ISSUE NO. 21

The Montana Administrative Register (MAR or Register), 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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 Secretary of State's Office, Administrative Rules Bureau, at (406) 444-2055.

Page Number

TABLE OF CONTENTS

NOTICE SECTION

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

In the matter of the proposed adoption of New Rule I Quality Educator Payments - General Fund, New Rule II At Risk Student Payments - General Fund, New Rule III Indian Education for All Payments - General Fund, New Rule IV American Indian Achievement Gap Payments - General Fund, and the proposed amendment of ARM 10.7.106, 10.7.106A, 10.7.113 through 10.7.115, 10.10.301, 10.10.301B, 10.10.301D, 10.10.311, 10.10.318, 10.10.610, 10.10.611 through 10.10.615, 10.15.101, 10.16.3804, 10.16.3811, 10.16.3812, 10.16.3816, 10.20.102, 10.20.104, 10.20.105, 10.21.101B, 10.21.101E, 10.21.101G, 10.21.101I, 10.21.102B, 10.21.102E, 10.22.102, 10.22.204, 10.23.102 through 10.23.104, 10.23.108, 10.30.403, 10.30.406, and 10.30.415, relating to School Finance	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On December 6, 2006, at 9:00 a.m., a public hearing will be held in the Superintendent's conference room at 1227 11th Avenue, Helena, Montana, to consider the adoption and amendment of the above-stated rules.

2. The State Superintendent will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the State Superintendent's office no later than 5:00 p.m. on November 20, 2006, to advise us of the nature of the accommodation that you need. Please contact Beverly Marlow, Legal Division, P.O. Box 202501, Helena, MT 59620-2501, telephone: (406) 444-3172, TDD number: (406) 444-0235, FAX: (406) 444-2893, e-mail opirules@mt.gov.

3. The proposed new rules provide as follows:

<u>NEW RULE I QUALITY EDUCATOR PAYMENTS - GENERAL FUND</u>

(1) The Superintendent of Public Instruction will determine and report the quality educator payment for each school district and special education cooperative by March 1 for the ensuing school year.

(2) The number of FTE used to determine the payment for FY 20XX+2 will be based on the full time equivalent (FTE) personnel assignments and associated FTE units reported by the district to the Superintendent of Public Instruction on the annual data collection report submitted in the fall of 20XX.

(3) The FTE used to calculate the payment will not include educators employed under emergency authorization granted by the State Superintendent. The FTE used to calculate the payment will include other licensed educators and licensed professionals, providing the employee holds a position for which the accreditation standards require such licensure and eligible licensed professionals as defined in 20-9-327, MCA.

(4) Educators without a valid license will not be considered in the FTE for the payment. A license must be current as of December 1 of the school year in which the employee is reported in order to be valid for purposes of the quality educator payment calculation for the following fiscal year.

(5) The Superintendent of Public Instruction will provide an opportunity for district officials to review the FTE information submitted on the annual data collection. Changes to FTE reporting used for the quality educator payment calculation will not be accepted after December 31 except in cases of significant reporting error, as determined by the Superintendent of Public Instruction.

(6) Payments will be distributed to school districts by the Superintendent of Public Instruction on the schedule for BASE aid distributions provided in 20-9-344, MCA.

AUTH: 20-3-106, MCA
IMP: 20-9-327, MCA

Statement of Reasonable Necessity: The Superintendent of Public Instruction has determined that it is reasonable and necessary to adopt New Rule I to implement 20-9-327, MCA which was enacted in the 2005 Special Session under SB 1. The bill added a new payment type to the school district's general fund.

NEW RULE II AT RISK STUDENT PAYMENTS - GENERAL FUND

(1) The Superintendent of Public Instruction will determine and report the at-risk student payment for each school district by March 1 for the ensuing school year.

(2) Payments will be distributed to school districts by the Superintendent of Public Instruction on the schedule for BASE aid distributions provided in 20-9-344, MCA.

AUTH: 20-3-106, MCA
IMP: 20-9-328, MCA

Statement of Reasonable Necessity: The Superintendent of Public Instruction has determined that it is reasonable and necessary to adopt New Rule II to implement 20-9-328, MCA which was enacted in the 2005 Special Session under SB 1. The bill added a new payment type to the school district's general fund.

NEW RULE III INDIAN EDUCATION FOR ALL PAYMENTS - GENERAL

FUND (1) The Superintendent of Public Instruction will determine and report the Indian Education for All payment for each school district by March 1 for the ensuing school year.

(2) Payments will be distributed to school districts by the Superintendent of Public Instruction on the schedule for BASE aid distributions provided in 20-9-344, MCA.

AUTH: 20-3-106, MCA
IMP: 20-9-329, MCA

Statement of Reasonable Necessity: The Superintendent of Public Instruction has determined that it is reasonable and necessary to adopt New Rule III to implement 20-9-329, MCA which was enacted in the 2005 Special Session under SB 1. The bill added a new payment type to the school district's general fund.

NEW RULE IV AMERICAN INDIAN ACHIEVEMENT GAP PAYMENTS - GENERAL FUND (1) The Superintendent of Public Instruction will determine and report the American Indian achievement gap payment for each school district by March 1 for the ensuing school year.

