

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 23

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the proposed) NOTICE OF PUBLIC
adoption of New Rules I through) HEARING ON PROPOSED
V pertaining to credit) ADOPTION
counseling services)

TO: All Concerned Persons

1. On December 28, 2005, at 1:00 p.m., a public hearing will be held in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed adoption of New Rules I through V pertaining to credit counseling services.

2. The Department of Justice 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 5:00 p.m. on December 14, 2005, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401, (406) 444-2026, Montana Relay Service 711, fax (406) 444-3549, or e-mail cojensen@mt.gov.

3. The proposed New Rules provide as follows:

NEW RULE I LICENSE FEE (1) The required license fee will be \$5000. It must be paid every year on or before July 1.

AUTH: 30-14-2004, MCA
IMP: 30-14-2004, MCA

NEW RULE II BOND REQUIREMENT (1) The surety bond for a credit counseling service that maintains an office in this state with a credit counselor on the premises will be the same as one that does not maintain an office in this state with a credit counselor.

AUTH: 30-14-2004, MCA
IMP: 30-14-2004, MCA

NEW RULE III LIST OF ACCREDITATION AND CERTIFICATION PROVIDERS (1) Accreditation must meet the ISO 9001:2000 or council on accreditation for children and families standards as they pertain to credit counseling.

(2) Certification must be by:

(a) the association for financial counseling and planning education;

(b) the national foundation for credit counseling; or

(c) a college accredited by one of the six regional accreditation services, by taking a course worth at least three

semester credits covering credit counseling or debt management.

AUTH: 30-14-2004, MCA
IMP: 30-14-2004, MCA

NEW RULE IV OTHER REQUIREMENTS FOR A LICENSE (1) The department may refuse to issue or renew a licensee if the applicant has been fined or enjoined by any state, part of the federal government, or a United States territory.

AUTH: 30-14-2004, MCA
IMP: 30-14-2004, MCA

NEW RULE V CONSULTATION AND MAINTENANCE FEES (1) The initial consultation fee or donation shall not be more than \$75.

(2) The maintenance fee shall not be more than the lower of \$50 or 15% of the monthly payment.

(3) Any one time fee for any part of the credit counseling or debt management services, regardless of name, will be considered a part of the initial consultation fee. Any reoccurring fee for any part of the credit counseling or debt management services will be considered a part of the maintenance fee for the month it occurs in.

(4) Any fee charged for noncredit counseling or debt management services must be reasonable and cannot be tied in any way to providing credit counseling or debt management services.

AUTH: 30-14-2010, MCA
IMP: 30-14-2010, MCA

4. REASONABLE NECESSITY STATEMENT: It is necessary to adopt New Rules I, II, III and V to comply with and clarify new enacted laws 30-14-2004 and 30-14-2010, MCA, and to protect consumers from abuses in the consumer credit service industry. The Department was required to set fees and licensing requirements in order to pay for the program of enforcement and to curb abuses in the industry. The Department anticipates New Rule I will generate approximately \$75,000 in fees. This number is based upon the 15 consumer credit counseling services that have informed the state they intend to register. The generated fees will be used to implement the Department's new responsibilities under 30-14-2004 and 30-14-2010, MCA. New Rules I, II, III, and V reflect the Department's efforts to balance the safety of the consumers with the reasonable needs of the industry. New Rule IV is necessary to prevent companies with known problems and violations from opening a Montana business. This has been a frequent problem in this particular industry. Not adopting New Rule IV would require the Department to wait until a company harmed a Montanan before taking action, even if thousands of consumers were harmed by this company in another state.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written

data, views, or arguments may also be submitted to Cort Jensen, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401, and must be received no later than January 5, 2006.

6. Cort Jensen, Assistant Attorney General, has been designated to preside over and conduct the hearing.

7. The Department of Justice 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 of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Consumer Protection Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to Jon Ellingson, 215 N. Sanders, P.O. Box 201401, Helena, MT 59620-1401, faxed to the office at (406) 444-3549, ATTN: Jon Ellingson, e-mailed to jellingson@mt.gov, or may be made by completing a request form at any rules hearing held by the Department of Justice.

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

By: <u>/s/ Mike McGrath</u>	<u>/s/ Jon Ellingson</u>
MIKE McGRATH	JON ELLINGSON
Attorney General	Rule Reviewer
Department of Justice	

Certified to the Secretary of State November 28, 2005.

BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC
amendment of ARM 24.177.401) HEARING ON PROPOSED
pertaining to fees) AMENDMENT

To: All Concerned Persons

1. On December 29, 2005, at 1:00 p.m., a public hearing will be held in room 489 Park Avenue Building, 301 South Park, 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 Physical Therapy Examiners no later than 5:00 p.m., December 22, 2005, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Physical Therapy Examiners, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdp@mt.gov.

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

24.177.401 FEES (1) ~~The fees shall be Applicant and license fees~~ are as follows:

- (a) The fee Application for NPTE and or NPTE examination examinations are set by the examination administrator and is paid by the applicant directly to the federation of state boards of physical therapy (FSBPT) by either cashier's check or money order only \$285
 - (b) Application for out-of-state licensure 50 \$125
 - (c) Renewal 25 60
 - (d) remains the same.
 - (e) Temporary license 50 100
 - (f) Original license 25 100
 - (g) Jurisprudence re-examination (each retake) 5 25
 - (h) and (i) remain the same.
 - ~~(j) NPTE and NPTE test history verification~~ 55
 - (j) Verification for licensure 10
- (2) All fees are non-refundable.

AUTH: 37-1-134, 37-11-201, MCA
IMP: 37-1-134, 37-1-304, 37-1-305, 37-11-201, 37-11-304, 37-11-307, ~~37-11-308, 37-11-309~~, MCA

REASON: The Board of Physical Therapy has determined that there is reasonable necessity to amend ARM 24.177.401 in order to set the Board's fees at a level commensurate with program costs, as required by 37-1-134, MCA. In 2001, the Legislature mandated that the Board be attached for administrative purposes to the Department of Labor and Industry. The accounting allocations for the Board's costs have been restructured to track the actual time spent by Department staff in handling the Board's business. That accounting change was made by the Department in response to criticisms by some Boards of the cost allocations that had been historically used to calculate each Board's share of administrative costs. Similar concerns were independently voiced by the Legislative Audit Division, and the Department's decision to implement the accounting changes kept the Department from being "written up" by the legislative auditors. The Board respectfully notes that it and the Department, as part of the executive branch of government, have an obligation to be responsive to the concerns of the legislative branch. One portion of the fee increase is due to the more accurate and fair allocation of costs to the Board and its licensees. Another portion of the increase is attributable to normal increase in the cost of salaries, utilities, computer technology, and such. The Board estimates that the proposed increased fees will affect approximately 995 persons a year. The estimated annual increase in revenue is approximately \$41,750. With the proposed fee increases, the Board's projected annual revenue is \$77,050. The Board's appropriation for fiscal year 2005 was \$52,178 and for fiscal year 2006 is projected to be \$66,427. The Board does not receive any revenue for the NPTE or NPTAE examinations or verifications. Those fees are paid directly to the examination administrator. The Board believes that the proposed fee structure will address the Board's need to maintain fees at a level commensurate with costs.

The Board advises licensees and the public that it has researched the comparative fees of surrounding states. With the proposed fee increases, Montana fees are comparable to those charged by Colorado, Idaho, North Dakota, South Dakota, Oregon, Washington and Wyoming. The Board has not raised any fees for licensees in over ten years.

In addition, there is reasonable necessity to update and amend the IMP citations at this time while the rule is otherwise being amended. Sections 37-11-307 and 37-11-308, MCA, were repealed by Chapter 467, Laws of 2005 (HB 182).

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 Physical Therapy Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdtpt@mt.gov, and must be received no later than 5:00 p.m., January 6, 2006.

5. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at www.ptp.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 Physical Therapy Examiners 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 Physical Therapy Examiners administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Physical Therapy Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdp@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. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PHYSICAL THERAPY EXAMINERS
BRENDA MAHLUM, CHAIRPERSON

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

Certified to the Secretary of State November 28, 2005

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

In the matter of the	)	NOTICE OF PUBLIC HEARING
adoption of new rules I	)	ON PROPOSED ADOPTION,
through XLI, the amendment	)	AMENDMENT AND REPEAL
of 37.37.316 and 37.37.318)	
and the repeal of ARM)	
37.97.1001, 37.97.1002,)	
37.97.1006, 37.97.1011,)	
37.97.1013, 37.97.1014,)	
37.97.1016, 37.97.1018, and)	
37.97.1019 pertaining to)	
youth foster homes		

TO: All Interested Persons

1. On January 5, 2006, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption, amendment and repeal of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on December 27, 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 YOUTH FOSTER HOMES: PURPOSE (1) These rules establish licensing procedures and licensing requirements for youth foster homes, including therapeutic foster homes and kinship foster homes licensed by the department.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-102, 52-2-111, 52-2-112, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621 and 52-2-622, MCA

RULE II YOUTH FOSTER HOMES: DEFINITIONS The following definitions apply to youth foster home licensing rules:

(1) "Department" means department of public health and human services.

(2) "Foster child" means a person under 18 years of age who has been placed in a youth foster home by the department,

another state agency, a tribe, or a licensed child placing agency. A youth over the age of 18 may remain in foster care if still in secondary school.

(3) "Foster parent" means a person responsible for the day-to-day care, supervision, and guidance of children in a youth foster home.

(4) "Kinship foster home" means a youth foster home in which substitute care is provided by a member of the child=s extended family, a member of the child=s or family=s tribe, the child=s godparents, the child=s stepparents if the child is placed with the stepparent by the department, or a person to whom the child, child=s parents and family ascribe a family relationship and with whom the child has had a significant emotional tie that existed prior to the agency=s involvement with the child or family.

(5) "Secondhand smoke" or "environmental tobacco smoke (ETS)" is a mixture of the smoke given off by the burning end of a cigarette, pipe, or cigar, and the smoke exhaled by smokers.

(6) A "serious incident" includes, but is not limited to suicide attempts, use of physical force by a foster parent or any member of the foster parent=s household, sexual contact with the child by anyone, emergency medical treatment, injury to a foster child which requires hospitalization, physical assault by the foster child, involvement with law enforcement by any member of the foster parent=s household, including a foster child, or the death of a foster child.

(7) "Substitute care" or "foster care" means the full-time care of a child who is placed in a youth foster home by the department, another state agency, tribe, or licensed child placing agency for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment, to children who are removed from or who are without the care and supervision of their parents or guardians.

(8) "Therapeutic foster home" means a youth foster home operating under the direction of the clinical staff of a licensed child placing agency when such agency has a contract with the department to provide therapeutic foster care services. A therapeutic foster home provides substitute care to only one child unless it is approved by the department to provide care for a second child needing therapeutic services. The therapeutic foster home may provide services to a foster child who does not need therapeutic services only as provided in [RULE XXXII].

(9) "Youth foster home" or "foster home" means a youth care facility in which substitute care is provided to one to a maximum of six children or youth other than the foster parents= own children, stepchildren or wards.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-102, 52-2-111, 52-2-112, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621 and 52-2-622, MCA

RULE III YOUTH FOSTER HOMES: LICENSE REQUIRED

(1) Every youth foster home shall be licensed by the department or responsible tribal authority.

(2) Failure of a provider to obtain or renew a license while continuing to operate a youth foster home is a misdemeanor and shall be subject to the penalties provided in 52-2-623, MCA.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE IV YOUTH FOSTER HOMES: LICENSING PROCEDURES

(1) Application for a license must be made on an application form provided by the department.

(2) Upon receipt of a completed application packet for license or renewal of license and completion of a licensing assessment, the department shall determine if the applicant meets all requirements for licensure as established in these rules.

(3) If the department determines that an application or accompanying information is incomplete or erroneous, the department shall notify the applicant in writing of the specific deficiencies or errors, and the applicant shall submit the required or corrected information within 60 days. The department shall not issue a regular license or renew a license until it receives all required or corrected information.

(4) The applicant or licensee shall cooperate with the department in providing the information required by these rules.

(5) Failure to provide information the applicant or licensee is obligated to provide may result in the denial of the application, or if a license has been issued, may result in other negative licensing action.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE V YOUTH FOSTER HOMES: LICENSURE AND RENEWAL

(1) The department shall issue a youth foster home, kinship foster home, or therapeutic foster home license to any license applicant that the department determines meets all licensing requirements established by these rules. The license will expire one year from the date it is issued unless it is extended up to an additional 60 days pursuant to (3).

(2) For placement made on or after [effective date of rule], the number of children for whom a kinship foster home is licensed will be based in part on the number of children already residing in the home. There shall be a maximum of seven children residing in a kinship foster home at any one time unless an exception is made by the regional administrator to accommodate placement of a sibling group.

(3) The department shall renew the license annually on the expiration date of the previous year's license if:

(a) the foster parents apply for renewal of the foster home license on a form provided by the department at least 30 days prior to the expiration date of the current license; and

(b) following completion of a relicensing study, the department determines that the foster home continues to meet all licensing requirements established by these rules.

(4) If the foster parent submits a completed application packet for renewal of a license at least 30 days prior to the expiration of the license, but the department is unable to complete the relicensing study but makes a determination that the home is in compliance with the licensing requirements before the expiration date of the previous year's license, the previous year's license will continue in effect for no more than 60 days while the department completes the relicensing study.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE VI YOUTH FOSTER HOMES: PROVISIONAL LICENSURE

(1) The department may, at its discretion, issue a provisional license restricted for care of a specific child or children for any period up to four months to any license applicant for a youth foster home or kinship foster home which has:

(a) met all licensing requirements for fire safety;

(b) completed and signed a release of information form provided by the department;

(c) submitted completed fingerprint cards on all adult household members;

(d) a satisfactory child protective and adult protective services check for all adults present in the home; and

(e) agreed in writing to comply fully with all licensing requirements established by these rules prior to the expiration of the provisional license.

(2) The department may, at its discretion, renew a provisional license for no more than a two month period of time if the license applicant shows good cause for unintentional failure to comply fully with all licensing requirements within the time period covered by the prior provisional license.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE VII YOUTH FOSTER HOMES: RESTRICTED LICENSE (1) The department may issue a license that is restricted to the care of a specific child or children.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-

2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE VIII YOUTH FOSTER HOMES: DUAL LICENSE (1) If an applicant for a foster home or kinship foster home is a registered day care provider, or if a licensee wishes to become a registered day care provider, the regional administrator and the department's quality assurance division (QAD) must approve the dual license or registration.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, 52-2-721, 52-2-722 and 52-2-723, MCA

RULE IX YOUTH FOSTER HOMES: GRANTING LICENSURE EXCEPTIONS (1) An applicant against whom child abuse or neglect has been substantiated or who has been convicted of abuse, sexual abuse, neglect, or exploitation of an elderly person or person with a developmental disability shall be denied a foster care license unless an exception is granted by a department regional administrator in his discretion, after careful review of extenuating circumstances which justify the issuance of a restricted license.

(2) An applicant whose child has been in foster care shall be denied a foster care license, unless an exception is granted by a department regional administrator because the circumstances leading to the provision of services and placement no longer exist. This does not include an applicant whose children were in foster care prior to being placed with the applicant for adoption.

(3) No applicant shall be newly licensed as a youth foster home if any one of the following has occurred within 12 months of the application, unless an exception is granted by a department regional administrator:

(a) a death of a spouse or a child in the applicant's family;

(b) a marital separation or divorce of the applicants;

(c) an adoption of a child who has not been living with the applicants for at least one year;

(d) the birth of a child to the applicants; or

(e) loss of employment by an applicant.

(4) If any event described in (3) through (3)(e) occurs in a licensed foster home, the foster parents shall notify the licensing worker within 48 hours as required by [RULE XIV] and the licensing worker will reevaluate the home within 30 days to determine whether to recommend a change in the licensing status of the home.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-

2-622, MCA

RULE X YOUTH FOSTER HOMES: NEGATIVE LICENSING ACTION

(1) The department, through written notice to the applicant or licensee, shall deny, revoke, or restrict a license upon finding that:

(a) the applicant, licensee, or member of the applicant=s or licensee=s household, or anyone living on the foster home property has a conviction for a serious crime, such as but not limited to homicide, sexual intercourse without consent, sexual assault, aggravated assault, assault on a minor, assault on an officer, assault with a weapon, kidnapping, aggravated kidnapping, prostitution, robbery, or burglary;

(b) the applicant, licensee, or member of the applicant=s or licensee=s household, or anyone living on the foster home property has a conviction for a crime pertaining to children or families, including but not limited to child abuse or neglect, incest, child sexual abuse, ritual abuse of a minor, felony partner or family member assault, child pornography, child prostitution, internet crimes involving children, felony endangering the welfare of a child, felony unlawful transactions with children, or aggravated interference with parent-child contact; or

(c) the applicant, licensee, or member of the applicant=s or licensee=s household, or anyone living on the foster home property has within the previous five years had a felony conviction for a drug related offense, including but not limited to use, distribution, or possession of controlled substances, criminal possession of precursors to dangerous drugs, criminal manufacture of dangerous drugs, criminal possession of imitation dangerous drugs with the purpose to distribute, criminal possession, manufacture or delivery of drug paraphernalia, or driving under the influence of alcohol or other drugs; or

(d) the applicant, licensee, or member of the applicant's or licensee's household, or anyone living on the foster home property has been convicted of abuse, sexual abuse, neglect, or exploitation of an elderly person or a person with a developmental disability.

(2) The department, through written notice to the applicant or licensee, may deny, suspend, restrict, or revoke a license upon a finding that:

(a) the applicant, licensee, or member of the licensee's household or anyone residing on the foster home property has a conviction for misdemeanor partner/family member assault, misdemeanor endangering the welfare of a child, misdemeanor unlawful transaction with children, or a crime involving an abuse of the public trust;

(b) the foster home is not in compliance with fire safety standards;

(c) the foster home or foster parents are not in compliance with any other licensing requirements;

(d) the foster parent has made any material

misrepresentations to the department, either negligent or intentional, including an omission of information the foster parent is obligated to disclose to the department, regarding any aspect of the foster home;

(e) the foster parent has failed to use the foster care payments for the support of the foster child;

(f) the foster parent has been named as the perpetrator in a substantiated report of abuse or neglect;

(g) the foster parent failed to report an incident of suspected abuse or neglect of any child to the department as required by 41-3-201, MCA, within 24 hours of receiving information pertaining to the incident;

(h) the results of a psychological or medical examination provide reasonable grounds for the department to believe that the foster parent is not an appropriate caretaker for a child; or

(i) the foster parents or anyone living in the foster home or on foster home property may pose any risk or threat to the safety or welfare of a child placed in the foster home.

(3) The foster home has failed to protect the health, welfare, or safety of a child or the foster home presents a threat to the health, welfare, or safety of a child.

