the owners of motor vehicles. The department may disclose the identity of a person involved in an accident when the identity is not otherwise known or when the person denies being present at the accident.

(2) Except as provided in this section, all accident reports and supplemental information filed as required by this part are confidential and not open to general public inspection. Except as provided in subsection (2)(e), copying of lists of reports is not permitted. The report and supplemental information, including witness statements, filed by law enforcement personnel, as required by this part, may be examined and copied, without obtaining a court order, by:

(a) a person named in the report or involved in the accident;

(b) the representative of the person referred to in subsection (2)(a), designated in writing, or the insurance carrier of that person;

(c) a party to a civil action arising from the accident;

(d) the executor, the administrator, or the attorney representing the executor or administrator if the person is deceased; or

(e) the general public, including commercial entities, for purposes of research into the history of vehicles, but the department may not disclose the name, address, or telephone number of, or other information allowing the identification of, any reporting person, accident victim, peace officer, or other person or any insurer named in a report or supplemental information, including witness

statements.

Mont. Code Ann. § 61-7-114 (emphasis supplied).

Statutes must be construed or interpreted in accordance with the intent of the legislature. State v. Christensen, 265 Mont. 374, 376, 877 P.2d 468, 469 (1994). In construing a statute, I must look first to the plain meaning of the words of the statute; if the language is clear and unambiguous, no further interpretation is necessary. Id. Another fundamental rule of statutory interpretation requires that all statutes concerning a subject be read together, with each given effect, if reasonably possible. Crist v. Segna, 191 Mont. 210, 212, 622 P.2d 1028, 1029 (1981). Mont. Code Ann. § 61-7-114 explicitly provides that the insurance companies of a person named in the report or involved in the accident are authorized by law to receive a copy of the accident report. The Act provides that law enforcement must release confidential criminal justice information to those authorized by law to receive it. Mont. Code Ann. § 44-5-303. The statutory language of these statutes when read together is clear and unambiguous. The language indicates that the legislature fully intended for insurance companies of individuals involved in traffic accidents be provided accident reports and supplemental information.

Further, Attorney General Greely issued a similar opinion, holding that "County Attorney, law enforcement personnel, and coroners must release reports of accident investigations, autopsies, and related tests to persons specifically listed in statutes." 37 Op. Att'y Gen. No. 112 (1978). Attorney General Greely further opined that "[o]ther reports covered by statutes elsewhere may be subject to disclosure under this section if they are prepared as part of the investigation itself and therefore are 'supplemental information' within the statute." Id.

THEREFORE, IT IS MY OPINION:

The insurance carrier of an individual involved in a traffic accident is entitled to receive copies of the accident report and supplemental information, including witness statements, whether or not the insurance carrier is referred to or named in the accident report.

Very truly yours,

/s/ Mike McGrath  
MIKE McGRATH  
Attorney General

mm/pdb/jym

**NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**

**Interim Committees and the Environmental Quality Council**

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

**Economic Affairs Interim Committee:**

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

and

- ▶ Office of Economic Development.

**Education and Local Government Interim Committee:**

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

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

- ▶ Department of Public Health and Human Services.

**Law and Justice Interim Committee:**

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

**Energy and Telecommunications Interim Committee:**

- ▶ Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

**State Administration, and Veterans' Affairs Interim Committee:**

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

**Environmental Quality Council:**

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

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 June 30, 2005. This table includes those rules adopted during the period July 1, 2005 through September 30, 2005 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 June 30, 2005, 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 2004 and 2005 Montana Administrative Registers.

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

ADMINISTRATION, Department of, Title 2

- I-X Definitions - Licensing and Application Requirements - Ownership Change - Examination of Title Lenders - Duration of Loans - Extensions - Reports - Schedule of Charges - Employees' Character and Fitness - Procedural Rules for Hearing and Discovery Proposed for Adoption under the Montana Title Loan Act, p. 1125, 1334
- I-X State of Montana Voluntary Employees' Beneficiary Association (VEBA), p. 2779, 643, 911
- 2.5.201 and other rules - State Procurement of Supplies and Services - Disposition and Disposal of Surplus Property, p. 1316
- 2.21.410 and other rules - Military Leave, p. 767, 1506
- 2.21.701 and other rules - Leave of Absence without Pay, p. 141, 372
- 2.21.1001 and other rules - Parental Leave, p. 286, 571
- 2.59.1701 and other rule - Definitions - License Renewal of Mortgage Brokers and Loan Originators, p. 2959, 320
  
- (Public Employees' Retirement Board)
- I-III Implementation of Detention Officer Transfer to Sheriffs' Retirement System, p. 1329
- I-III Implementation of Detention Officer Transfer to Sheriffs' Retirement System, p. 725, 1021

- 2.43.441 and other rule - Transfer of Funds for Certain Service Purchases, p. 400, 913
- 2.43.1002 Investment Policy Statement for the Defined Contribution Retirement Plan, p. 1461
- 2.43.1801 and other rule - Plan Document and Investment Policy Statement for the 457 Deferred Compensation Plan, p. 1458

AGRICULTURE, Department of, Title 4

- I-III Cherry Research and Marketing Development Program, p. 771, 1279
- 4.13.1001A and other rule - State Grain Lab Fee Schedule, p. 775, 1280

(Montana Agriculture Development Council)

- 4.16.303 and other rules - Agricultural Marketing Development Program, p. 1532

STATE AUDITOR, Title 6

- I-XII Insurance Standards for Safeguarding Personal Information, p. 2435, 426
- I-XV Small Business Health Insurance Purchasing Pool - Premium Assistance and Premium Incentive Payments - Tax Credits, p. 1464
- 6.6.504 and other rules - Medicare Supplements, p. 1131, 1537
- 6.6.6811 and other rules - Captive Insurance Companies, p. 861

COMMERCE, Department of, Title 8

- I Submission and Review of Applications to the Treasure State Endowment Program (TSEP), p. 1539
- I Administration of the 2005-2006 Federal Community Development Block Grant (CDBG) Program, p. 1, 572
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