(2) The number of students used to determine the payment for FY 20XX+2 will be the number of American Indian students enrolled in the district as reported on the fall enrollment count submitted by the district to the Superintendent of Public Instruction in the fall of 20XX.

(3) The Superintendent of Public Instruction will provide an opportunity for district officials to review the enrollment information submitted on the fall enrollment report. Changes to the enrollment report information used for the American Indian achievement gap payment will not be accepted after December 31 except in cases of significant reporting error, as determined by the Superintendent of Public Instruction.

(4) Payments will be distributed to school districts by the Superintendent of Public Instruction on the schedule for BASE aid distributions provided in 20-9-344, MCA.

AUTH: 20-3-106, MCA
IMP: 20-9-330, MCA

Statement of Reasonable Necessity: The Superintendent of Public Instruction has determined that it is reasonable and necessary to adopt New Rule IV to implement 20-9-330, MCA which was enacted in the 2005 Special Session under SB 1. The bill added a new payment type to the school district's general fund.

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

10.7.106 CONTENTS AND LIMITATIONS OF PUPIL TRANSPORTATION CONTRACTS (1) through (7) remain the same.

(8) Contracts for students with transportation listed as a related service on

their individualized education plans will receive the following state/county reimbursement:

(a) Students who live three miles or less from the school or bus stop will be eligible for the minimum state/county reimbursement rate of ~~25~~ 35 cents per day;

(b) through (12) remain the same.

(13) By July 10, or as received from the district, the county superintendent transmits the original copy of each transportation contract to the Superintendent of Public Instruction. All individual contracts made between the same parent or legal guardian and different school districts (in the same county or in different counties) are gathered by the Superintendent of Public Instruction and allocation of district responsibility for payment is made in compliance with the law and the Board of Public Education policy. ~~(20-10-111 and 20-10-112, MCA.)~~

(14) remains the same.

(15) The district clerk, in writing warrants for transportation payments to the parent, legal guardian, or the emancipated minor, is guided by the approved rates; the school district may only make payments to the parent, legal guardian, or emancipated minor in accordance with the rate established in (14) for approved contracts. ~~(20-10-124, MCA.)~~

AUTH: 20-3-106, 20-10-112, MCA
IMP: 20-5-321, 20-9-166, 20-10-101, 20-10-111, 20-10-112, 20-10-121, 20-10-124, 20-10-142, MCA

Statement of Reasonable Necessity: The Superintendent of Public Instruction has determined that it is reasonable and necessary to amend ARM 10.7.106, 10.7.106A, 10.7.113 and 10.7.114 to implement changes made in the 2005 Special Session under SB 1. This bill increased the reimbursement rate for mileage on individual transportation contracts. Several changes are made to clean up extraneous wording and references.

10.7.106A TRANSPORTATION COSTS ALLOCATED BY OUT-OF-DISTRICT ATTENDANCE AGREEMENTS (1) through (4)(a) remain the same.

(b) the number of miles added to a bus route or routes to accommodate students attending under attendance agreements, divided by the number of students riding the buses under the attendance agreement(s), times ~~$0.25~~ $0.35, times the number of days the route or routes are conducted for the year of attendance.

(5) through (9) remain the same.

AUTH: 20-10-112, MCA
IMP: 20-5-320, 20-5-321, 20-5-323, 20-10-141, 20-10-142, MCA

Statement of Reasonable Necessity: See statement following ARM 10.7.106.

10.7.113 "TWO CONTRACT AMOUNT" REGULATION (1) and (1)(a) remain the same.

(i) The reimbursement paid to each district may be less than ~~25~~ 35 cents per day, but the combined payment for the contract shall not be less than ~~25~~ 35 cents

per day.

(b) and (c) remain the same.

AUTH: 20-3-106, 20-10-112, MCA
IMP: 20-10-142, MCA

Statement of Reasonable Necessity: See statement following ARM 10.7.106.

10.7.114 SCHEDULE FOR TRANSPORTATION PAYMENTS (1) The schedule for paying for individual and isolated (or "increased") transportation or for room and board in lieu of bus transportation is found in 20-10-142, MCA. This section establishes the amount of individual payments to parents for transporting their children to school (if they reside in an area not served by a school bus) or to a bus stop ~~(if they reside in an area served by a school bus)~~.

(2) remains the same.

(3) In cases where the family must move and maintain two households or where the family must board the student near the school, the family may be eligible for the room and board rate of ~~$9.25~~ $12.95 per day for the first child and ~~$6.00~~ $8.40 per day for each additional child ~~(20-10-142, MCA)~~. All contracts for room and board reimbursement must be approved by the county transportation committee prior to approval by the Superintendent of Public Instruction.

(a) If there is more than one eligible transportee of the same household, and the eligible transportees attend schools operated by more than one school district, the rate of ~~$9.25~~ $12.95 per day shall be paid to the district enrolling the student with the highest grade level. Additional reimbursement will be at the rate of ~~$6.00~~ $8.40 per day per student.