(4) A foster care license may be suspended, restricted, or revoked at the discretion of a department regional administrator if the licensee's child is placed in foster care.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 2-4-631, 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XI YOUTH FOSTER HOMES: REMOVAL OF A CHILD (1) The department may immediately remove a child from a foster home at any time it determines that another placement is more appropriate or that there is a need to protect the child from possible harm.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XII YOUTH FOSTER HOMES: HEARING PROCEDURES (1) Any applicant or licensee against whom the department takes negative licensing action regarding a youth foster home, kinship foster home, or therapeutic foster home license may request a hearing as provided in ARM 37.5.304, 37.5.307, 37.5.313, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 2-4-102, 2-4-623, 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XIII YOUTH FOSTER HOMES: CONFIDENTIALITY OF RECORDS AND INFORMATION

(1) All information in records maintained in a youth foster home and all personal information made available to a foster parent pertaining to an individual child and the child's family must be kept confidential unless a written court order authorizes the release of the information. The confidentiality requirement continues after the child is no longer in the home. The confidentiality requirement also applies to information a foster parent receives about foster children placed with other foster parents, whether the information is received in a support group setting or otherwise.

(2) All requests for records or information maintained by a youth foster home which pertain to an individual child or the child's family must be referred to the department or, if applicable, to the agency that placed the child. The department may authorize the release of information from the foster home; the foster home may not.

(3) All records pertaining to individual children placed by the department are available at any time to the department or its representatives.

(4) Records pertaining to individual children residing in the home but not placed by or in the custody of the department are available to the department for the purposes of licensing or relicensing the youth foster home.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 41-3-205, 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XIV YOUTH FOSTER HOMES: REPORTS OF CHANGE IN COMPOSITION OF FOSTER HOME

(1) Foster parents shall notify the department licensing worker or supervisor, and if applicable, the child placing agency's licensing worker under whose jurisdiction the foster home operates, within 48 hours of:

- (a) a death of a spouse or a child in the foster family;
- (b) a marital separation or divorce of the foster parents;
- (c) an adoption of a child who has not been living with the foster parents for at least one year;
- (d) the birth of a child to the applicants; or
- (e) loss of employment by an applicant.

(2) At least 30 days prior to moving, foster parents shall report a planned change of residence to the department licensing worker or supervisor and, if applicable, to the child placing agency under whose jurisdiction the foster home operates. The licensing worker assigned to the family will evaluate the new residence for compliance as soon as possible but not more than 10 calendar days after the move to the new residence.

(3) Foster parents shall provide notice to the department licensing worker or supervisor and, if applicable, the child placing agency under whose jurisdiction the foster home operates:

- (a) before agreeing to accept formal or informal placement

of any child, including placement of an exchange student, when such placements have been arranged without prior approval of the agency which conducted the foster home licensing study;

(b) within one working day of any changes in household composition; and

(c) within 30 days of a change in employment.

(4) If a foster parent is unwilling or unable to care for a child who is placed in the foster parent's care, the foster home shall notify the child's worker immediately. The foster parent is not authorized to make his own arrangements for care of the child, except for respite care.

(5) A foster parent may not accept a child into the household without prior notice to the department and the prior approval of the department.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XV YOUTH FOSTER HOMES: REPORTS OF SUSPECTED CHILD ABUSE OR NEGLECT

(1) As required by 41-3-201, MCA, foster parents shall report any incident of known or suspected child abuse or neglect of any child to the department's centralized intake bureau at 1(866)820-5437. Foster parents shall make the report within 24 hours of receiving information concerning suspected child abuse or neglect.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 41-3-201, 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XVI YOUTH FOSTER HOMES: REPORTS OF SERIOUS INCIDENTS AND THREATS

(1) Foster parents shall immediately report any serious incident involving a foster child to the person or agency which placed the child and to the department licensing worker.

(2) Foster parents shall complete a written incident report on a form provided by the department of any serious incident involving any child in the home. The report shall include the date and time of the incident, the child involved, the nature of the incident, description of the incident and the circumstances surrounding the incident. A copy of the report shall be maintained at the foster home and a copy sent to the department licensing worker the next working day.

(3) Foster parents shall immediately report any foster child who has run away from home to the police and shall report the runaway to the agency which placed the child within the next working day.

(4) Foster parents shall report disasters or emergencies which require evacuation of a foster home to the department's centralized intake bureau at 1(866)820-5437.

(5) Foster parents shall report any threats to the health, welfare, or safety of a child at the time of the license application or within the next working day after becoming aware of the threat.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 2-4-631, 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XVII YOUTH FOSTER HOMES: REPORTS OF DISCIPLINE VIOLATIONS (1) If a foster parent or other household member physically disciplines a foster child as described in [RULE XXXIV] or violates any other portion of that rule, the foster parent must notify the agency that placed the child and the department licensing worker or supervisor of the violation by the next working day. The foster parent must then complete a written report on a form provided by the department and must submit it to both the person or agency which placed the child and to the department licensing worker or supervisor within 48 hours of giving notice of the violation.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

Rule XVIII YOUTH FOSTER HOMES: GENERAL REQUIREMENTS FOR FOSTER PARENTS AND OTHER HOUSEHOLD MEMBERS (1) Foster parents must:

- (a) be at least 18 years of age;
- (b) be physically, mentally and emotionally competent to care for children;
- (c) like and understand children;
- (d) be in good general health;
- (e) be of good moral character;
- (f) be able to demonstrate the foster home has sufficient resources to meet the needs of their existing family, independent of foster care reimbursements;
- (g) comply with state laws including those that relate to the possession or use of drugs, alcohol, tobacco, and firearms; and
- (h) have lived together for at least 24 months unless an exception is granted by a department regional administrator.

(2) No person residing in or visiting the foster home may pose a risk or threat to the safety and well being of children in the home.

(3) The foster home shall protect the foster child from exposure to sexual or violent language and behavior inappropriate to the child's age, including but not limited to physical activity, visual or other media depictions, and music, including lyrics.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-

2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XIX YOUTH FOSTER HOMES: HEALTH VERIFICATION REQUIREMENTS FOR FOSTER PARENTS AND OTHER HOUSEHOLD MEMBERS

(1) A personal statement of health form provided by the department must be completed for each person in the applicant's household. The form must be submitted to the department with the initial licensure application and a new form must be submitted prior to relicensure.

(2) Any person staying in the foster home for more than two weeks must complete a personal statement of health form provided by the department. If the person is an adult, the person must also complete a release of information form provided by the department. The completed forms are to be submitted to the department licensing worker.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XX YOUTH FOSTER HOMES: PRESCHOOL AGE CHILD IMMUNIZATION REQUIREMENTS

(1) All children residing in the foster home under five years of age shall be immunized according to the following schedule:

Total Immunizations Required, By Age

<u>Age</u>	<u>Number Doses - Vaccine Type</u>
under 2 months old	no vaccinations required
by 3 months of age	1 dose of polio vaccine 1 dose of DTP vaccine 1 dose of Hib vaccine
by 5 months of age	2 doses of polio vaccine 2 doses of DTP vaccine 2 doses of Hib vaccine
by 7 months of age	2 doses of polio vaccine 3 doses of DTP vaccine *2 or 3 doses of Hib vaccine
by 16 months of age	2 doses of polio vaccine 3 doses of DTP vaccine 1 dose of MMR vaccine, administered no earlier than 12 months of age *1 dose of Hib vaccine given after 12 or 15 months of age

by 19 months of age	1 dose of varicella vaccine
	3 doses of polio vaccine
	4 doses of DTP vaccine
	1 dose MMR vaccine, administered no earlier than 12 months of age
	*1 dose of Hib vaccine given after 12 or 15 months of age

(*) varies depending on vaccine type used.

(2) If the child is at least 12 months old but less than 60 months of age and has not received any Hib vaccine, the child must receive a dose.

(3) Documentation of each required vaccination must include the date of birth and the month, day, and year of each vaccination.

(4) Hib vaccine is not required or recommended for children five years of age and older.

(5) Doses of MMR vaccine, to be acceptable under this rule, must be given no earlier than 12 months of age. A child who received a dose prior to 12 months of age must be revaccinated.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622 and 52-2-735, MCA

RULE XXI YOUTH FOSTER HOMES: SCHOOL AGED CHILD IMMUNIZATION REQUIREMENTS (1) All children residing in the foster home under 12 years of age shall be immunized in accordance with the following standards:

<u>Vaccine</u>	<u>Dosages Required by Age</u>
Polio	Each child must receive at least three doses of polio vaccine, one of which is administered after age four.
DTP or DTaP	Each child must receive at least four doses of DTP or DTaP (diphtheria, tetanus, and pertussis) vaccines by age four and one dose of Dtap after age four but before age seven, unless a licensed health care provider has issued a medical exemption for the pertussis portion of the DTP or DTaP vaccine. If a medical exemption has been issued for pertussis, the child must receive at least four doses of DT vaccine or a combination of four doses of DT, DTP, and DTaP vaccines before age four and one dose of the DT vaccine after age four but before age seven.

Because neither DTP nor DTaP vaccines are

recommended or required for a child older than age seven, a child in the foster home age seven or older who has not received the four doses of DTaP or DTP vaccinations described above must receive a Td vaccine (tetanus and diphtheria vaccine intended for persons seven years of age or older) as soon as possible and must then receive sufficient additional Td doses to reach a minimum of three doses of any combination of DTP, DTaP, DT, or Td containing vaccine.

Hib Each child must receive one dose of Hib vaccine (Haemophiles influenza type B) disease on or after the child's first birthday. However, an Hib vaccination is not recommended or required for a child age five or older who has not previously received one.

Td Each child in the foster home must receive a Td (tetanus diphtheria containing vaccine intended for children younger than seven years of age) booster shot unless the child has had a DTP, DTaP, DT, or Td shot within the previous five years or the child received a Td shot at seven years of age or older.

(2) The immunization history may be recorded on the Montana certificate of immunization form provided by the department or a physician or clinic may provide immunization record which includes:

- (a) the name of the physician or clinic;
- (b) the name and birth date of the child; and
- (c) the date and type of immunization.

(3) The immunization information is to be kept on file in both the foster home and the licensing file.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 20-5-403, 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XXII YOUTH FOSTER HOMES: CRIMINAL BACKGROUND CHECKS (1) A satisfactory criminal background, motor vehicle, and child and adult protective services check is required for each person living in the household or on the foster home property.

(2) A new applicant must submit a completed fingerprint card so that a fingerprint based criminal records check can be requested.

(3) If a new applicant who has lived only in Montana cannot be successfully fingerprinted or if two fingerprint cards

cannot be successfully read by the department of justice, a Montana name based criminal records check will be used for applicants who have not lived in a state other than Montana.

(4) If an applicant who has lived in states other than Montana cannot be successfully fingerprinted, or if two fingerprint cards cannot be successfully read by the department of justice, a Montana name based criminal records check will be completed, and:

(a) a criminal history check will be requested from every state in which an applicant has lived in the past 15 years;

(b) a check will be made of the violent offender and criminal history registries in those states if this information is available for states in which the applicant has lived; and

(c) if after 45 days, the department has been unable to obtain results of a criminal records check for an applicant who has lived in Montana for at least five years, the applicant must sign an affidavit attesting to his lack of criminal history or to the details of existing criminal history. The affidavit will be accepted in lieu of results from a criminal history check.

(5) An annual name based criminal records check and a motor vehicle check for licensed foster parents are required for relicensure.

(6) Persons formerly licensed as foster parents will be treated as new applicants if the former foster parents have not been licensed for a period of more than one year or if the foster parents have lived out of state for any period of time since being licensed in Montana.

(7) If an applicant has children, a child protective services check will be requested from all states in which an applicant has lived since the birth date of the applicant's oldest child.

(8) If an applicant does not have children, a child protective services check will be requested from all states in which the applicant has lived in the previous 15 years.

(9) If after 45 days the department has been unable to obtain results from a child protective services check, the applicant must sign an affidavit attesting to his lack of child protective services history or to the details of existing child protective services history. The affidavit will be accepted in lieu of receipt of child protective services history results.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XXIII YOUTH FOSTER HOMES: PSYCHOLOGICAL AND MEDICAL EXAMINATIONS (1) The department may require a psychological evaluation or medical examination, and/or a signed authorization for release of medical or psychological records from:

(a) any person applying for licensure as a foster parent, or any member of the household of a person applying for licensure as a foster parent; or

(b) any foster parent or any member of a foster parent's household.

(2) The results of a psychological or medical examination may be considered in determining whether an applicant or licensee meets licensing requirements and may be relied upon as a basis for negative licensing action.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XXIV YOUTH FOSTER HOMES: GENERAL PROGRAM REQUIREMENTS (1) The foster parents shall not accept more children than the number specified on the license.

(2) The foster parents must arrange for appropriate child care for every child in foster care when the child is not being cared for by a foster parent.

(3) The foster parent shall provide appropriate care including:

(a) regular, well balanced meals, an adequately maintained and furnished home, clothing, and supervision of child's health and dental care;

(b) personal care, supervision, and attention appropriate to each child's age, needs, and level of functioning;

(c) opportunities for educational, social, and cultural growth, through suitable reading materials, toys, and equipment; and

(d) associations with peer groups and opportunities for experiences in school and community.

(4) The foster parents shall teach each foster child personal care, hygiene, and grooming, and shall provide each child with the necessary supplies.

(5) Money earned by a child or received as a gift or allowance is the child's personal property and must be accounted for separately from foster home funds.

(6) The foster parents, in conjunction with the supervising worker, shall distinguish between tasks which children are expected to perform as part of living together, jobs to earn spending money, and jobs performed for vocational training.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-102, 52-2-111, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621 and 52-2-666, MCA

RULE XXV YOUTH FOSTER HOMES: COOPERATION OF FOSTER PARENTS (1) The foster parents shall cooperate with the placing agency and participate in case conferences and in-service training. Foster parents shall implement decisions made by the department regarding the child and shall support the department's permanent plan for the child.

(2) The foster parents shall permit and encourage contact and visitation between the foster child and the child's birth or legal family, including parents and siblings, except in those cases where a restriction of visitation is part of a court order or the written case plan.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-102, 52-2-111, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621 and 52-2-666, MCA

RULE XXVI YOUTH FOSTER HOMES: CHILD EDUCATION AND TRAINING

(1) The foster parents shall cooperate with the placing agency and, when appropriate, the birth or legal parents, in providing or arranging an age appropriate education, employment, or training program appropriate for each child that addresses the child's needs in the areas of social living, sex education, consumer education, career planning, and preparation for independent living.

(2) The foster parents shall assure that all children attend a public school unless otherwise approved by the department.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-102, 52-2-111, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621 and 52-2-666, MCA

RULE XXVII YOUTH FOSTER HOMES: CHILD RELIGIOUS AND CULTURAL EXPRESSION

(1) Each child in foster care shall have the opportunity to voluntarily practice his religion. Foster parents shall allow each child to attend available religious services of the child's or birth parent's choice in the community and to visit with representatives of the child's faith.

(2) Foster parents shall respect the religious beliefs or practices of the children placed in their home.

(3) Each child shall be given the opportunity to identify with his own cultural heritage and shall be encouraged to do so.

(4) Participation or nonparticipation by the child in religious activities of the child or foster family shall not be used as a form of discipline.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-102, 52-2-111, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621 and 52-2-666, MCA

RULE XXVIII YOUTH FOSTER HOMES: CHILD CLOTHING (1) The foster parents shall ensure that each child is supplied with his own clothing suitable to the child's age and size.

(2) Clothing shall be comparable to the clothing of other children in the community.

(3) Children shall be given appropriate choice in the selection of their clothing.

(4) The foster parent shall inventory the child=s clothing and other possessions when the child is placed in the foster home and again at the time of discharge from the foster home.

(a) All clothing or other items specifically purchased for or given to the child shall be added to the inventory list;

(b) All of the child=s clothing and other possessions shall be sent with the child to any subsequent placement, including a return to the child=s home;

(c) Foster parents shall maintain receipts for clothing purchased with funds provided by the department; and

(d) Foster parents shall provide the clothing receipts and the inventory list at any time upon request of the department and shall provide the receipts and inventory to the child=s social worker when the child leaves the foster home.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XXIX YOUTH FOSTER HOMES: CHILD PRIVACY RIGHTS (1) The foster parents shall allow privacy for the child and shall provide appropriate sleeping arrangements, separate storage space for clothing and personal articles, and a place to display the child's socially appropriate creative works and symbols of identity.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-102, 52-2-111, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621 and 52-2-666, MCA

RULE XXX YOUTH FOSTER HOMES: SLEEPING ARRANGEMENTS AND REQUIREMENTS (1) Each foster child must sleep in a room designated as a bedroom that provides for privacy.

(2) Any room in which the child sleeps must have a window sufficiently large for an adult to enter or exit in an emergency.

(3) Children of the opposite sex who are five years of age or older must not share a bedroom.

(4) Children over 24 months of age may not routinely sleep in the same room with an adult unless approved by the department foster care licensing supervisor.

(5) A foster parent shall sleep within call of all foster children during the night or must use a baby monitor or other intercom system that will alert the foster parent to the child's call.

(6) Each child must be provided with the child=s own bed, which must be at least 30 inches wide and of a length which is adequate for the child=s height.

(7) A child under the age of four may be provided with a toddler bed which must use a standard crib mattress, be at least 28 inches wide, and have a length adequate for the child's height.

(8) Children under age two must sleep in a crib. Cribs must have a snug fitting mattress and there must not be more than 2 and 3/8 inches of space between the vertical slats.

(9) Each bed or crib must have adequate bedding.

(10) Bunk beds more than two bunks high are prohibited. If bunk beds are used, the upper bunk must have a guardrail. Upper bunks must not be used by children under eight years of age.

(11) Each child must be provided with space in a closet, locker, or dresser for clothing and personal belongings located in his sleeping area.

(12) When placement in a kinship foster home is determined to be in a child's best interests, a regional administrator may approve a requested exception to one or more provisions of this rule on a case by case basis.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XXXI YOUTH FOSTER HOMES: YOUTH INDEPENDENT LIVING PROGRAM, JOB TRAINING AND EMPLOYMENT

(1) The foster parents shall cooperate with the department's independent living program staff and contractors to ensure that eligible youth in foster care are encouraged and assisted to access services and benefits offered under the department's independent living program.

(2) The foster parents shall assist the placing agency, the youth, and the independent living program staff and contractors in developing an appropriate transitional plan for each youth age 16 or older.

(3) The foster parents shall encourage and assist each teenage youth to prepare for the transition from foster care to independent living.

(4) The foster parents shall assist the placing agency, the youth, and the independent living program staff and contractors in developing the youth's job readiness skills and, when appropriate, assisting the youth in locating employment.

(5) The foster parents shall assist youth in exploring postsecondary educational opportunities.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-102, 52-2-111, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621 and 52-2-666, MCA

RULE XXXII YOUTH FOSTER HOMES: THERAPEUTIC FOSTER HOMES

(1) Therapeutic foster parents must meet all requirements for regular foster parents set forth in this rule, the

requirements set forth in ARM 37.37.101, et seq., and the additional requirements in this rule and [Rule XLII].

(2) Therapeutic foster parents are in home treatment providers who, in addition to carrying out usual family foster parent responsibilities, implement treatment strategies and provide treatment interventions under the supervision of a therapeutic foster care agency's clinical staff according to the child's individual treatment plan.

(3) Therapeutic foster care requires the availability of one parent to provide 24 hour per day supervision to deliver therapeutic services as needed. Parenting skills must be sufficient to meet the level of therapeutic foster care being provided, including being adequate to address the needs of the emotionally disturbed youth in the areas of behavior management, supportive counseling, and implementation of the treatment interventions identified in the child's individual treatment plan.

(4) One foster parent of a preschool age foster child placed in a therapeutic foster home must not be employed outside of the home unless a written exception is made by a department regional administrator.

(5) If child care arrangements are made for a child receiving therapeutic foster care for any reason, including to allow a foster parent to work or in order to provide socialization opportunities for the child, such arrangements must be approved by the child's treatment team to ensure they meet the therapeutic needs of the child.

(6) A child receiving therapeutic foster care may not be placed in child care in excess of four hours per day without the written approval of a department regional administrator.

(7) Therapeutic foster parents are members of the youth's treatment team and must participate in treatment team meetings.

(8) Therapeutic foster parents must regularly document the youth's progress toward achievement of the individual treatment plan. This documentation must be put in writing and must be incorporated into the youth's case file within 30 days.

(9) The department may approve the placement of children who are not approved for therapeutic foster care services with youth receiving therapeutic foster care services when:

(a) placement in the therapeutic foster home will maintain an intact sibling group;

(b) placement in the therapeutic foster home will maintain a parent/child relationship when the parent is a youth who is receiving therapeutic foster care services;

(c) moving a child who was previously placed in the therapeutic foster home but is not receiving therapeutic foster care services is determined by the department to not be in the best interests of the child; or

(d) the department and treatment team determine that a kinship placement is appropriate and an exception is granted by the regional administrator.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-

2-622, MCA

IMP: Sec. 52-1-103, 52-2-102, 52-2-111, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621 and 52-2-666, MCA

RULE XXXIII YOUTH FOSTER HOMES: PHYSICAL CARE OF CHILDREN (1) The foster parents must work with the placing agency to ensure that the child's medical needs are met.

(2) Every foster child shall have an identified physician.

(3) Medical and dental care, including examinations and treatment, shall be obtained for children as needed.

(4) The foster parents, in consultation with the placing worker, shall arrange for each child to have a complete early periodic screening, diagnosis, and treatment (EPSDT) well child examination within 30 days of placement in foster care. Subsequent examinations must be completed yearly thereafter unless more frequent examinations are recommended by the child's physician.

(5) A child two years of age or older who has not had a dental examination within a year prior to placement in foster care shall have one within 90 days after admission. Reexamination shall be done at least annually unless more frequent examinations are recommended by the child's dentist.

(6) Psychiatric, psychological, and counseling services, including diagnosis and treatment, shall be obtained for each child as determined necessary by the placing agency.

(7) The foster parents must keep the placing agency apprised of illnesses of each foster child which require medical attention and the results of examinations, tests, and treatment recommended for each child.

(8) All medication shall be kept in the original containers labeled with the original prescription labels in a place inaccessible to children.

(9) All medication shall be given as prescribed unless a licensed health care provider rescinds the prescription or otherwise modifies it. The foster parent shall notify the child's case worker of any changes in medication.

(10) All children residing in the home under 12 years of age shall be immunized in accordance with [Rules XX and XXI]. Any child with a history of measles is considered immunized against measles.

(11) The medical and immunization history of the child will be recorded on forms provided by the department and kept on file in both the foster home and the placing agency.

(12) In an emergency, the foster parents shall make arrangements for emergency care at a nearby hospital, clinic, or doctor's office and, as soon as possible thereafter, shall notify the placing agency.

(13) When a preschool child with special needs is in foster care, one of the foster parents should not be employed outside of the home. An exception may be granted by a regional administrator.

(14) Foster parents must not provide tobacco products in any form to children under the age of 18 who are placed in the

foster home.

(15) Foster parents must not allow children placed in the foster home to be exposed to secondhand smoke in the foster parents' home or vehicle.

(16) Nothing in (14) or (15) is meant to interfere with traditional or Native American ceremonies involving the use of tobacco.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XXXIV YOUTH FOSTER HOMES: DISCIPLINE (1) Foster parents shall use discipline appropriate to the child's age and developmental level. The foster parents' approach to discipline must be positive.

(2) The foster parents shall not use spanking or other forms of physical punishment or any other disciplinary technique which is humiliating, shaming, cruel, capricious, frightening, or otherwise damaging to a child.

(3) No child in care shall be subjected to any form of abuse.

(4) No child in care shall be subjected to verbal abuse, derogatory remarks about himself or members of his family, or threats to expel the child from the foster home.

(5) No child in care shall be deprived of meals, mail, or family visits as a method of discipline.

(6) Foster parents shall not punish children for bed wetting or any other toilet training issue.

(7) Children must not be placed in a locked room.

(8) Participation or nonparticipation by the child in religious activities of the child or the foster family shall not be used as a form of discipline.

(9) Medication or withholding of prescribed medication shall never be used to discipline or threaten children.

(10) If a foster parent or other household member is involved in any physical discipline of a foster child or any other violation of this rule, the foster parent must report the violation as required in [Rule XVII].

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-102, 52-2-111, 52-2-112, 52-2-113, 52-2-115, 52-2-601, 52-2-603, 52-2-621 and 52-2-622, MCA

RULE XXXV YOUTH FOSTER HOMES: ENVIRONMENTAL AND SAFETY REQUIREMENTS (1) The home and its premises shall be comparable to other residences of the community and neighborhood in which it is located.

(2) The home must be built or manufactured for the purpose of full-time residency.

(3) Every interior door shall be designed to permit the

opening of the locked door from the outside in an emergency.

(4) Protective plugs shall be installed on electrical outlets in all homes occupied by foster children under five years of age.

(5) The foster parents shall keep the home clean and in good repair and the premises shall be kept free from objects, materials, and conditions which constitute a danger to the occupants.

(6) The foster parents must protect any foster child from any threat to a child's health, welfare or safety in the neighborhood.

(7) All foster homes shall be equipped with a telephone. Telephone numbers of the placing agency, hospital, police department, fire department, ambulance, and poison control center must be posted by each telephone.

(8) The foster home must have an adequate and safe sewage disposal system.

(9) If the home's water supply is not from a municipal system, the foster home must arrange to, at a minimum, have a basic screen water test conducted at least annually through the Department of Public Health and Human Services, Public Health and Safety Division, Laboratory Services Bureau, Environmental Laboratory Section, Cogswell Building, 1400 Broadway, Room B-204, Helena, Montana 59620 to ensure that the water supply remains safe for human consumption. Documentation of the test results must be provided to the licensing worker.

(10) Children shall not be exposed to paint containing lead in excess of .06%.

(11) Cleaning materials, flammable liquids, detergents, aerosol products, and other poisonous and toxic materials shall be kept in their original containers or shall be clearly labeled with both symbols and words indicating that the contents are hazardous. Such substances shall be kept in a place inaccessible to children and shall be childproofed, if possible. They shall be used in such a way that will not contaminate play surfaces, food, food preparation areas, or constitute a hazard to the children.

(12) Any pet or animal present at the home with the foster parents' permission shall not pose a threat to the safety or well being of any child placed in the home.

(a) The pet or animal shall show no evidence of carrying disease.

(b) Documentation provided by a veterinarian verifying that any pet or animal belonging to the foster parents and present at the home is in good health must be provided to the department upon request.

(c) Foster parents are legally and financially responsible for the actions and any resulting injuries that may be caused by any animal allowed in or around the foster home.

(13) Guns and ammunition shall be kept in locked storage with guns stored separately from ammunition. Guns kept in vehicles shall be locked in the glove compartment or gun rack, shall be unloaded, and ammunition must be kept locked in a separate location in the vehicle.

(14) Any outdoor play area shall be maintained hazard free. If any part of the play area is adjacent to a well, machinery, road, drainage ditch, holes, or other hazardous areas, the play area shall be enclosed with fencing or natural barriers when preschool children are in placement to restrict the children from these areas.

(15) Outdoor equipment, such as climbing apparatus, slides, swings, and trampolines, shall be anchored firmly and placed in a safe location. A responsible adult must be present and directly observing any activity of a foster child on a trampoline at all times.

(16) The foster parents shall make swimming and wading pools and swimming areas inaccessible to children except when directly supervised by a responsible adult.

(17) Foster children may not participate in high risk activities including, but not limited to hunting, snowmobiling, four-wheeling, or rock climbing without written consent of the licensing supervisor and, where appropriate, the birth parents.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XXXVI YOUTH FOSTER HOMES: FIRE SAFETY REQUIREMENTS

(1) There shall be two unobstructed means of exit from all sleeping areas occupied by foster children. Foster parents must prepare a written plan to rescue children if the primary means of exit is blocked.

(2) Foster parents must devise a plan for everyone in the home to exit the home in emergencies and must teach the plan to children placed in the home. There must be regular fire drills at different times of the day and night.

(3) A working smoke detector which is properly maintained and regularly tested shall be located in each bedroom and in the hallway leading to the bedroom with at least one smoke detector on each level of the foster home.

(4) Each foster home must have a workable portable fire extinguisher with a minimum rating of 2A10BC. Extinguishers shall be readily accessible and shall be mounted.

(5) No portable unvented fuel-fired heating devices such as portable kerosene or oil heaters are allowed.

(6) No extension cord shall be used as permanent wiring.

(7) All woodburning stoves, pellet stoves, and fireplace inserts must meet building codes for the installation and use of such stoves. If the department identifies a possible concern regarding safety of a wood stove or fireplace, the department may require the foster home to have an inspection conducted to certify that it meets applicable codes.

(8) Upon request of the department, the state fire marshal or his designee shall inspect any home for which a license is applied or issued and shall report its findings to the department.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA
IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XXXVII YOUTH FOSTER HOMES: TRANSPORTATION

(1) Foster parents and any person transporting foster children with the foster parents' permission shall possess a valid driver's license and shall meet at least the minimum liability insurance coverage requirements set by state law.

(2) All doors on vehicles must be locked whenever the vehicle is in motion.

(3) No vehicle shall begin moving until all children are seated and secured in age appropriate safety restraints which must remain fastened at all times the vehicle is in motion.

(4) Foster parents must request and receive written travel authorization before taking any child placed by the department:

- (a) out of the county;
- (b) out of the state; or
- (c) out of the country.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA
IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XXXVIII YOUTH FOSTER HOMES: REQUIRED TRAINING

(1) Each applicant shall attend an orientation and preservice training of not less than 18 hours prior to issuance of a regular license.

(2) The foster parents must obtain a total of at least 15 hours of training for relicensure. Training must be documented on a form provided by the department.

(3) The department will provide the foster parents notice that documentation of the training requirements is due in the materials provided by the department for relicensure.

(a) If the foster parents fail to obtain the required training hours, the license will be restricted to the care of the children in the home at the time until such time as the required training hours have been successfully completed; or

(b) If there are no children in the foster home, the license will be deemed automatically suspended until such time as the required training hours have been successfully completed.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA
IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XXXIX YOUTH FOSTER HOMES: TRAINING EXEMPTIONS

(1) An exemption to the required orientation and preservice training must be approved by a department regional administrator.

(2) An exemption to the required 15 hours of training for

relicensure must be approved by a department regional administrator.

(3) Exemptions to any training requirement must be written and a copy maintained in the licensing file.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XL YOUTH FOSTER HOMES: REQUIRED TRAINING TOPICS (1) Annual training is intended to help the foster parents gain further understanding regarding such issues as child maltreatment, child growth and development, family dysfunction, permanency planning, emergency or long term medical needs of children, and age appropriate preparation of youth for independent living.

(2) Training must be provided or approved by the department and may include training on the following topics:

- (a) separation and grieving;
- (b) loss and attachment;
- (c) alternatives to physical discipline and an explanation of the department's policy on physical discipline;
- (d) positive parenting techniques;
- (e) the department's and foster parents' roles and responsibilities;
- (f) biological family rights and responsibilities;
- (g) how and why children come into foster care;
- (h) types and behaviors of children in foster care;
- (i) placement process;
- (j) confidentiality;
- (k) sexual abuse;
- (l) drugs and alcohol;
- (m) interpersonal communications;
- (n) foster parent insurance; and
- (o) other topics approved by the department.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

RULE XLI YOUTH FOSTER HOMES: REQUIRED TRAINING FOR THERAPEUTIC FOSTER HOMES (1) Therapeutic foster parents must each complete 18 hours of orientation and preservice training and 15 hours of training described in (2)(a) and (b) before initial licensure.

(2) Each year thereafter, therapeutic foster parents must each complete a total of 30 hours of annual training that may include training in the general areas identified in [RULE XL(2)], but which must also include a minimum of 15 hours of training directly related to:

- (a) the special needs of youth with emotional disturbances receiving treatment for their emotional disturbance in a

treatment family environment; and

(b) the use of nonphysical methods of controlling youth to assure the safety and protection of the youth and others.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

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

37.37.316 THERAPEUTIC FAMILY CARE, TREATMENT PARENTS

(1) The therapeutic family care agency recruits, trains and supervises treatment parents. In addition, the therapeutic family care agency recommends treatment families for licensure by the department, as specified under ARM 37.93.716. Therapeutic foster parents must meet all licensing requirements set out in [Rules I through XLI].

(2) Therapeutic treatment parents are in home treatment providers who, in addition to carrying out usual family foster parent responsibilities, implement treatment strategies and provide treatment interventions under the supervision of the therapeutic family care agency's clinical staff according to the youth's individual treatment plan.

(3) Therapeutic family care requires one parent be available to provide 24 hour per day supervision and be able to deliver therapeutic services as needed. Parenting skills must be appropriate to the level of therapeutic family care being provided and adequate to deal with the needs of emotionally disturbed youths in the areas of behavior management, supportive counseling, and implementation of the treatment interventions contained in the youth's individual treatment plan.

(4) Treatment parents providing intensive level therapeutic family care must be able to provide routine guidance to the mental health assistant to ~~assure~~ ensure that these services support the goals and objectives of the youth's individual treatment plan.

(5) Treatment parents are members of the youth's treatment team and must be available to participate in treatment team meetings.

(6) Treatment parents must regularly document the youth's progress toward achievement of the individual treatment plan. This documentation must be in writing and incorporated as documented into the youth's case file every 30 days.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

37.37.318 THERAPEUTIC FAMILY CARE, MEDICAL NECESSITY,

ADDITIONAL TRAINING REQUIREMENTS (1) Treatment parents must complete orientation and training as described in ~~ARM 37.97.1019~~ [Rules XXXVII through XLI].

(2) ~~Treatment parents and~~ Mental health assistants must receive a minimum of 15 hours of training annually directly related to:

(a) the special needs of youth with emotional disturbances receiving treatment for their emotional disturbance in a treatment family environment; and

(b) the use of nonphysical methods of controlling youth to ~~assure~~ ensure the safety and protection of the youth and others.

AUTH: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

IMP: Sec. 52-1-103, 52-2-111, 52-2-601, 52-2-621 and 52-2-622, MCA

4. The rule 37.97.1001 as proposed to be repealed is on page 37-24007 of the Administrative Rules of Montana.

AUTH: Sec. 41-3-1103, MCA

IMP: Sec. 41-3-1103 and 41-3-1142, MCA

The rules 37.97.1002 and 37.97.1006 as proposed to be repealed are on pages 37-24007 through 37-24012 of the Administrative Rules of Montana.

AUTH: Sec. 41-3-1103 and 53-4-111, MCA

IMP: Sec. 41-3-1103 and 53-4-113, MCA

The rule 37.97.1011 as proposed to be repealed is on pages 37-24012 and 37-24013 of the Administrative Rules of Montana.

AUTH: Sec. 41-3-1103 and 53-4-111, MCA

IMP: Sec. 41-3-1103, 41-3-1142 and 53-4-113, MCA

The rules 37.97.1013, 37.97.1014, 37.97.1016, 37.97.1018 and 37.97.1019 as proposed to be repealed are on pages 37-24013 through 37-24015 of the Administrative Rules of Montana.

AUTH: Sec. 41-3-1103 and 53-4-111, MCA

IMP: Sec. 41-3-1103 and 53-4-113, MCA

5. The department is required by section 471 of the Social Security Act to establish requirements for family foster homes which are reasonably in accord with recommended standards. Requirements that must be addressed include safety, sanitation, and protection of civil rights. The department is encouraged by the United States Department of Health and Human Services (HHS) to develop and implement additional licensing requirements and is required to apply the requirements equally to all foster family homes. This requirement does not preclude the department from establishing additional requirements for foster homes that provide care to special populations, such as children receiving

therapeutic foster care. The department must ensure that foster parents are adequately prepared to provide appropriate care for children placed in their home. The department must ensure that the licensing requirements provide for the safety, health, and well being of children placed in youth foster homes.

The department is granted specific authority to adopt rules regarding the licensure, operation, and regulation of youth care facilities as well as authority to inspect all licensed facilities and to take such licensing action, including revocation, as determined to be necessary to protect children. The department has authority to establish administrative rules for the licensure of youth care facilities under 52-2-603, MCA and 52-2-622, MCA. Child and Family Services Division (CFSD) is responsible for the licensure of youth foster homes, including kinship foster homes and therapeutic foster homes. The Quality Assurance Division (QAD) is responsible for licensure of other types of youth care facilities. Some of the current licensing rules are applicable to all youth care facilities, including youth foster homes.

The requirements for youth foster homes and other youth care facilities are increasingly different and it will be beneficial to applicants and licensees to have administrative rules that are specific to individual facility types. In addition, it is necessary to amend the youth foster home rules because some language is outdated and ambiguous, and in some instances, does not reflect current federal or state statutes. Updating the youth foster home rules is necessary to address gaps in the current rules and to ensure that the rules adequately address the issues relative to the safety and well being of children placed in youth foster homes.

The department is proposing to repeal existing rules and adopt new rules because of the number and complexity of the changes that are proposed. Adoption of new rules will make it easier for applicants and licensees to reference the applicable rules for youth foster homes since they will be located in one chapter. The proposed rules for youth foster homes will contain all licensing rules that apply to such homes. This will eliminate confusion as to which provisions apply to which facilities.

New Rules I through XLII are necessary because the existing rules, ARM 37.97.101 through 37.97.132, will continue to be used by QAD for youth care facilities other than youth foster homes. ARM 37.97.1001, 37.97.1002, 37.97.1006, 37.97.1011, 37.97.1013, 37.97.1014, 37.97.1016, 37.97.1018, and 37.97.1019 will be repealed and the provisions of these rules incorporated into the new rules. New rule numbers will be assigned to the specific rules governing youth foster homes.

Rule I, Youth Foster Homes: Purpose, defines the purpose of licensing rules specific to youth foster homes. The

department has statutory authority to establish administrative rules for youth foster homes. Administrative rules for youth foster homes are necessary to establish minimum requirements that must be met in order to obtain or maintain a youth foster home license.

Rule II, Youth Foster Homes: Definitions, contains definitions specific to youth foster homes. Existing definitions have been amended to reflect current language, to conform with 52-2-602, MCA, and to reflect the inclusion of therapeutic youth foster home licensing rules (therapeutic family care) in the youth foster home licensing rules.

Rule III, Youth Foster Homes: License Required, describes the entities which may issue a license to a youth foster home and the consequences of operating a youth foster home without a license as provided for in statute.

Rule IV, Youth Foster Homes: Licensing Procedures, and Rule V, Youth Foster Homes: Licensure and Renewal, are necessary to establish the application process and the process under which the department will assess applications prior to issuance of an initial or renewed license for youth foster homes. The proposed rules clarify the department's role in determining if an applicant meets the requirements for licensure upon receipt of an application and completion of a licensing assessment. Rule V includes language which will limit the total number of children who may reside in a foster home. Rule V will provide the department with parameters regarding the total number of children that can reside in a foster home. This rule is necessary in order to ensure that the needs of all children in the home can be appropriately met.

Rule VI, Youth Foster Homes: Provisional License, describes the circumstances under which the department may issue a provisional youth foster home license to an applicant who does not fully meet all licensing requirements.

Rule VII, Youth Foster Homes: Restricted License, allows the department to issue licenses to providers who wish to care only for specific children, often kin.

Rule VIII, Youth Foster Homes: Dual License, requires that applicants or licensees who wish to be both registered as day care providers and licensed as youth foster home providers obtain approval from the Child and Family Services Division and the Quality Assurance Division. This rule is necessary in order to ensure that the needs of all children in the home can be appropriately met.

Rule IX, Youth Foster Homes: Granting License Exceptions, describes some circumstances under which regional administrator approval is required prior to issuance of a license. This rule is necessary to allow the department the ability to assess

individual circumstances which may result in possible significant negative impact on children. The ability to grant an exception is of particular importance in some situations often involving kin. Rule IX also requires applicants and licensees to apprise the department of significant life events that may impact children placed in the home and/or the status of the license. This rule is necessary to ensure that the department has the opportunity to determine that the needs of children in foster care are not adversely impacted by changes in the foster family's situation.

Rule X, Youth Foster Homes: Negative Licensing Action, gives the department authority to take negative licensing action following written notification to an applicant or licensee when the department has determined that circumstances warrant such action. The department is required by federal law to deny a license for applicants convicted of certain crimes such as those described in the rule. The rule provides the department with the necessary authority to ensure that applicants or licensees who are not appropriate to provide foster care because they or others in the home or on the property of the applicant or licensee pose a threat to children's safety and well being do not become licensed or do not remain licensed. This rule is necessary in order to protect children.

Rule XI, Youth Foster Homes: Removal of a Child, is also necessary to protect children. This rule reiterates the department's authority to make placement decisions for children for whom the department has placement responsibility, including a determination of the most appropriate placement setting.

Rule XII, Youth Foster Homes: Hearing Procedures, provides for an appeal process for youth foster home applicants or licensees seeking a fair hearing based on negative licensing action taken by the department as provided for in Rule X. This rule is necessary to protect the due process rights of applicants and licensees.

Rule XIII, Youth Foster Homes: Confidentiality of Records and Information, is necessary to ensure that personal information regarding a foster child or the family of a foster child is not indiscriminately shared with others. The rule describes the responsibility of licensed foster parents to keep information regarding a foster child or the family of any foster child about whom the foster parent obtains information confidential. The rule clarifies the circumstances under which information may be shared. The rule also gives the department authority to access records of children placed in the foster home when the children have not been placed by the department.

Rule XIV, Youth Foster Homes: Reports of Change in Composition of Foster Home, is necessary to ensure that the department receives prompt notice of significant life events or changes in a foster parent's household which may impact the

safety and well being of a child placed in the home as well as changes which impact the license issued to a foster home. This rule also requires that foster parents operating under a child placing agency notify the child placing agency of significant life events or changes. The rule clarifies the expectations of the department that a foster parent will notify the foster child's worker when the foster parent determines that he is unable to continue to care for a child.

Rule XV, Youth Foster Homes: Reports of Suspected Child Abuse or Neglect, establishes the time frame in which foster parents, who are mandatory reporters, must report suspected child abuse or neglect to the department. Foster parents are often the persons to whom children placed in the foster home will disclose abuse or neglect and this information must be promptly reported to the department in order to ensure that children are protected and that appropriate services are provided to them.

Rule XVI, Youth Foster Homes: Reports of Serious Incidents and Threats, establishes the reporting requirements for serious incidents, runaways, and some disasters and emergencies. The rule is necessary to ensure that the department receives timely notice of situations which may have a serious negative impact on the safety and well being of children in foster homes.

Rule XVII, Youth Foster Homes: Reports of Discipline Violations, expands the reporting requirement for violations of the discipline rules to include other members of the household in addition to foster parents. The rule clarifies the reporting requirements and requires that the foster parent notify both the licensing worker or supervisor and the placing worker or agency. This rule is necessary because some violations of discipline rules may constitute abuse, may impact the safety and well being of a child, and may impact the continued licensure of the foster home.

Rule XVIII, Youth Foster Homes: General Requirements for Foster Parents and Other Household Members, describes the general requirements for foster parents and other household members and is necessary to ensure that foster parents are appropriate caretakers for abused and neglected children and that no one in the household poses a risk or threat to children placed in the foster home.

Rule XIX, Youth Foster Homes: Health Verification Requirements for Foster Parents and Other Household Members, expands the requirement for personal statements of health to include any person in the household for more than two weeks. This rule is intended to provide the department with timely information regarding the health of household members and allow the department to assess potential impact on children placed in the foster home.

Rule XX, Youth Foster Homes: Preschool Age Child Immunization Requirements and Rule XXI, Youth Foster Homes: School Aged Child Immunization Requirements, update the current rule addressing immunization requirements for the children residing in a foster home to reflect current immunization recommendations. In recognition of the fact that children in foster care are at greater risk for illness than most children, these rules are necessary to help protect the health of children placed in foster care.

Rule XXII, Youth Foster Homes: Criminal Background Checks, is necessary to establish the process to be used in conducting criminal background checks as required by state and federal statute. State law specifically requires the department to conduct child protective service and criminal background checks of youth foster home applicants. Rule XXII outlines the process to be used to obtain the results of a criminal records check via fingerprints and provides for an exception process for applicants who cannot be successfully fingerprinted or for whom the Department of Justice is unable to successfully read fingerprint cards. The rule defines the process to be followed when assessing applicants who have lived in states other than Montana and for whom a fingerprint based check cannot be obtained. The rule provides for an annual name based check for renewal of a foster home license. This rule also establishes the process to be followed in requesting a child protective services check and the process to be followed if the department is unable to obtain results from a child protective services check.

Rule XXIII, Youth Foster Homes: Psychological and Medical Examinations, strengthens the department's authority to obtain medical and psychological information necessary to properly assess an applicant's ability to provide a safe and appropriate environment and proper care for children placed with the applicant. The rule authorizes the department to obtain medical and psychological information regarding household members in addition to the applicant. The rule specifies that the department may use the results of a psychological or medical examination in determining whether an applicant meets licensing requirements. This rule is necessary in order to fully assess the ability and appropriateness of some applicants to become licensed.

Rules XXIV, Youth Foster Homes: General Program Requirements, XXV, Youth Foster Homes: Cooperation of Foster Parents, XXVI, Youth Foster Homes: Child Education and Training, XXVII, Youth Foster Homes: Child Religious and Cultural Expression, XXVIII, Youth Foster Homes: Child Clothing, XXIX, Youth Foster Homes: Child Privacy Rights, XXX, Youth Foster Homes: Sleeping Arrangements and Requirements, and XXXI, Youth Foster Homes: Youth Independent Living Program, Job Training and Employment, are necessary to ensure that the needs of children placed in foster homes are appropriately met. The

rules set out the expectations the Department has of foster parents in working with the agency, visitation between the child and his/her birth or legal family, education, religion, cultural expression, clothing, privacy, and sleeping arrangements.

Rule XXVIII, Youth Foster Homes: Child Clothing, will require that the foster parent inventory the clothing and personal possessions of children placed in the foster home and that the foster parent maintain receipts for clothing purchased with funds provided by the department. The foster parent is to provide the inventory and clothing receipts to the department as requested. This rule is intended to assist the department in ensuring that the clothing and possessions of children in foster care move with the child when the child leaves a foster home. The rule is also intended to assist the department in tracking the cost of clothing provided for children in foster care.

Rule XXX, Youth Foster Homes: Sleeping Arrangements and Requirements, is necessary to ensure that children are provided with a safe and appropriate sleeping room, bed, and bedding and that an adult will hear the child cry or call. This rule expands and clarifies the expectations for sleeping arrangements for children. The rule, as proposed, does allow the department to make an exception to certain requirements on a case by case basis for a kinship foster home.

Rule XXXI, Youth Foster Homes: Youth Independent Living Program Job Training and Employment, is necessary to improve the services provided to teenage youth in foster care. Foster parents who choose to care for youth age 16 and older must work cooperatively with department staff and contractors to meet the federal requirement of a transitional living plan and provision of appropriate services to assist youth in the transition from foster care to living on their own. This rule requires foster parents of teenage youth to actively assist in preparing youth for the transition from foster care to self-sufficiency and independent living.

Rule XXXII, Youth Foster Homes: Therapeutic Foster Homes, is necessary to clarify that therapeutic youth foster homes, also known as therapeutic family care homes, are youth foster homes and must meet all the licensing requirements of youth foster homes as well as additional requirements for therapeutic foster homes. Additional requirements are necessary in order to ensure that the higher needs of the children in therapeutic foster care are met. Therapeutic foster care is a subcategory of youth foster homes but some licensing rules for therapeutic foster homes are in ARM Title 37, chapter 37 of the Department's administrative rules. Rule XXXII incorporates some additional licensing requirements foster parents must meet.

Rule XXXIII, Youth Foster Homes: Physical Care of Children, is necessary to clarify the expectations of foster parents in meeting the physical health needs of children.

Notable additions to the existing rule include the prohibition regarding the provision of tobacco products to foster children by foster parents and the exposure of foster children to secondhand smoke while in the foster parent's care.

Rule XXXIV, Youth Foster Homes: Discipline, updates language and clarifies the expectations of foster parents when disciplining foster children. The rule clarifies that foster parents are not to use spanking or other forms of physical punishment with foster children.

Rule XXXV, Youth Foster Homes: Environmental and Safety Requirements, is necessary to ensure that the foster home and premises are safe and do not contain obvious hazards which might compromise the safety and well being of children placed in the foster home.

Rule XXVI, Youth Foster Homes: Fire Safety Requirements, is necessary to ensure that minimal fire safety requirements are met and to minimize the risk of fire danger to foster children and other occupants of the foster home.

Rules XXXVII, Youth Foster Homes: Transportation, will help to protect children who are transported by foster parents or by other persons given permission to transport children by the foster parents by requiring that all children are secure in appropriate safety restraints and that doors to the vehicle are locked when the vehicle is moving. Language is added to the existing rule requiring foster parents to obtain permission when traveling out of the county, out of the state, or out of the country with foster children.

Rule XXXVIII, Youth Foster Homes: Required Training, is necessary because the department is required by federal law to prepare foster parents to provide appropriate care for children placed in a foster home. The rule clarifies what the department requires of foster parents regarding preservice and ongoing training, and the consequences for failure to obtain the required training.

Rule XXXIX, Youth Foster Homes: Training Exemptions, is necessary to allow the department the option of waiving specific training requirements on a case by case basis.

Rule XL, Youth Foster Homes: Required Training Topics, describes the types of training content which will meet the training requirements of Rule XXXIX. This rule clarifies that training must be provided by or approved by the department in order to meet the requirements of Rule XXXIX.

Rule XLI, Youth Foster Parents: Required Training Topics for Therapeutic Foster Homes, clarifies that therapeutic youth foster parents are required to meet the same training requirements as other youth foster homes as well as additional

training requirements. Additional training requirements are necessary due to the higher needs of children placed in therapeutic foster homes. Rule XLI incorporates the current training requirements for therapeutic youth foster homes in ARM 37.37.318 into the youth foster home licensing rules.

There is no fiscal impact that will occur by adopting these rules.

6. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to 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 January 12, 2006. 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. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva
Rule Reviewer

Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State November 28, 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 37.62.2101,	)	ON PROPOSED AMENDMENT
37.62.2103, 37.62.2105,	)	AND REPEAL
37.62.2107, 37.62.2111,)	
37.62.2113, 37.62.2117,)	
37.62.2119 and 37.62.2121 and)	
the repeal of ARM 37.62.2115)	
pertaining to the)	
modification of child support)	
orders)	

TO: All Interested Persons

1. On January 11, 2006, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment and repeal of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on January 3, 2006, 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.

37.62.2101 MODIFICATION OF SUPPORT ORDERS (1) The CSED ~~will~~ may conduct a review ~~and for~~ for modification of a support order which it is enforcing ~~upon a verified written application showing one or more of the criteria for review under 40-5-272, MCA.~~

~~(a) at the request of the IV-D agency of another state, an obligor or obligee, and upon a verified written petition showing a material change of circumstances, as defined in ARM 37.62.2103(2), a showing that the support order is inconsistent with the Montana child support guidelines, or if the obligor is not required to get and keep health insurance for the child whenever it is available through employment or union;~~

~~(b) at 30 month intervals after establishment of the order or the most recent review in any case in which support rights are assigned under 53-2-613, MCA; or~~

~~(c) if the CSED finds on its own motion with reference to~~

~~CSED written procedures that a modification may be appropriate.~~

(2) The party filing an application for a review may withdraw the application prior to service of the administrative notice described in 40-5-273, MCA without triggering the prohibitions of ARM 37.62.2103(2)(a).

AUTH: Sec. 40-5-202, MCA

IMP: Sec. 40-5-226, MCA

37.62.2103 AVAILABILITY OF REVIEW (1) The CSED will conduct administrative reviews of support orders if 30 months have elapsed since establishment of the order or most recent review and a material change of circumstances has occurred. For purposes of 40-5-272(4)(a), MCA, a substantial change in circumstances includes, but is not limited to:

(a) an increase or decrease at least 30% in a parent's income for child support, as defined by the Montana child support guidelines, ARM 37.62.106(1);

(b) the adoption, emancipation, or death of a child in households where more than one child are the subjects of the guideline calculation, if the existing order is not a per child amount;

(c) the movement of a child from one parent's home to the home of the other parent, with the intent that the move is permanent and is:

(i) evidenced by the written consent of the other parent;

(ii) ordered by a court of competent jurisdiction; or

(iii) demonstrated to have continued for 90 days prior to the request for review and modification;

(d) the development of special needs by a child, if those needs were not considered in the original order; or

(e) evidence that the original Montana order was set without reference to the child support guidelines.

~~(2) The CSED will deny a request for review and will not conduct a periodic review and modification of a support order if any of the following conditions exist:~~

~~(a) less than 30 36 months have elapsed since establishment of from the date that the existing support order was entered, an administrative hearing was granted under 40-5-277, MCA, or an administrative order was issued which denied a modification because of the applicant's failure to meet one of the criteria described in 40-5-272, MCA or the most recent review and no material substantial change of circumstances has occurred.; For purposes of this rule, a significant change of circumstances includes, but is not limited to:~~

~~(i) an increase or decrease in a parent's net income of 25% or more;~~

~~(ii) one or more of the children have been adopted, attained the age of majority, become otherwise emancipated or died;~~

~~(iii) one or more of the children have moved from one parent's home to the home of the other parent. The move must be made with the intent that it be permanent and be:~~

~~(A) evidenced by the written consent of the other parent;~~

- ~~(B) ordered by a court of competent jurisdiction; or~~
 - ~~(C) demonstrated to have continued for 90 days prior to the request for review and modification.~~
 - ~~(iv) a child has developed special needs, as defined in the child support guidelines, which were not considered in the original order;~~
 - ~~(v) social security benefits which were not considered in the original order are being paid to the children;~~
 - ~~(vi) the order was set without reference to the guidelines; or~~
 - ~~(vii) a parent has become a recipient of public assistance on behalf of a child;~~
 - (b) the CSED does not have an open IV-D case after the procedures in ARM 37.62.2107 have been completed;
 - (c) the state of Montana does not have or cannot obtain personal or subject matter jurisdiction over a necessary party;
 - (d) the address of a necessary party has not been verified;
 - (e) review and adjustment services are being provided by another IV-D agency;
 - (f) a modification or adjustment action is pending in another forum, ~~and activity has occurred within the last 6 months; or~~
 - (g) the support order will terminate within ~~6~~ six months after the date the request for review is received by the CSED review and modification unit.
- ~~(3) For purposes of this subchapter a review is conducted by an arbitrator and is referred to in these rules as a settlement conference.~~

AUTH: Sec. 40-5-202, MCA
IMP: Sec. 40-5-202, MCA

37.62.2105 RIGHT TO HEARING ON DENIAL OF REVIEW REQUEST (1) When a review is denied under ARM 37.62.2103, the ~~parents shall each have~~ parent requesting the review has the right to request a hearing on whether the review was properly denied. The request for hearing shall be made to the CSED office of the administrative law judge, and must be received within ~~30~~ 10 days after service of a notice ~~concerning denying the~~ review request ~~upon the parent requesting a hearing.~~ The hearing shall be conducted in the same manner as a hearing under ARM ~~37.62.2119~~.

(2) The hearing shall be conducted in accordance with CSED rules at ARM 37.62.901, et seq., except that the hearing is not a contested case hearing, and therefore no judicial review is available. The scope of the hearing is limited to the CSED's decision rejecting the review request, and the order of the administrative law judge is not subject to ARM 37.62.949 regarding proposed orders.

AUTH: Sec. 40-5-202, MCA
IMP: Sec. 40-5-202, MCA

37.62.2107 PROCEDURE FOR TERMINATING REVIEW OR MODIFICATION AFTER CLOSURE OF IV-D CASE (1) If a IV-D case is closed while a review application or ~~review request~~ modification action is pending, the CSED will mail notice to the ~~other~~ party who did not open the IV-D case and offer that party offering the opportunity to apply for support enforcement services.

(2) If a new IV-D referral or an application for support enforcement services is not received by the CSED within 20 calendar days of the date the notice was received by the party, the ~~review~~ modification notice will be dismissed or the review ~~request~~ application denied.

(3) If a new IV-D referral or an application for support enforcement services is received by the CSED within 20 calendar days of the date the notice was received by the party, the ~~review~~ action will continue from the point at which the IV-D case was closed.

(4) No additional or duplicate fees for performing the administrative review and modification will be charged in a case re-opened under this section rule.

(5) This section rule does not apply when closure is the result of a good cause determination by the appropriate agency under 42 CFR 433.147 or 45 CFR 232.40 through 232.49 that support enforcement may not proceed without risk of harm to the child or caretaker relative.

AUTH: Sec. 40-5-202, MCA

IMP: Sec. 40-5-202, MCA

37.62.2111 TIME FRAME DETERMINATIONS (1) For purposes of determining time frames in reviews and modifications conducted under this subchapter, the following provisions apply:

(a) a request for review is received when the CSED ~~review and modification unit~~ has sufficient information to determine if review is available under ARM 37.62.2103; or

(b) the CSED shall take no action on a review or modification while the procedures under ARM 37.62.2107 are being performed. The time provided for the performance of procedures under ARM 37.62.2107 shall not be counted in any determination of time frames~~;~~.

~~(c) a review is complete when the department's proposed modification is issued under ARM 37.62.2115, or upon the agreement of the parties to the proper amount of support under the child support guidelines; or~~

~~(d) a modification is complete when the hearing officer's order is entered under ARM 37.62.2119, or an order is entered by the CSED upon the agreement of the parties.~~

AUTH: Sec. 40-5-202, MCA

IMP: Sec. 40-5-202, MCA

37.62.2113 REQUESTS FOR DISCOVERY (1) Requests for discovery by ~~parents~~ parties in administrative ~~review and~~ modification cases must be received in the CSED office of the administrative law judge on or before the 10th day after service

of a ~~review~~ notice of review of child support order and order to produce financial information upon the ~~parent~~ party requesting discovery. The CSED may request discovery by including a discovery order within its notice of proposed modification.

~~(2) Requests for discovery by the CSED must be received in the CSED office of the administrative law judge on or before the 10th day prior to the settlement conference.~~

~~(3)~~ (2) Requests for discovery may be denied for untimeliness or for other good and reasonable cause.

(3) Except as otherwise provided in these rules or the authorizing statutes, discovery shall be conducted as provided in ARM Title 37, chapter 62, part 9.

AUTH: Sec. 40-5-202, MCA

IMP: Sec. 40-5-202, and 40-5-273, MCA

37.62.2117 NEGLIGIBLE CHANGE (1) If the difference between the existing total monthly support order and the proposed ~~adjustment~~ support obligation is less than ~~\$25.00 per month~~ 15%, the change may be considered negligible and the child support provisions of the existing support order need not be modified.

(2) Provisions in the existing order for the medical needs of the child may be modified even if the change in the child support amount is negligible. Where an existing support order does not contain a provision for the medical needs of the child, the order may be modified to include a medical support order even if the change in the child support amount is negligible.

AUTH: Sec. 40-5-202, MCA

IMP: Sec. 40-5-202, MCA

37.62.2119 MODIFICATION HEARING (1) A party ~~aggrieved by the determination of the CSED at the settlement conference~~ may request a hearing on the ~~proposed modification~~ notice of administrative review.

(2) The request for hearing must be received in the office of the administrative law judge within ~~30~~ 20 days after the notice of ~~proposed modification~~ administrative review is received by the party requesting a hearing.

(3) ~~The record at the modification hearing shall consist of the record of the settlement conference, and the testimony, exhibits or arguments presented at the time of the modification hearing.~~ If no party timely requests a hearing, the administrative law judge may enter an order adopting the terms and provisions proposed in the notice, including the child support amount and the imposition or modification of a medical support order.

(4) After the modification hearing, the ~~hearing officer~~ administrative law judge shall enter an order ~~in accordance with 40-5-277, MCA.~~

~~(a) adopting the findings of fact and conclusions of law and ordering modification of the support obligation in accordance with the CSED's proposed modification;~~

~~(b) changing all or any part of the CSED's findings of fact, conclusions of law, Montana child support guidelines calculations or determinations on variances from the guidelines and ordering modification of the support obligation accordingly;~~

~~(c) rejecting the CSED's findings, conclusions, calculations and variances in whole or in part, making new findings of fact and conclusions of law and ordering modification of the support obligation accordingly; or~~

~~(d) remanding the matter to the CSED with instructions for further review investigation or settlement conference.~~

(5) ~~The hearing officer's determination after a modification hearing constitutes a final agency decision subject to judicial review under Title 2, chapter 4, part 6, MCA. The order shall be effective the first day of the month following the issuance of the notice of proposed modification. If the modification result is a lowered child support obligation, all payments received during the pendency of the modification action shall be credited against the new obligation, and amounts exceeding the modified obligation shall be applied first to outstanding arrearages, fees, and fines. Any amount remaining after such credits shall be applied to future child support by reducing the amount of child support collected under the new order for no more than six months, or before the order terminates, whichever comes first. Parties may agree to an alternate schedule. No refunds shall be available from the CSED.~~

AUTH: Sec. 40-5-202, MCA

IMP: Sec. 40-5-202, 40-5-272, and 40-5-273, MCA

37.62.2121 ADDITIONAL HEARING PROCEDURES (1) To the extent they are not inconsistent with the provisions of this subchapter, the overall hearing procedures set forth in subchapter 6 of this chapter are applicable to ~~settlement conferences and modification~~ administrative hearings under this subchapter.

AUTH: Sec. 40-5-202, MCA

IMP: Sec. 40-5-273, MCA

3. The rule 37.62.2115 as proposed to be repealed is on page 37-14063 of the Administrative Rules of Montana.

AUTH: Sec. 40-5-202, MCA

IMP: Sec. 40-5-202, MCA

4. The proposed amendments of ARM Title 37, chapter 62, subchapter 21, "Modification of Support Orders", are necessary in order to allow parents to modify their child support or medical support orders within the administrative process as directed by 40-5-271 through 40-5-277, MCA. The proposed rules describe the circumstances when a child support order can be reviewed and modified, when the review or modification can be terminated, and makes provisions for administrative hearings and

requests for discovery by parties if needed.

Montana's IV-D Child Support Program is required to provide review and modification services to case participants. The time frame allowed by the federal guidelines under 45 CFR 303.8(e) (1999) is that a review must be conducted within 180 calendar days of receiving a request for review, or locating the nonrequesting parent, whichever occurs later.

When providing review and modification services, state child support programs are deemed to be in compliance when a level of at least 75% of child support orders are reviewed and modified as appropriate within 180 days. Only once in the past five internal audits (Federal Fiscal Year 2000) has this level of proficiency been attained.

While failing to meet federal compliance standards is a serious concern, there is an important human element to consider also. The longer it takes for a review and modification to be completed, the more frustration it causes the party requesting a review. The proposed amendments of ARM Title 37, chapter 62, subchapter 21, should increase compliance with the 180 day time frame and reduce participants' frustration by reducing the time needed to complete a review and modification of support orders.

Specific proposed amendments to ARM Title 37, chapter 62 subchapter 21 are:

ARM 37.62.2101

Amendments are necessary because of amendments made to 40-5-272 and 40-5-273, MCA during the 2005 Montana Legislative Session and to remove unnecessary or redundant language.

ARM 37.62.2103

Amendments are necessary to define "substantial change in circumstances" as required by 40-5-272(4)(a), MCA. Additionally, changes are necessary to harmonize the rule with 40-5-272 and 40-5-277, MCA, and to remove unnecessary or redundant language.

ARM 37.62.2105

Amendments are necessary in order to make the rule consistent with other administrative rules, specifically ARM Title 37, chapter 62, subchapter 9 and CSED policy. Additional changes are necessary to remove unnecessary or redundant language.

ARM 37.62.2107

Amendments are necessary to make the language of the rule consistent with other administrative rules and harmonize the rule with amendments made to 40-5-272(5), MCA and CSED policy.

ARM 37.62.2111

Amendments are necessary to make the language of the rule consistent with other administrative rules and CSED policy, and remove unnecessary or redundant language, and to provide consistency with state law.

ARM 37.62.2113

Amendments are necessary in order to make the rule consistent with other administrative rules, specifically ARM Title 37, chapter 62, subchapter 9 and CSED policy. Additional changes are necessary to remove unnecessary or redundant language.

ARM 37.62.2115

The repeal of this rule is necessary as it is no longer consistent with the provisions of 40-5-272 through 40-5-277, MCA.

ARM 37.62.2117

Amendments to this rule are necessary to define "negligible change" and to allow administrative modification if the provisions of the medical support order are inconsistent with Title 40, chapter 5, part 8, MCA.

ARM 37.62.2119

Amendments to this rule are necessary to make the language of the rule consistent with other administrative rules and harmonize the rule with amendments made to 40-5-277, MCA and CSED policy. Additional changes are necessary to remove unnecessary or redundant language.

ARM 37.62.2121

Amendments are necessary in order to make the rule consistent with other administrative rules and to reflect the repeal of 40-5-276, MCA.

The proposed changes are necessary because the current rules pertaining to the administrative modification of child support orders are outdated and have procedures no longer required as reflected in amendments to 40-5-271 through 40-5-277, MCA.

Because of the changes made to the modification statutes in the last legislative session, there were no other viable alternatives to modifying subchapter 21 of ARM Title 37, chapter 62.

The number of persons affected by the changes to these rules is difficult to quantify. However, any party or parent seeking modification of their current child support order will be

positively affected. In Federal Fiscal Year 2004 the Child Support Enforcement Division received 1175 requests for review of child support orders affecting 2,350 parents and their children.

The cumulative amount for all persons of proposed increase, decrease, or new amount is not applicable to these rule changes as it is not possible to quantify it.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on January 19, 2006. 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. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva
Rule Reviewer

Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State November 28, 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 V)
pertaining to Medicare Part D)
Low Income Subsidies)

NOTICE OF PUBLIC HEARING
ON PROPOSED ADOPTION

TO: All Interested Persons

1. On January 11, 2006, at 3:00 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed 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 January 3, 2006, 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 APPLICATION FOR MEDICARE PART D LOW INCOME PREMIUM AND COST SHARING SUBSIDIES (LIS) (1) There is a federal program known as extra help that provides low income subsidies (LIS) to qualified persons to pay medicare Part D prescription drug plan premiums and cost sharing.

(2) An individual who wishes to apply for LIS may do so using either a federal or a state LIS application. State offices of public assistance (OPA) must provide information on the LIS and its eligibility requirements and must provide assistance with completion of LIS application forms, both state and federal, when requested to do so.

(3) An individual may file an application for LIS by submitting an application to any state OPA or at a federal social security administration (SSA) office.

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

RULE II PROCESSING OF APPLICATIONS FOR LIS (1) If an individual submits an application on the federal form SSA-1020, the OPA will forward the form SSA-1020 to the SSA for processing.

(2) If an individual specifically requests that the state

rather than SSA process the individual's application for LIS, the OPA will give the individual a state application and the department will process the completed application.

(3) When processing an application that is submitted on the state form:

(a) The department will determine eligibility using the criteria contained in the regulation governing eligibility for low income subsidies at 42 CFR 423.773 (January 28, 2005), which is adopted and incorporated by reference, and using the income and resource criteria contained in the supplemental security income (SSI) regulations at 20 CFR, Part 416, subparts K and L, (November 1, 2005), which are adopted and incorporated by reference. Copies of 42 CFR 423.773 and 20 CFR, Part 416, subparts K and L, may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, 1400 Broadway, P.O. Box 202952, Helena, MT 59620-2952.

(b) The department will comply with the procedural requirements, including but not limited to the requirements for verification, documentation, and notice, applicable to a medicaid application as set forth in the department's SSI Medicaid Manual, also known as the Aged Blind Disabled Medicaid Manual, as incorporated by reference in ARM 37.82.101.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

RULE III EFFECTIVE DATE OF ELIGIBILITY FOR LIS (1) When an individual files an application on the state form and is found eligible for a subsidy, the effective date of eligibility will be determined as follows:

(a) Eligibility for a month will not be granted unless the applicant meets all eligibility requirements on the first moment of the first day of that month. Thus, eligibility begins on the first day of the month of application if the applicant meets all eligibility requirements as of the first moment of the first day of that month. If the applicant does not meet all eligibility requirements as of the first moment of the first day of the month of application, but meets all eligibility requirements at some later time during that month, eligibility will begin on the first day of the month immediately after the month of application.

(b) If the applicant does not meet all eligibility requirements at any time during the month of application, but meets all eligibility requirements in a subsequent month before the application is denied, eligibility will begin on the first day of the first month in which the applicant met all eligibility requirements as of the first moment of the first day of the month.

(c) There is no retroactive coverage for LIS. An applicant is not eligible for any month prior to the month of application even if the applicant met all eligibility requirements in a prior month.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

RULE IV REDETERMINATIONS OF ELIGIBILITY FOR LIS (1) When an individual submits an application on a state form and is found eligible for a subsidy, eligibility shall remain in effect for no more than one year.

(2) The department will conduct periodic redeterminations of the individual's eligibility in accordance with the requirements for redetermination of medicaid eligibility prescribed in the department's SSI Medicaid Manual.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

RULE V APPEAL PROCESS FOR LIS APPLICATIONS (1) When an individual submits an application on a state form and disagrees with the department's decision as to the individual's eligibility for a subsidy or the amount of the subsidy, the individual shall be entitled to a hearing to the same extent as provided to medicaid applicants and recipients in ARM 37.5.103.

AUTH: Sec. 53-2-201, MCA

IMP: Sec. 53-2-201, MCA

3. The Medicare Prescription Drug Improvement and Modernization Act of 2003 (the MMA) added prescription drug coverage to the Medicare program effective January 1, 2006. All Medicare beneficiaries will be able to enroll in a prescription drug plan. The Medicare beneficiary will pay a premium for drug coverage that will be approximately \$35 per month depending on the prescription drug plan chosen. Medicaid will pay the Medicare Part D premium for individuals who are eligible for both Medicaid and Medicare.

Additionally, the federal government has a program known as Extra Help to provide a low income subsidy (LIS) to Medicare beneficiaries with limited income and resources who do not qualify for Medicaid. The low income subsidy provides assistance with the Part D premium, deductible, and copayments. To qualify for Extra Help an individual must have countable income below 150% of the federal poverty level and countable resources below \$11,500 for one person and below \$23,000 for a couple.

Although the Medicare Part D low income subsidy is 100% federally funded, the federal regulations implementing LIS at 42 CFR 423.771, et seq., require states as well as the Social Security Administration to accept and process applications for LIS. 42 CFR 423.904 provides that the states must have a state LIS application in addition to the federal application form and that the states must accept both federal and state applications for LIS. 42 CFR 423.774 provides that the state must process the LIS application if the applicant requests that the state rather than the SSA do so. 42 CFR 423.774 and 42 CFR 423.904

require states to conduct periodic redeterminations of eligibility in cases where the state makes the initial eligibility determination. 42 CFR 423.774 also provides that the state must have an appeal process for LIS determinations made by the state which is conducted in the same manner as appeals for Medicaid applicants and recipients.

The adoption of Rules I through V is necessary to implement the provisions of the MMA, and to set forth the requirements and provisions of the program for members of the public who may be eligible to receive the benefits of this program, so that they may readily understand the procedures involved and the eligibility requirements. Rule I provides that a LIS application can be submitted in any state office of public assistance. Rule II specifies the procedures to be followed in processing applications depending on whether the application is submitted on a federal or state form.

Rule III specifies the effective date for coverage, which is based on the SSI regulation that provides for coverage beginning on the first day of the month in which the applicant meets all eligibility criteria as of the first moment of the first day of the month. Rule III provides that there is no retroactive coverage for months prior to the month of application, because the LIS regulations do not provide for retroactive coverage. This is contrary to the Medicaid policy, which provides for retroactive coverage of up to three months prior to the month of application.

Rule IV provides for redeterminations of eligibility at least annually.

Rule V provides that an applicant who disagrees with the Department's decision on eligibility for the subsidy or the amount of the subsidy is entitled to the same appeal rights granted to Medicaid applicants and recipients in ARM 37.5.103.

SSA has mailed 75,544 applications for Extra Help/LIS to Montana residents who are potentially eligible for this new program. The monthly subsidy amount is \$33.11. Thus, if all 75,544 persons applied and qualified for a subsidy, the cost of the subsidies for a year would be \$30,015,142.08. Fewer than 13,000 applications have been returned to SSA at this time, however, and no applications have been submitted to the Department for processing. It is probable that all of the persons who received applications will not return the applications and/or will not qualify for the subsidy, so the total cost will likely be less than \$30,015,142.08 per year. The subsidies are funded 100% with federal money. No state General Fund dollars will be used to pay for the subsidies.

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 January 19, 2006. 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. 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

Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State November 28, 2005.

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

In the matter of the adoption)
of Rule I through XV and the)
amendment of ARM 37.106.1946)
pertaining to outpatient)
crisis response facilities)

NOTICE OF PUBLIC HEARING
ON PROPOSED ADOPTION AND
AMENDMENT

TO: All Interested Persons

1. On January 4, 2006, at 2:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption and amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on December 27, 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 OUTPATIENT CRISIS RESPONSE FACILITY: APPLICATION OF OTHER RULES (1) To the extent that other licensure rules in ARM Title 37, chapter 106, subchapter 3, conflict with the terms of this subchapter, the terms of this subchapter will apply to outpatient crisis response facilities.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103, MCA

RULE II OUTPATIENT CRISIS RESPONSE FACILITY: DEFINITIONS
In addition to the definitions in 50-5-101, MCA, the following definitions apply to this subchapter:

(1) "Inpatient crisis stabilization program" means 24-hour supervised treatment for adults with a mental illness for the purpose of stabilizing the individual's symptoms.

(2) "Outpatient crisis response facility" means an outpatient facility operated by a licensed hospital or a licensed mental health center that provides evaluation, assessment, intervention and referral for individuals experiencing a crisis due to serious mental illness or a serious mental illness with a co-occurring substance use disorder. The facility may not provide services to a client for more than 23

hours and 59 minutes from the time the client arrives at the facility. The facility must discharge or transfer the client to the appropriate level of care.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103, MCA

RULE III OUTPATIENT CRISIS RESPONSE FACILITY: SERVICES AND LICENSURE (1) Each applicant for licensure shall submit a license application to the department requesting approval to provide outpatient crisis services.

(a) A licensed hospital does not have to comply with the requirements found at ARM 37.106.1906(3) to provide outpatient crisis response services.

(2) Services provided by an outpatient crisis response facility must be rendered by:

(a) a single administration in a discrete physical facility or multiple facilities; or

(b) written agreement or contract with:

(i) licensed health care professionals;

(ii) licensed mental health professionals; or

(iii) other facilities such as hospital, clinics, or educational institutions which may combine to provide crisis services.

(3) Outpatient crisis response facility services must be available to clients continuously throughout the year.

(4) An outpatient crisis response facility must report to the department, in writing, any of the following changes within at least 30 days before the planned effective date of the change:

(a) a change of administrator;

(b) a change of medical director;

(c) any change in administrative location or service location;

(d) a change in the name of the agency; or

(e) the discontinuation of services.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103, 50-5-201, and 50-5-203, MCA

RULE IV OUTPATIENT CRISIS RESPONSE FACILITY: ORGANIZATIONAL STRUCTURE (1) Each crisis response facility shall employ or contract with an administrator who shall:

(a) maintain daily overall responsibility for the crisis response facility's operations;

(b) develop and oversee the implementation of policies and procedures pertaining to the operation and services of the crisis response facility;

(c) establish written orientation and training procedures for all employees including new employees, relief workers, temporary employees, students, interns, volunteers, and trainees. The training must include orientation on all the crisis response facility's policies and procedures;

(d) develop an organizational chart that accurately

reflects the current lines of administration and authority; and

(e) maintain a file for all client incident reports.

(2) Each outpatient crisis response facility shall employ or contract with a medical director who shall:

(a) coordinate with and advise the staff of the outpatient crisis response facility on clinical matters;

(b) provide direction, consultation, and training regarding the outpatient crisis response facility's programs and operations as needed;

(c) act as a liaison for the outpatient crisis response facility with community physicians, hospital staff, and other professionals and agencies with regard to psychiatric or hospital services; and

(d) ensure the quality of treatment and related services through participation in the outpatient crisis response facility's quality assurance process.

(3) Each outpatient crisis response facility shall employ or contract with a program supervisor who is a licensed mental health professional knowledgeable about the service and support needs of individuals with co-occurring mental illness and intoxication/addiction disorders who may be experiencing a crisis. The program supervisor must be site based.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103, MCA

RULE V OUTPATIENT CRISIS RESPONSE FACILITY: STAFFING AND OPERATIONS

(1) In addition to the requirements established in this subchapter, each outpatient crisis response facility shall comply with the requirements established in this rule. The outpatient crisis response facility shall require staff working in the facility:

(a) to be at least 18 years of age;

(b) possess a high school diploma or GED; and

(c) be capable of implementing each client's crisis facility treatment plan.

(2) The facility must ensure the program supervisor and all staff each have a minimum of six contact hours of annual training relating to the service and support needs of individuals with mental illness experiencing a crisis.

(3) The facility must orient direct care staff, prior to their contact with clients, on the following:

(a) the types of mental illness and treatment approaches;

(b) alcohol and drug intoxication treatment approaches;

(c) dependence and addiction treatment approaches;

(d) suicide risk assessment and prevention procedures; and

(e) program policies and procedures, including emergency procedures.

(4) The facility must orient staff within four weeks of employment on the following:

(a) therapeutic communications;

(b) legal responsibilities of mental health service providers;

(c) mental health and substance abuse laws of Montana

relating to the rights of consumers;

(d) other services provided by mental health centers and substance abuse providers; and

(e) infection control and prevention of transmission of blood borne pathogens.

(5) The facility must annually train staff in the abdominal thrust maneuver and ensure staff maintain current certification in cardiopulmonary resuscitation (CPR).

(6) The facility must maintain 24-hour awake staff.

(7) The facility must maintain staff-to-patient ratio dictated by client need.

(8) The facility must establish admission criteria that assess the individual client's needs and the appropriateness of the services to meet those needs. At a minimum, admission criteria must require that the client:

(a) be at least 18 years of age;

(b) be medically stable, with the exception of the person's mental illness or serious mental illness with a co-occurring substance use disorder; and

(c) be in need of frequent observation on an ongoing basis.

(9) The facility must provide each client upon admission, or as soon as possible if not clinically appropriate upon admission with:

(a) a written statement of client rights which, at a minimum, includes the applicable patient rights in 53-21-142, MCA;

(b) a copy of the crisis response facility grievance procedure; and

(c) the written rules of conduct including the consequences for violating the rules.

(10) The facility must ensure inpatient care is available through a transfer agreement for clients in need of a higher level of care.

(11) The facility must maintain progress notes for each client. The progress notes must be entered following the clinical intake assessment and updated in a timely manner into the client's clinical record. The progress notes must describe the client's physical condition, mental status, and involvement in treatment services.

(12) The facility must make referrals for services that would help prevent or diminish future crises at the time of the client's discharge. Referrals include, but are not limited to, additional treatment or training or assistance such as securing housing.

(13) The program supervisor and program staff must be trained in the therapeutic de-escalation of crisis situations to ensure the protection and safety of clients and staff. The training must:

(a) include the use of physical and nonphysical methods of managing clients; and

(b) be updated at least annually to ensure that necessary skills are maintained.

AUTH: Sec. 50-50-103, MCA
IMP: Sec. 50-5-103, MCA

RULE VI OUTPATIENT CRISIS RESPONSE FACILITY: POLICIES AND PROCEDURES

(1) Each outpatient crisis response facility shall maintain a policy and procedure manual. The manual must be reviewed and approved, at least annually, by the medical director and administrator. The manual must, at a minimum, contain policies and procedures for:

(a) defining the responsibilities, limitations, and supervision of students, interns, and volunteers working for the crisis response facility;

(b) verifying each professional staff member's credentials, when hired, and annually thereafter, to ensure the continued validity of required licenses;

(c) client complaints and grievances, to include an opportunity for appeal, and to inform clients of the availability of advocacy organizations to assist them;

(d) completing a medical screening and determining methods for medical stabilization and criteria for transfer to appropriate level of medical care that may include emergency care in a hospital;

(e) interacting with clients considered to be at risk for harming themselves or others who attempt to leave the facility without discharge authorization from the licensed mental health professional responsible for their treatment;

(f) increasing or decreasing staff coverage as indicated by client need;

(g) identifying client rights, including a procedure for informing clients of their rights;

(h) addressing and reviewing ethical issues faced by staff and reporting allegations of ethics violations to the applicable professional licensing authority;

(i) informing clients of the policy and procedures for client complaints and grievances;

(j) initiating services to clients;

(k) informing clients of rules governing their conduct and the types of infractions that can result in suspension or discontinuation of services offered by the crisis response facility;

(l) suspending or discontinuing program services with the following information to be provided to the client:

(i) the reason for suspending or discontinuing services or access to programs;

(ii) the conditions that must be met to resume services or access to programs;

(iii) the grievance procedure that may be used to appeal the suspension or discontinuation; and

(iv) what services, if any, will be continued to be provided even though participation in a particular service or program may be suspended or discontinued.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103, MCA

RULE VII OUTPATIENT CRISIS RESPONSE FACILITY: CLINICAL RECORDS (1) Each crisis response facility shall collect assessment data and maintain clinical records on all clients who receive services.

(2) Each facility must ensure the confidentiality of clinical records in accordance with the Uniform Health Care Information Act, Title 50, chapter 16, part 5, MCA.

(3) At a minimum, the clinical record must include:

(a) a clinical intake assessment;

(b) additional assessments or evaluations, if clinically indicated;

(c) a copy of the client's individualized crisis treatment plan and all modifications to the crisis treatment plan;

(d) progress notes which indicate whether or not the stated treatment plan has been implemented, and the degree to which the client is progressing, or failing to progress, toward stated treatment objectives;

(e) medication orders from the prescribing physician and documentation of the administration of all medications;

(f) signed orders by a licensed mental health professional for any restrictions of rights; and, privileges accorded clients of the crisis response facility including the reasons for the restriction; and

(g) a discharge summary which must be completed within one week of the date of discharge.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103, MCA

RULE VIII OUTPATIENT CRISIS RESPONSE FACILITY: CLIENT ASSESSMENTS (1) Each outpatient crisis response facility shall employ or contract with licensed mental health professionals to conduct clinical intake assessments which may be abbreviated assessments focusing on the crisis issues and safety.

(a) Abbreviated intake assessments must be conducted by a licensed mental health professional trained in clinical assessments including chemical dependency screening. The clinical intake assessment must include sufficient detail to individualize crisis plan goals and objectives.

(2) Based on the client's clinical needs, each crisis response facility will refer any necessary additional assessments to appropriate and qualified providers. Additional assessments may include, but are not limited to, physical, psychological, emotional, behavioral, psychosocial, recreational, vocational, psychiatric, and chemical dependency evaluations.

(3) Each crisis response facility shall maintain a current list of providers who accept referrals for assessments and services not provided by the facility.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103, MCA

RULE IX OUTPATIENT CRISIS RESPONSE FACILITY: CLIENT

DISCHARGE (1) Each outpatient crisis response facility shall prepare a discharge summary for each client no longer receiving services. The discharge summary must include:

- (a) the reason for discharge;
- (b) a summary of the services provided by the crisis response facility including recommendations for aftercare services and referrals to other services, if applicable;
- (c) an evaluation of the client's progress as measured by the treatment plan and the impact of the services provided by the facility; and
- (d) the signature of the staff member who prepared the report and the date of preparation.

(2) Discharge summary reports must be filed in the clinical record within one week of the date of the client's formal discharge from services.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103, MCA

RULE X OUTPATIENT CRISIS RESPONSE FACILITY: PERSONNEL RECORDS (1) For each employee or contracted individual, the outpatient crisis response facility shall maintain the following information on file:

- (a) a current job description;
- (b) if a licensed mental health professional, documentation of current licensure and certification; and
- (c) dated documentation of the individual's involvement in orientation, training, and continuing education activities.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103, MCA

RULE XI OUTPATIENT CRISIS RESPONSE FACILITY: QUALITY ASSESSMENT (1) Each outpatient crisis response facility shall implement and maintain an active quality assessment program using information collected to make improvements in the facility's policies, procedures and services. At a minimum, the program must include procedures for:

- (a) conducting client satisfaction surveys, at least annually;
- (b) maintaining records on the occurrence, duration, and frequency of seclusion and physical restraints used; and
- (c) reviewing, on an ongoing basis, incident reports, grievances, complaints, medication errors, and the use of seclusion and/or physical restraint with special attention given to identifying patterns and making necessary changes in how services are provided.

(2) Each crisis response facility shall prepare and maintain on file an annual report of improvements made as a result of the quality assessment program.

AUTH: Sec. 50-5-103, MCA
IMP: Sec. 50-5-103, MCA

RULE XII OUTPATIENT CRISIS RESPONSE FACILITY: COMPLIANCE WITH BUILDING AND FIRE CODES, FIRE EXTINGUISHERS, SMOKE DETECTORS, AND MAINTENANCE

(1) Each outpatient crisis response facility shall ensure that its facilities, buildings, and homes:

(a) meet all applicable state and local building and fire codes. The facility must be annually inspected for compliance with fire codes by the state fire marshal or the marshal's designee, and the facility shall maintain a record of such inspection for at least one year following the date of the inspection;

(b) have a workable portable fire extinguisher on each floor, with a minimum rating of 2A10BC. Extinguishers must be readily accessible at all times;

(c) have a properly maintained and monthly tested smoke detector, approved by a recognized testing laboratory, on each floor of the facility; and

(d) have building exits which must be unobstructed and clearly marked.

(2) Each facility shall ensure its facilities, buildings, homes, equipment, and grounds are clean and maintained in good repair at all times for the safety and well being of its clients, staff, and visitors.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103, MCA

RULE XIII OUTPATIENT CRISIS RESPONSE FACILITY: PHYSICAL ENVIRONMENT

(1) Each outpatient crisis response facility must ensure that no more than four clients reside in a single treatment room. Each treatment room must contain at least 80 square feet per client, exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules. Each center must further provide:

(a) one toilet for every four clients;

(b) a hand washing sink in each toilet room;

(c) one bathing facility for every 12 clients; and

(d) showers and tubs with nonslip surfaces and handicap grab bars capable of supporting a sustained weight of 250 lbs.

(2) Any provision of this rule may be waived at the discretion of the department if conditions in existence prior to the adoption of this rule or construction factors would make compliance extremely difficult or impossible and if the department determines that the level of safety to clients and staff is not diminished.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103, MCA

RULE XIV OUTPATIENT CRISIS RESPONSE FACILITY: EMERGENCY PROCEDURES

(1) Each outpatient crisis response facility shall develop a written plan for emergency procedures. At a minimum, the plan must include:

(a) emergency evacuation procedures to be followed in the case of fire or other emergency;

(b) procedures for contacting emergency service responders; and

(c) the names and phone numbers for contacting other crisis response facility staff in emergency situations.

(2) Telephone numbers of the hospital, police department, fire department, ambulance, and poison control center must be posted by each telephone.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103, MCA

RULE XV OUTPATIENT CRISIS RESPONSE FACILITY: MANAGEMENT OF INAPPROPRIATE CLIENT BEHAVIOR

(1) The facility must develop and implement written policies and procedures that govern the management of inappropriate client behavior only as allowed in 42 CFR 482.13(f)(1) through (6).

(2) The department adopts and incorporates by reference 42 CFR 482.13(f)(1) through (6) (July 2, 1999), which contains standards for use of seclusion and restraint for behavioral management.

(3) The policies and procedures must:

(a) specify all facility-approved interventions to manage inappropriate client behavior and designate these interventions on a hierarchy to be implemented, ranging from most positive or least intrusive, to least positive or most intrusive;

(b) ensure, prior to the use of more restrictive techniques, that the client's record documents that programs incorporating the use of less intrusive or more positive techniques have been tried systematically and demonstrated to be ineffective; and

(c) address the following:

(i) the use of observation and seclusion rooms;

(ii) the use of time-out procedures;

(iii) the use of appropriate medication to manage inappropriate behavior;

(iv) the staff members who may authorize the use of specified interventions; and

(v) a mechanism for monitoring and controlling the use of such interventions.

(4) Interventions to manage inappropriate client behavior must be employed with sufficient safeguards and supervision to ensure that the safety, welfare, and civil and human rights of each client are adequately protected.

(5) Techniques to manage inappropriate client behavior must never be used for disciplinary purposes, for the convenience of staff or as a substitute for a treatment and habilitation program.

(6) The use of systematic interventions to manage inappropriate client behavior must be incorporated into the client's crisis facility treatment plan.

(7) Standing or as needed programs to control inappropriate behavior are not permitted.

AUTH: Sec. 50-5-103, MCA

IMP: Sec. 50-5-103, MCA

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

37.106.1946 MENTAL HEALTH CENTER: INPATIENT CRISIS STABILIZATION PROGRAM (1) In addition to the requirements established in this subchapter, each mental health center providing ~~a~~ an inpatient crisis stabilization program shall comply with the requirements established in this rule.

(2) remains the same.

(3) The inpatient crisis stabilization program shall:

(a) through (d)(iii) remain the same.

(e) orient staff within eight weeks from assuming the duties of the position on:

(i) through (iv) remain the same.

(v) infection control and prevention of transmission of blood borne pathogens-;i

(f) through (j)(vii) remain the same.

(k) establish written policies and procedures:

(i) and (ii) remain the same.

(iii) for the secure storage of toxic household chemicals and sharp household items such as utensils and tools-;i

(l) when clinically appropriate, provide each resident upon admission, or as soon as possible thereafter:

(i) and (ii) remain the same.

(iii) the written rules of conduct including the consequences for violating the rules-;i

(m) ensure ~~inpatient psychiatric~~ hospital care is available through a transfer agreement for residents in need of hospitalization;

(n) and (o) remain the same.

(4) The program supervisor and program staff must be trained in the therapeutic de-escalation of crisis situations to ensure the protection and safety of the residents and staff. The training must include the use of physical and non-physical methods of managing residents and must be updated, at least annually, to ensure that necessary skills are maintained.

AUTH: Sec. 50-5-103, MCA

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

4. The proposed adoptions and amendments describe a new level of care that addresses a need to respond to mental health crisis within a community based setting. A crisis response facility is intended to provide, when medically appropriate, an alternative to inpatient or hospital care through evaluation, assessment, intervention and referral. The proposed new rules describe the minimum standards for an outpatient crisis response facility that will provide less than 24-hour care for individuals experiencing a crisis due to serious mental illness or serious mental illness with a co-occurring substance use disorder. The Department has authority to adopt rules and

minimum standards pursuant to 50-5-103, MCA.

The crisis response facility level of care is not currently available within either the public mental health or chemical dependency system in Montana. Individuals who will be served in this type of facility are now routinely seen in a hospital emergency room or transported to the Montana State Hospital at considerable public expense. An outpatient crisis response facility provides a setting for clinical assessment, evaluation, and referral without placing an unnecessary pressure on limited hospital resources. Those individuals determined to need inpatient or hospital care will be transported to appropriate treatment through a standing transfer agreement. For those who do not require inpatient care, the crisis response facility provides a less expensive alternative for assessment of clinical need and referral to the appropriate available resources in the community.

A crisis response facility will be licensed by the Department of Public Health and Human Services to ensure program and facility standards for protection of the general public. The facility will employ or contract with an administrator who shall maintain overall daily responsibility for the facility's operations, a medical director who shall advise staff on clinical matters, and a program supervisor who is a licensed mental health professional knowledgeable about the service and support needs of individuals experiencing a mental health crisis or those with co-occurring mental illness and substance use disorders.

The proposed amendments identify requirements for policies and procedures, clinical records, client assessments, client discharge, management of inappropriate client behavior, and quality assessment. Finally, the proposed amendments establish the minimum requirements for the physical environment, personnel records, and staffing and operations. The Department has compared the requirements of other mental health service settings, and proposes these minimum requirements for care in this type of facility.

These rules are necessary to establish a standard of minimum requirements for the provision of services in order to protect the health and safety of persons seeking these services.

The number of facilities that will seek licensing of this sort is unknown. There will be no fiscal impact.

5. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on January 12, 2006. 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. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

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

Dawn Sliva
Rule Reviewer

Joan Miles
Director, Public Health and
Human Services

Certified to the Secretary of State November 28, 2005.

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

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 38.5.4111,	)	AMENDMENT
pertaining to interLATA and)	
intraLATA PIC change charges	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On January 10, 2006, the Public Service Commission proposes to amend ARM 38.5.4111, pertaining to interLATA and intraLATA PIC change charges.

2. The PSC 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 PSC no later than 5:00 p.m., December 27, 2005 to advise us of the nature of the accommodation that you need. Please contact Connie Jones, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, or email conniej@mt.gov.

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

38.5.4111 CHARGES

(1) remains the same.

(2) In cases in which customers change both their intraLATA PIC and their interLATA PIC at the same time to either the same carrier or to separate carriers, a single PIC change charge shall apply. That single PIC change charge shall be one of the following:

(a) the associated intraLATA PIC change charge;

(b) the associated interLATA PIC change charge; or

(c) the total of one-half of the associated intraLATA PIC change charge plus one-half of the associated interLATA PIC change charge.

(3) remains the same.

AUTH: 69-3-822, MCA

IMP: 69-3-834, MCA

4. The amendment is necessary in order to allow telecommunications carriers in Montana to recover their costs for making simultaneous interLATA and intraLATA primary interexchange carrier (PIC) changes. The amendment is necessary at this time because of a February 17, 2005 order of the Federal Communications Commission, effective January 1, 2006, which changes the rates that may be charged for

simultaneous PIC changes.

5. Interested persons may submit their data, views, or arguments, either orally or in writing (original and 10 copies) to Legal Division, Public Service Commission, Attention: Robin A. McHugh, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than January 5, 2006, or may be submitted to the PSC through the PSC's web-based comment form at <http://psc.mt.gov> (go to "consumer assistance," "talk to us," "pending proceeding comments," then complete and submit the form) no later than January 5, 2006. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-05.11.6-RUL.")

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

7. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments either 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 Robin A. McHugh, Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, or email rmchugh@mt.gov to be received no later than 5:00 p.m., January 5, 2006.

8. If the Public Service Commission 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 less than 25 based on the number of regulated telecommunications carriers.

9. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers; rail carriers; and administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O.

Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618, emailed to conniej@mt.gov, or may be made by completing a request form at any rules hearing held by the PSC.

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

/s/ Greg Jergeson
Greg Jergeson, Chairman
Public Service Commission

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

Certified to the Secretary of State November 28, 2005.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 42.2.304) ON PROPOSED AMENDMENT
relating to Montana source)
income)

TO: All Concerned Persons

1. On December 29, 2005, at 9:00 a.m., a public hearing will be held in the Director's Office (Fourth Floor) Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rule relating to Montana source income.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., December 19, 2005, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.2.304 DEFINITIONS The terms used by the department are, in great part, defined in Titles 15, 16, 39, and 72, MCA. In addition to these statutory definitions, the following definitions apply to ARM Title 42, unless context of a particular chapter or rule provides otherwise:

(1) through (28) remain the same.

(29) "Montana source income" is defined in 15-30-101, MCA, and the statute should be consulted to determine whether particular income is "Montana source income" obligating a nonresident to file a Montana individual income tax return, and a pass-through entity to file a Montana information return. In general, all income from work performed in the state, real or personal property located in the state, and business conducted in the state is Montana source income. For example:

(a) Gain realized from transfer of real or personal property located in the state remains Montana source income notwithstanding that recognition of the gain is deferred and regardless of the deferral mechanism.

(b) Gain realized from an installment sale of Montana property retains its Montana source income character and must

be reported as the payments are received.

(c) Gain realized on the transfer of Montana property in a like-kind exchange retains its Montana source income character and must be reported when the gain is recognized in a subsequent taxable transaction.

(30) through (53) remain the same.

AUTH: 15-1-201, 15-30-305, 15-31-501, 16-1-303, 16-10-104, and 16-11-103, MCA

IMP: 15-1-102, 15-1-601, 15-30-101, 15-30-105, 15-30-131, 15-30-1101, 15-30-1102, 15-30-1111, 15-30-1112, 15-30-1113, 15-30-1121, and 15-31-101 and Title 15, chapter 31, part 3, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.2.304 to augment the definition of "Montana source income" because questions have arisen about whether gain realized from the sale of Montana property somehow loses its character as Montana source income when the gain is not recognized and the tax is not determined until a later year or the happening of a future event.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to:

Cleo Anderson
Department of Revenue
Director's Office
P.O. Box 7701
Helena, Montana 59604-7701

and must be received no later than January 6, 2006.

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

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." 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.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State November 28, 2005

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption)
of New Rule I and amendment of)
ARM 2.5.201, 2.5.301, 2.5.302,) CORRECTED NOTICE OF
2.5.404, 2.5.406, 2.5.407,) ADOPTION AND AMENDMENT
2.5.408, 2.5.503, 2.5.505,)
2.5.601, 2.5.602, 2.5.603, and)
2.5.702 concerning state)
procurement of supplies and)
services and disposition and)
disposal of surplus property)

TO: All Concerned Persons

1. On August 28, 2005 the Montana Department of Administration published MAR Notice No. 2-2-342 regarding the proposed adoption and amendment of the above-stated rules at page 1316 of the 2005 Montana Administrative Register, Issue No. 14. On September 22, 2005, the department published an amended notice of proposed adoption and amendment (MAR Notice No. 2-2-365) at page 1709 of the 2005 Montana Administrative Register, Issue Number 18. On October 6, 2005, the department published the notice of adoption and amendment at page 1906 of the 2005 Montana Administrative Register, Issue Number 19.

2. The reason for the correction is that the permanent rule number assigned to new RULE I was incorrect.

RULE I ~~(2.5.510)~~ (2.5.610) COOPERATIVE PURCHASING
(1) remains as adopted.

AUTH: 18-4-221, MCA
IMP: 18-4-402, MCA

3. In addition, text changes in three of the rules proposed for amendment were not properly shown. The corrected rule amendments read as follows, stricken matter interlined, new matter underlined:

2.5.404 BID AND PROPOSAL PREPARATION

(1) through (6) remain as amended.

(7) Vendors may quote a cash discount based on early payment; however, such discounts will not be considered in determination of low bid or contract award and payment terms will remain as in (6), unless the bid or proposal specified otherwise.

(8) and (9) remain as amended.

AUTH: 18-4-221, MCA
IMP: 18-4-221 and 18-4-303, MCA

2.5.407 DETERMINATION OF RESPONSIVENESS/STANDARDS OF RESPONSIBILITY (1) through (4)(e) remain as amended.

(5) If requested, a bidder or offeror must supply information to the procurement officer concerning responsibility in a timely and convincing manner. If the bidder or offeror fails to supply the requested information, the procurement officer ~~shall base the~~ may base a determination of responsibility upon any available information or may find the bidder or offeror nonresponsible.

(6) through (8) remain as amended.

AUTH: 18-4-221, MCA

IMP: 18-4-303, 18-4-304, and 18-4-308, MCA

2.5.702 DISPOSITION OF SURPLUS SUPPLIES (1) through (6) remain as amended.

(7) Surplus supplies may be traded in only if the division determines the trade-in value is ~~expected to equal or exceed the value estimated to be obtained through the sale or other disposition of the supplies sufficient and in the state's best interest.~~ Generally, trade-ins will not be approved for vehicles.

(8) remains as amended.

AUTH: 18-4-226, MCA

IMP: 18-4-226, MCA

4. The text of the remaining rules remains the same.

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

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

Certified to the Secretary of State November 28, 2005.

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

In the matter of the) NOTICE OF ADOPTION
adoption of New Rule I (ARM) AND AMENDMENT
6.6.6820) and the)
amendment of ARM 6.6.6811 and)
6.6.6815 pertaining to)
captive insurance companies)

TO: All Concerned Persons

1. On June 16, 2005, the State Auditor's Office published MAR Notice No. 6-159 pertaining to captive insurance companies, at page 861 of the 2005 Montana Administrative Register, issue no. 11.

2. The Department has adopted New Rule I (ARM 6.6.6820) exactly as proposed.

3. The Department has amended the following rules exactly as proposed: ARM 6.6.6811 and 6.6.6815.

4. A public hearing was held on July 7, 2005, to consider the proposed adoption and amendment of these rules. No comments were received at this hearing, and no additional comments were received up to the closing date of comment.

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 November 28, 2005.

BEFORE THE BUSINESS RESOURCES DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of New Rules I through XVI)
pertaining to the award of)
grants and loans under the Big)
Sky Economic Development)
Program)

To: All Concerned Persons

1. On September 22, 2005, the Department of Commerce published MAR Notice No. 8-99-49 regarding the public hearing on the proposed adoption of the above-stated rules concerning the award of grants and loans under the Big Sky Economic Development Program at page 1711 of the 2005 Montana Administrative Register, Issue No. 18.

2. The Department has adopted New Rules I through XVI (8.99.901 through 8.99.916) exactly as proposed, but has amended the Big Sky Economic Development Fund Application Guidelines dated 2006 that are incorporated by reference in New Rule IV (8.99.904) based on comments received.

3. A public hearing was held on October 13, 2005. The Department has thoroughly considered all comments received. The comments received and the Department's response to each follow:

Comment 1: A comment was received with regard to a requirement that limited eligible businesses to basic sector business. Concern was expressed that this would limit the funding of small business projects in rural areas.

Response: The current language in the guidelines that the commenter took exception to provides:

"Trust Fund earnings will be awarded to local governments for use in efforts to develop economic development projects, through cooperative endeavor with a business, which provides good paying jobs to Montana residents. Eligible businesses shall meet one or more of the following criteria:

1. A basic sector company defined as a company that:
 - a. Generates more than 50% of their total dollar sales from outside Montana,
 - b. More than 50% of their product or services enters into the production of exported products outside of Montana,
 - c. Defined as a "value-adding business" by the Montana Board of Investments,

2. Other business entities that:
 - a. Are engaged in business activities that will provide a significant positive economic impact to the community, region and/or the state beyond the job creation involved,
 - b. Do not compete locally, regionally and/or within the state with existing businesses that would result in a negative impact on competitors in the community, region and/or the state, and
 - c. Provide a service or function that is essential to the locality, region and/or the State of Montana.

NOTE: Eligible businesses must also meet all of the program requirements outlined in these guidelines.

Other for-profit business entities, which do not meet the above stated criteria, may be an eligible recipient if it is determined by the Director of the Department that the activities that the business is primarily engaged in would have a substantial impact on the economy of a community, region and/or the state."

As set forth in the guidelines, in certain circumstances, the Department does recognize non-basic sector and/or other businesses to be eligible businesses, which includes small businesses in rural areas. Therefore, the Department does not believe that any changes to the guidelines in this area are necessary.

Comment 2: A comment was received with regard to a requirement that a local government work with a Certified Regional Development Corporation to implement and administer a project. The commenter wanted the local government to have the ability to choose the economic development organization to work on a project.

Response: The current language in the guidelines that the commenter took exception to provides:

"Special purpose agencies such as Certified Regional Development Corporations and other eligible economic development organizations are not eligible to apply directly to the Department for Category I financial assistance; however, local governments are statutorily required to work with an economic development organization on a proposal, and economic development organizations may be involved in implementing and administering a project by sub-recipient agreement, if the eligible applicant agrees to such an arrangement.

As determined by the Department, local governments and sub-recipients must have the management capacity to undertake and satisfactorily complete the proposed project and assure proper management of Trust Fund awards."

As set forth in the guidelines, the Department does not require that a local government work with a Certified Regional Development Corporation. The Department recognizes the local governments' discretion in agreeing to enter into a sub-recipient agreement with other eligible economic development organizations for the implementation and administration of an economic development project. The economic development organization must, however, have the management capacity to undertake and satisfactorily complete the proposed project and assure proper management of Trust Fund awards. Therefore, the Department does not believe that any changes to the guidelines are necessary.

Comment 3: Several comments were received that suggested the Department should strike all language in the program guidelines which provides a preference for projects that involve at least ten or more new eligible jobs. The commenters suggested that this preference was contrary to the legislative intent of the program.

Response: The Department agrees with these comments. The Department, therefore, has stricken the following text from the guidelines, "Projects preferably should involve at least ten (10) new eligible jobs unless unique circumstances are documented that indicate a significant, positive, secondary impact to the local economy."

BUSINESS RESOURCES DIVISION
DEPARTMENT OF COMMERCE

By: /s/ ANTHONY J. PREITE
ANTHONY J. PREITE, DIRECTOR
DEPARTMENT OF COMMERCE

By: /s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE, RULE REVIEWER

Certified to the Secretary of State November 28, 2005

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF DECISION
adoption of New Rules I through) ON PROPOSED RULE ACTION
V pertaining to credit)
counseling services)

TO: All Concerned Persons

1. On August 11, 2005, the Department of Justice published MAR Notice No. 2-61-167 regarding the public hearing on the proposed adoption of the above-stated rules concerning credit counseling services at page 1485 of the 2005 Montana Administrative Register, Issue No. 15.

2. On September 9, 2005, the Department of Justice held a public hearing to consider the proposed new rules regarding credit counseling services. In addition to the comments made at the public hearing, the Department also received written comments.

3. In light of the comments received, the Department has decided not to enact the new rules as originally proposed. Instead, the Department is proposing a modified set of new rules on the same subject, based upon those comments. MAR Notice No. 2-61-175, the Notice of Public Hearing on those modified new rules, can be found in the Notice section of this issue of the Montana Administrative Register.

By: /s/ Mike McGrath
MIKE McGRATH
Attorney General
Department of Justice

/s/ Jon Ellingson
JON ELLINGSON
Rule Reviewer

Certified to the Secretary of State November 28, 2005.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption)
of New Rules I through V pertaining) CORRECTED NOTICE
to the administration of the) OF ADOPTION
address confidentiality program)

TO: All Concerned Persons

1. On November 23, 2005, the Montana Department of Justice published MAR Notice No. 23-15-172 regarding a notice of adoption of the above-stated rules at page 2332 of the 2005 Montana Administrative Register, issue Number 22.

2. The reason for this correction is that the new rules were inadvertently assigned duplicate rule numbers. The correct numbers should be ARM 23.15.501 through 23.15.505.

By: /s/ Mike McGrath
MIKE McGRATH
Attorney General
Department of Justice

/s/ Jon Ellingson
JON ELLINGSON
Rule Reviewer

Certified to the Secretary of State November 28, 2005.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 23.16.103, 23.16.401,)
and 23.16.502, concerning the)
effective date for forms)
relating to investigation of)
applicants, disclosure from)
noninstitutional lender, dealer)
licenses, and gambling operator)
licenses)

TO: All Concerned Persons

1. On October 27, 2005, the Department of Justice published MAR Notice No. 23-16-174 regarding the public hearing on the proposed amendment of the above-stated rules at page 2018, 2005 Montana Administrative Register, Issue Number 20.

2. The Department has amended ARM 23.16.103, 23.16.401, and 23.16.502 exactly as proposed.

3. A public hearing was held on November 16, 2005. No comments or testimony were received.

By: /s/ Mike McGrath
MIKE McGRATH
Attorney General
Department of Justice

/s/ Jon Ellingson
JON ELLINGSON
Rule Reviewer

Certified to the Secretary of State November 28, 2005.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the transfer) NOTICE OF TRANSFER
of ARM 8.58.101 through)
8.58.715, pertaining to the)
board of realty regulation)

TO: All Concerned Persons

1. Pursuant to Chapter 483, Laws of Montana 2001, effective July 1, 2001, the Board of Realty Regulation was transferred from the Department of Commerce to the Department of Labor and Industry, ARM Title 24, chapter 210.

2. The Department of Labor and Industry has determined that the transferred rules will be numbered as follows:

<u>OLD</u>	<u>NEW</u>	
8.58.101	24.210.101	Board Organization
8.58.102	24.210.405	Application Of Rules--Sub-Chapter Distinction
8.58.201	24.210.201	Procedural Rules
8.58.301	24.210.301	Definitions
8.58.401	24.210.410	Purpose Of Board
8.58.402	24.210.411	Board Meetings
8.58.403	24.210.412	Record Of Minutes And Hearings
8.58.404	24.210.416	Applications For Examination And License In General -- Broker And Salesperson
8.58.405	24.210.602	Examination
8.58.405A	24.210.603	Application For Examination -- Salesperson And Broker
8.58.406A	24.210.611	Application For License -- Salesperson And Broker
8.58.406B	24.210.610	Application For License -- Pre-Examination And Pre-Course Of Education Option
8.58.406C	24.210.615	Application For Determination Of Equivalent Experience — Broker <u>For Broker Licensing</u>
8.58.406D	24.210.616	Waiver Of Experience Requirement — <u>For Broker Licensing Prohibited</u>
8.58.408A	24.210.621	Non-Resident License -- Salesperson And Broker
8.58.411	24.210.401	Fee Schedule
8.58.412	24.210.624	Inactive Licenses
8.58.413	24.210.625	Reactivation Of Licenses
8.58.414	24.210.426	Trust Account Requirements
8.58.415A	24.210.667	Continuing Real Estate Education

8.58.415B	24.210.674	Continuing Real Estate Education -- Course Approval
8.58.415C	24.210.677	Continuing Real Estate Education -- Instructor Approval
8.58.415D	24.210.661	New Licensee Mandatory Continuing Education -- Salespersons
8.58.418	24.210.435	Investigations Committee
8.58.419	24.210.641	Grounds For License Discipline - General Provisions - Unprofessional Conduct
8.58.420	24.210.651	Reinstatement
8.58.421	24.210.406	Severability
8.58.422	24.210.629	Reciprocity
8.58.423	24.210.601	General License Administration Requirements
8.58.424	24.210.646	Disciplinary Guidelines -- Public Notice
8.58.425	24.210.660	Pre-Licensing Education -- <u>Salespersons</u> And Brokers Renewal
8.58.426	24.210.635	Renewal
8.58.427	24.210.430	Internet Advertising Rules
8.58.601	24.210.1003	<u>Timeshare</u> Licensure— <u>For</u> Licensed Real Estate Brokers And Salespersons
8.58.602	24.210.1005	Licensure— <u>Of</u> Timeshare Brokers
8.58.603	24.210.1007	Licensure— <u>Of</u> Timeshare Salespersons
8.58.604	24.210.1011	Licensure—Requirements Of Personal Disclosure Statement <u>Required For Licensure</u>
8.58.605	24.210.1013	<u>Timeshare</u> Licensure— <u>For</u> Non- Residents
8.58.606	24.210.1016	Licensure—Timeshare Course Of Education <u>Required For Licensure</u>
8.58.607	24.210.1018	Licensure—Timeshare Examination <u>Requirements For Licensure</u>
8.58.608	24.210.1020	Licensure—Timeshare <u>License</u> Renewal <u>Requirements</u>
8.58.612	24.210.1025	<u>Timeshare</u> Registration— Application <u>Requirements</u>
8.58.613	24.210.1029	<u>Timeshare</u> Registration— Disclosure Document <u>Requirements</u>
8.58.614	24.210.1031	<u>Timeshare</u> Registration— Conditions Of Registration <u>Requirements</u>
8.58.615	24.210.1027	Registration—Alternative <u>Acceptable</u> Documents <u>Acceptable</u> <u>For Timeshare Registration</u>
8.58.616	24.210.1033	<u>Timeshare</u> Registration—Renewal <u>Registration Requirements</u>
8.58.617	24.210.1035	Registration—Timeshare Amendment For Additional

		<u>Intervals Registration Requirements</u>
8.58.618	24.210.1037	Registration—Timeshare Amendment For Material Adverse Change <u>Registration Requirements</u>
8.58.701	24.210.803	<u>Property Management</u> Definitions
8.58.702	24.210.812	Application For <u>Property Management</u> Licensure
8.58.703	24.210.815	Application For <u>Property Management</u> Examination
8.58.704	24.210.818	<u>Property Management</u> Examination
8.58.705	24.210.809	Pre-Licensure <u>Property Management</u> Course Requirements
8.58.706	24.210.807	<u>Property Management</u> License Transfer — Notice to the Department <u>Requirements</u>
8.58.707	24.210.825	<u>Property Management</u> License Renewal — <u>And</u> Late Renewal
8.58.708	24.210.826	Inactive <u>Property Management</u> Licenses — <u>And</u> Reactivation <u>Of Property Management Licenses</u>
8.58.709	24.210.835	Continuing Property Management Education
8.58.710	24.210.840	Continuing Property Management Education -- Course Approval
8.58.711	24.210.843	Continuing Property Management Education -- Instructor Approval
8.58.712	24.210.805	<u>Property Management</u> Trust Account Requirements
8.58.713	24.210.801	Fee Schedule
8.58.714	24.210.828	Grounds For Discipline Of Property Management Licensees - General Provisions - Unprofessional Conduct
8.58.715	24.210.836	Continuing Property Management Education Reporting Requirements

3. The transfer of rules is necessary because this board was transferred from the Department of Commerce to the Department of Labor and Industry by the 2001 legislature by Chapter 483, Laws of Montana 2001.

BOARD OF REALTY REGULATION
TERRY HILGENDORF, CHAIRPERSON

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State November 28, 2005

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

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 24.141.401 pertaining)
to board meetings, ARM 24.141.402)
pertaining to apprentice)
registration, ARM 24.141.405)
pertaining to fee schedule,)
ARM 24.141.502 pertaining to)
temporary practice permits, and)
ARM 24.141.503 pertaining to)
examinations)

TO: All Concerned Persons

1. On July 14, 2005, the State Electrical Board published MAR Notice No. 24-141-30 regarding the public hearing on the proposed amendment of the above-stated rules at page 1219 of the 2005 Montana Administrative Register, issue no. 13.

2. On August 11, 2005, at 9:00 a.m., a public hearing was conducted in Helena, Montana, and two members of the public spoke at the public hearing. In addition, three written comments were received prior to the closing of the comment period.

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

Comment 1: Mr. J. Michael Scott stated he felt "any copyrighted book should be permitted in the examination. The NEC is not always the most self-explanatory reference book for the practitioner."

Response 1: The Board believes there is no need for any other book, and the examination is taken exclusively from the NEC codebook. In addition, it would be too difficult for those involved in monitoring the examinations to review more than the one relevant book (NEC) for inappropriate notes and commentary.

Comment 2: Mr. Scott also stated "that all commercial projects over 3,000 square feet should be designed by a registered electrical engineer."

Response 2: The Board notes that requiring commercial projects of over 3,000 square feet to be designed by an electrical engineer is outside the scope of the proposed rulemaking, and thus the Board is unable to take any final

action on the suggestion. The topic may be addressed at sometime in the future, however.

Comment 3: Mr. Michael H. Lindquist commented he was requesting that the Electrician's Handbook of Examples and Formulas and UGLY's Electrical References be included as approved materials for examinations.

Response 3: The Board believes that the response for Comment 1 is applicable to this comment as well.

Comment 4: Mr. Tom Webber commented that he was advised by his attorney that it was legal to have his own apprenticeship program so long as it meets or exceeds the State's program. He also felt it was unfair to limit the choice of apprenticeship programs to the state only.

Response 4: The Board agrees that Mr. Webber can operate his own apprenticeship program. The Department of Labor and Industry Apprenticeship and Training Program will register any apprenticeship program that meets or exceeds the standards recognized by the Department, whether that program is privately sponsored by an individual employer, by a group of employers, or by one or more labor organizations. In addition, the Board's rule allows the Board to recognize any apprenticeship program that is equivalent to Montana's registered programs. The Board concludes that its rule provides for alternatives to Montana-registered apprenticeship programs and agreements.

Comment 5: Mr. Keith Allen and Roy Symons testified in full support of the proposed amendments.

Response 5: The Board took this opportunity to thank all of the commenters and witnesses for their input. It is only after receipt of information from the public and from the industry that the Board can make the best decision in these types of matters.

4. The Board has amended ARM 24.141.401, 24.141.402, 24.141.405, 24.141.502, and 24.141.503 exactly as proposed.

STATE ELECTRICAL BOARD
TONY MARTEL, PRESIDENT

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State November 28, 2005

23-12/8/05

Montana Administrative Register

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

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 24.180.607) AND ADOPTION
pertaining to temporary)
practice permits and the)
adoption of NEW RULE I)
pertaining to continuing)
education requirements)

TO: All Concerned Persons

1. On June 16, 2005, the Board of Plumbers (Board) published MAR Notice No. 24-180-42 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 893 of the 2005 Montana Administrative Register, issue no. 11.

2. On July 8, 2005, a public hearing was conducted in Helena, Montana. Numerous comments were received prior to the end of the public comment period.

3. The Board has thoroughly considered all of the comments received. A summary of the comments received and the Board's responses are as follows:

Comment 1: Several comments were received in support of the proposed continuing education (CE) requirement.

Response 1: The Board appreciates all comments received in this proceeding.

Comment 2: One commenter suggested that only journeymen plumbers should be required to obtain CE.

Response 2: The Board considers it equally important for all licensees, both journeymen and master plumbers, to obtain CE for the safety, health and welfare of the public.

Comment 3: Comments were received that CE is unnecessary and that Board focus should be directed toward enforcement of the current laws regarding unlicensed practice.

Response 3: The Board agrees that enforcement of current laws is important and will continue to pursue any and all violators. The Board determined that CE requirements are not associated with unlicensed practice enforcement and requiring CE will not affect the amount of compliance inspections. Enforcement of current licensure regulations and requiring CE are equally important for the plumbing industry and the public health, safety and welfare.

Comment 4: Commenters inquired whether out-of-state licensees would be exempt from CE requirements.

Response 4: The Board determined it is equally important for all Board licensees to obtain CE whether they are in-state or out-of-state. The Board notes that subsection (2)(b)(v) of the CE rule allows instructors from other states or jurisdictions to have their CE courses approved by the Board.

Comment 5: One commenter opposed the CE requirements stating that it will require hundreds of thousands of dollars annually for additional manpower at the State level.

Response 5: The Board will pre-approve CE courses and does not anticipate a need for additional State personnel to implement or administer the CE requirements.

Comment 6: One commenter stated that even with instructor qualifications in rule, CE courses will end up being taught by wholesale material and equipment suppliers and will not further the public's protection. The commenter would prefer to have State-sponsored traveling code seminars.

Response 6: The Board has set qualifications for instructors and for Board approval of course curricula in New Rule I. The Board established these criteria to ensure that only relevant CE courses would be offered and taught by qualified instructors. The Board has no plans to implement traveling code seminars at this time.

Comment 7: One commenter asked if the Board would recognize employment by a municipality as an inspector or plan checker as part of the CE requirements.

Response 7: The Board determined that all licensed journeymen and master plumbers will be required to obtain CE regardless of their particular employers or places of employment.

Comment 8: One commenter stated that master plumbers only should be required to obtain CE and then pass the acquired knowledge onto the journeymen plumbers.

Response 8: The Board considers it equally important for all licensees, both journeymen and master plumbers, to obtain CE for the safety, health and welfare of the public.

Comment 9: One commenter was concerned about the cost to licensees of obtaining the required CE.

Response 9: The Board shares that concern, but concluded that it is essential for the public health, safety and welfare that CE be imposed. The Board notes that many other professions require CE and that many courses offered are at very low cost due to competition between CE providers.

Comment 10: One commenter stated that a random audit of 30% is insufficient to adequately monitor compliance and suggested an audit of 100% of all active licensees.

Response 10: The Board was concerned as well that 30% was not sufficient and concluded that 50% would better protect the public and is the maximum audit amount allowed by statute.

Comment 11: One commenter questioned whether it is reasonable to require licensees to maintain records for three years if audits are conducted annually.

Response 11: The Board determined that having a three-year record retention requirement for licensees is reasonable to assist the Board in obtaining information during investigation, contested cases and litigation of potential disciplinary actions against licensees.

Comment 12: One commenter asked whether the Board would accept CE courses completed online or through correspondence.

Response 12: The Board has the authority to approve any course meeting the requirements set forth in rule, including online or correspondence courses.

Comment 13: One commenter inquired whether vendors would be allowed to be CE instructors.

Response 13: The Board determined that any person meeting the qualifications in rule can be an instructor.

Comment 14: One commenter asked if town resolution plumbers, who are exempt from licensure, would be required to obtain CE.

Response 14: Because town resolution plumbers are exempt from licensure laws and rules, the Board has no authority to require them to obtain CE.

Comment 15: Two commenters asked about placing licenses on "inactive" status in lieu of maintaining active licensure and complying with CE requirements.

Response 15: The Board lacks statutory authority to create an "inactive" status for plumbing licenses. Pursuant to 37-1-141, MCA, licenses not renewed by the renewal date will be placed in a lapsed status for 45 days. Licenses not reactivated within the 45-day period will be placed on expired status. Lastly, licenses not reactivated within the two-year expired period will be terminated and reapplication and reexamination will be required for licensure.

Comment 16: One commenter requested clarification of New Rule I, (2)(b)(iii), which states "a certified journeyman and

apprentice plumbing inspector." The commenter suggested that it should be "instructor", not "inspector."

Response 16: The Board concurs with the comment. The use of "inspector" was a clerical error and has been amended to "instructor" accordingly.

4. The Board has amended ARM 24.180.607 exactly as proposed.

5. The Board has adopted NEW RULE I (24.180.2102) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (24.180.2102) CONTINUING EDUCATION REQUIREMENTS (1) remains as proposed.

(2) through (2)(b)(ii) remain as proposed.

(iii) a certified journeyman and apprentice plumbing ~~inspector~~ instructor.

(iv) through (3) remain as proposed.

(4) The department may conduct a random audit of up to ~~30%~~ 50% of all active licensees following the licensee renewal process.

(a) through (6) remain as proposed.

AUTH: 37-69-202, MCA

IMP: 37-1-306, MCA

BOARD OF PLUMBERS
TIM REGAN, PRESIDING OFFICER

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

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

Certified to the Secretary of State November 28, 2005

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

In the matter of the amendment) NOTICE OF AMENDMENT AND
of ARM 24.189.2107 continuing) ADOPTION
education implementation and)
adoption of NEW RULE I fee)
abatement)

To: All Concerned Persons

1. On September 22, 2005, the Board of Psychologists published MAR Notice No. 24-189-29 regarding the public hearing on the proposed amendment and adoption of the above-stated rules relating to continuing education implementation and fee abatement, at page 1739 of the 2005 Montana Administrative Register, issue no. 18.

2. A public hearing on the proposed amendment and adoption was held on October 14, 2005. No members of the public spoke at the public hearing. One written comment was received prior to the closing of the comment period on October 21, 2005.

3. The Board of Psychologists (Board) has thoroughly considered the comment made. A summary of the comment received and the Board's response are as follows:

Comment 1: One commenter suggested that the Board should notify licensees whether the licensees are in compliance with continuing education (CE) requirements, or out of compliance with such requirements.

Response 1: The Board's process of notifying licensees of CE noncompliance only has been in place for 13 years. In that time, the Board is not aware of any instances where disciplinary action was taken when a licensee mistakenly assumed compliance because a noncompliance notification was lost in the mail. The Board determined not to change the process and is amending the rule exactly as proposed.

4. After consideration of the comment, the Board hereby amends ARM 24.189.2107 and adopts NEW RULE I (ARM 24.189.402) exactly as proposed.

BOARD OF PSYCHOLOGISTS
JAY PALMATIER, PhD, CHAIRPERSON

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State November 28, 2005

BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT
of ARM 24.204.401 fee schedule,	)	AND ADOPTION
ARM 24.204.404 permit fees,)	
ARM 24.204.406 abatement of)	
renewal fees, ARM 24.204.408)	
radiologic technologists)	
applications, ARM 24.204.411)	
replacement licenses and)	
permits, ARM 24.204.504)	
permits - practice limitations,)	
ARM 24.204.511 permit)	
examinations, and the)	
adoption of NEW RULES I through)	
IV pertaining to radiologist)	
assistants, scope of practice,)	
supervision, and adoption of a)	
code of ethics)	

TO: All Concerned Persons

1. On July 14, 2005, the Board of Radiologic Technologists (Board) published MAR Notice No. 24-204-31 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1226 of the 2005 Administrative Register, issue no. 13.

2. A public hearing on the proposed amendment and adoption was held on August 8, 2005. Members of the public spoke at the public hearing. In addition, written comments were received prior to the closing of the comment period on August 16, 2005.

3. The Board has thoroughly considered all of the comments made. A summary of the comments received and the Board's responses are as follows:

Comment 1: Comments were received that New Rules II and III should be amended to comply with statutory changes following enactment of House Bill 457 of the 2005 legislature. The commenters stated that New Rules II and III require RAs to work under general supervision of radiologists, and opined that, due to House Bill 457, general supervision is no longer required for all procedures. The commenters further stated that the Board can set different supervision levels for various procedures and suggested the Board define the RA scope of practice in categories of procedures having different levels of supervision.

Response 1: The 2005 Montana Legislature enacted Chapter 491, Laws of 2005 (House Bill 457), an act revising laws governing

licensing and professional practices of radiologic technologists and radiologist assistants and requiring adoption of rules by the Board. The bill was signed by the Governor and became effective on April 28, 2005.

Section 37-14-313, MCA, provides that the specific duties allowed for RAs may be defined by the Board in rule. The statute requires those rules to specify the functions that RAs may perform in conjunction with diagnostic procedures under a radiologist's supervision. Prior to passage of House Bill 457, the supervision was specified as general supervision. House Bill 457 deleted the specific requirement of "general" supervision in 37-14-313(2)(b), MCA, but inserted a new subsection (c) stating that the "rules may specify levels of supervision based on education and experience, but at a minimum, the level of supervision must be general supervision."

Because the rules may specify levels of supervision, and general supervision is the minimal permissible supervision level, the Board proposed New Rules II and III to identify procedures requiring general supervision. House Bill 457 amended the definition of "general supervision" at 37-14-102(3), MCA, to "face-to-face communication, direction, observation, and evaluation by the radiologist at least monthly, with interim supervision occurring by other methods, such as telephonic, electronic, or written communication." The Board anticipates addressing RA procedures requiring direct supervision at their next regularly scheduled meeting. Further, the Board anticipates drafting rules to further delineate the RA scope of practice by defining "direct supervision" as "a radiologist in attendance in the facility during the performance of the exam" and "personal supervision" as "a radiologist in personal attendance in the exam room during the procedure."

Comment 2: Several licensees jointly submitted comments on deleting the requirement for licensure applicants to submit a copy of a current American Registry of Radiologic Technologists (ARRT) wallet card. The commenters questioned the differences between requiring a copy of the ARRT wallet card, submitting proof of ARRT examination passage, or looking applicants up in the ARRT registry. The commenters asked if applicants who have passed the ARRT examination would then not need ARRT registration for licensure? And if so, the commenters asked how the Board would verify applicants' required annual continuing education?

Response 2: Applicants can take, pass and receive proof of passage of the ARRT examination even if they are not registered with ARRT and do not have an ARRT wallet card. The Board amended the rule to allow licensure of applicants who have taken and passed the examination, but who are not ARRT credentialed due to past criminal conviction. Applicants who have passed the ARRT examination may still qualify for Montana licensure, but would be neither ARRT credentialed nor listed

in the ARRT registry, and would not hold an ARRT wallet card or be allowed to use the ARRT trademark "RT" following their names. Montana licensed radiologic technologists are required to obtain continuing education (CE) to maintain Montana licensure and licensees must affirm completion of CE on their license renewal forms.

The commenters posed additional questions unrelated to and beyond the scope of the proposed notice, which will be addressed by the Board at a subsequent Board meeting.

4. After consideration of the comments, the Board hereby amends ARM 24.204.401, 24.204.404, 24.204.406, 24.204.408, 24.204.411, 24.204.504 and 24.204.511, and adopts NEW RULE I (ARM 24.204.601), NEW RULE II (ARM 24.204.603), NEW RULE III (ARM 24.204.605) and NEW RULE IV (ARM 24.204.607) exactly as proposed.

BOARD OF RADIOLOGIC TECHNOLOGISTS
JOHN ROSENBAUM, CHAIRPERSON

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

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

Certified to the Secretary of State November 28, 2005

BEFORE THE DEPARTMENT
OF NATURAL RESOURCES AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the repeal) NOTICE OF REPEAL
of ARM 36.19.106 pertaining)
to the reclamation and)
development grants program)

To: All Concerned Persons

1. On September 22, 2005, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-108 regarding the proposed repeal of ARM 36.19.106 concerning the reclamation and development grants program at page 1746 of the 2005 Montana Administrative Register, Issue No. 18.

2. The Department has repealed ARM 36.19.106 exactly as proposed.

AUTH: 90-2-1105, MCA
IMP: 90-2-1105, MCA

3. No comments or testimony were received.

/s/ Anne W. Yates
ANNE W. YATES
RULE REVIEWER

/s/ Mary Sexton
MARY SEXTON, DIRECTOR,
NATURAL RESOURCES AND CONSERVATION

Certified to the Secretary of State November 28, 2005.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 42.18.109, 42.18.110,)
42.18.113, 42.18.121, 42.18.122,))
and 42.18.124 relating to the)
Montana reappraisal plans for)
2003 and 2009)

TO: All Concerned Persons

1. On October 6, 2005, the department published MAR Notice No. 42-2-750 regarding the proposed amendment of the above-stated rules relating to the Montana reappraisal plans for 2003 and 2009 at page 1891 of the 2005 Montana Administrative Register, issue no. 19.

2. A public hearing was held on October 28, 2005, to consider the proposed amendment. No one appeared at the hearing to testify and no written comments were received.

3. Therefore, the department amends ARM 42.18.109, 42.18.110, 42.18.113, 42.18.121, 42.18.122, and 42.18.124 as proposed.

4. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The Department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State November 28, 2005

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION,
of NEW RULE I (ARM 42.25.1815),) AMENDMENT, AND REPEAL
amendment of ARM 42.25.1801,)
42.25.1807, 42.25.1808,)
42.25.1809, and repeal of ARM)
42.25.1810, 42.25.1811, and)
42.25.1812 relating to oil,)
gas, and coal natural resources)

TO: All Concerned Persons

1. On October 10, 2005, the department published MAR Notice No. 42-2-751 regarding the proposed adoption, amendment, and repeal of the above-stated rules relating to oil, gas, and coal natural resources at page 1896 of the 2005 Montana Administrative Register, issue no. 19.

2. A public hearing was held on October 27, 2005, to consider the proposed adoption, amendment, and repeal. Oral testimony received at the hearing is summarized as follows along with the response of the department:

COMMENT NO. 1: Gail Abercrombie representing the Montana Petroleum Association stated that they appreciate the work that went into the development of the rules. She asked for some clarification regarding the stricken language currently found in ARM 42.25.1801(7), which addresses the stripper well bonus and exemption. Ms. Abercrombie asked if the bonus and exemption would go on a month-by-month analysis or how does the department envision administering that function.

RESPONSE NO. 1: Because the department is adding another production type under ARM 42.25.1801(6) "stripper well bonus," the department is proposing to delete the sentence currently found in (7) which reads: "Once qualified, all production for the lease for the entire year is reported at the stripper well exemption tax rate of .8% for working interests and 15.1% for non-working interests, even if it exceeds the 3 barrel average." The department believes that the two definitions in combination with each other, the modification of (7) under the "stripper well exemption" and the new definition in (6) "stripper well bonus" still permit a lease to be classified based on the prior calendar year. The language as proposed will keep a lease under the same classification for the next four calendar quarters. Also, with regard to tax administration, these two new definitions will help the department determine which tax rates will apply for wells producing three barrels a day or less. Either the stripper well exemption rates or the stripper well bonus rates.

COMMENT NO. 2: Ms. Abercrombie stated that she had a
Montana Administrative Register 23-12/8/05

general question regarding the administration of the rules. Currently, many of the tax rates that are expressed in the tables shown in ARM 42.25.1809 may not be applicable because of different price triggers established by the law. They are effective but they are not applicable. She asked if the department had experienced any problems with the issue where the incremental production lower tax rate had a trigger that is not applicable now? Has this confused people because there is nothing in the rule or statute that alerts a person reading the rule that it is not the current applicable tax rate because it is over the trigger rate that is in the statute?

She further asked if the department thought there should be some kind of qualification paragraph or definition that would somehow make the reader of the rule aware that there is a price trigger on that calculation if it is over a certain price. That price would be \$30 of west Texas intermediate crude per calendar quarter based on the rate in the primary production.

RESPONSE NO. 2: The department does not believe that this has been an issue with the operators. When someone amends a return for example, if they are a new operator and they are not familiar with, or have knowledge of, the prior price thresholds the staff always makes an effort to contact them to make sure they understand the older tax rates. The department has clear directions, which are updated regularly to keep people aware of how to file the correct tax return information. The rule changes being proposed in these rules will be included in form updates when the rules are adopted and the department sends its quarterly "newsletter" to operators reflecting the changes that may impact them in some way.

3. The department adopts New Rule I (ARM 42.25.1815), amends ARM 42.25.1801, 42.25.1807, 42.25.1808, 42.25.1809, and repeals ARM 42.25.1810, 42.25.1811, and 42.25.1812 as proposed.

4. An electronic copy of this Adoption Notice is available through the Department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The Department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State November 28, 2005

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through 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.

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