AUTH: 20-3-106, 20-10-112, MCA
IMP: 20-10-142, MCA

Statement of Reasonable Necessity: See statement following ARM 10.7.106.

10.7.115 SCHEDULE FOR BUS TRANSPORTATION (1) and (2) remain the same.

(3) Nonbus mileage is reimbursable for a vehicle driven by a bus driver to and from an overnight location of a school bus when the location is more than ~~10~~ ten miles from the school. Reimbursement for nonbus mileage is ~~43~~ 50 cents per mile.

(4) remains the same.

AUTH: 20-3-106, 20-10-112, MCA
IMP: ~~20-10-127,~~ 20-10-141, 20-10-142, MCA

Statement of Reasonable Necessity: The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.7.115 to reflect amendments to the nonbus mileage reimbursement rate in HB 63, 2005 Session Laws. The implementation section is amended to remove a reference to 20-10-127, MCA which was repealed in 2003.

10.10.301 CALCULATING TUITION RATES (1) through (2)(a) remain the same.

(b) the costs of the program can be documented and exceed the receiving school district's average general fund budget per budgeted ANB in the year preceding the year of attendance.

(3) through (5)(e) remain the same.

AUTH: 20-5-312, 20-9-102, 20-9-201, MCA
IMP: Title 20, ch. 5, pt. 3, 20-6-702, MCA

Statement of Reasonable Necessity: The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.10.301, 10.10.318, 10.16.3804, 10.16.3811, 10.16.3812, 10.16.3816, 10.20.104, 10.20.105, 10.21.101B, 10.21.101E, 10.21.101G, 10.21.101I, 10.21.102B, 10.21.102E, 10.22.204, 10.23.104, 10.30.403, 10.30.406 and 10.30.415 to implement the three-year average ANB provisions passed in HB 63, 2005 Session Laws. The references to "ANB" must distinguish which type of ANB calculation is being used, since there are six types of ANB used in various sections of law.

10.10.301B OUT-OF-DISTRICT ATTENDANCE AGREEMENTS (1) through (7) remain the same.

(8) When the state is obligated to pay tuition or transportation costs for a student placed under provisions of 20-5-321(1)(d) and (e), MCA, the ~~county superintendent~~ trustees of the district of attendance shall send a completed copy of the student's attendance agreement to the Superintendent of Public Instruction ~~before paying tuition to the school district of attendance~~ for approval. The agreement must be submitted by June 30 of the year following the year of attendance to be eligible for approval.

(9) remains the same.

(10) The state shall be responsible for tuition and may be charged transportation costs as established under 20-5-323, MCA, for a child who has been placed outside the child's resident district by a court or by a state agency or for a child placed outside the child's resident district in a foster care or group home licensed by the state. ~~When the state is obligated to pay a student's tuition or transportation costs, those payments may be made in the child's year of attendance.~~

(11) The state's tuition and related transportation obligation shall be paid to the eligible receiving district by the ~~county superintendent in the county of attendance, who will direct the county treasurer to pay the billing district from the basic county tax for equalization~~ Superintendent of Public Instruction.

(12) Tuition payments made for a child placed outside the child's resident district by a court or state agency must be supported by a properly completed out-of-district attendance agreement signed by both the receiving district and by an authorized representative of the placing court or state agency. Attendance agreements for students placed in state licensed group homes by parents, guardians, or representatives of state licensed group homes must be signed by the receiving district and by a parent or legal guardian or an authorized representative of a state licensed group home on behalf of the parent or legal guardian.

AUTH: 20-5-323, 20-9-102, MCA
IMP: 20-5-320, 20-5-321, 20-5-322, 20-5-323, 20-5-324, MCA

Statement of Reasonable Necessity: The Superintendent of Public Instruction has determined that it is reasonable and necessary to amend ARM 10.10.301B and 10.10.301D to implement HB 83, 2005 Session Laws. The bill moved the responsibility for paying tuition for students placed by state agencies and courts from the county superintendent to the State Superintendent of Public Instruction. The change in ARM 10.10.301B(12) reflects the Superintendent of Public Instruction's interpretation that 20-5-321(1)(e), MCA, includes a parent's or group home representative's placement of a student in an out-of-district state licensed group home qualifies for state paid tuition.

10.10.301D TUITION REPORTS (1) ~~By July 15 of~~ Following the close of each fiscal year, the trustees of a district shall provide an out-of-district attendance report to the ~~county s~~Superintendent of Public Instruction. That report shall be in a format prescribed by the ~~Office~~ Superintendent of Public Instruction and shall list, for the most recent school year~~,~~ :

(a) students who attended a school of the district under a mandatory agreement pursuant to 20-5-321, MCA; ~~and~~

(b) resident students who attended a public school out-of-state for which the district is responsible for payment of the tuition charges; and

(c) resident students attending day treatment programs under approved individualized education programs at private nonsectarian schools in the previous school year.

(2) ~~By July 30, the county superintendent shall submit the tuition reports received under (1) to the Superintendent of Public Instruction.~~ To be eligible to receive state payments for tuition and tuition reimbursements under 20-5-324, MCA, a district must submit the tuition report to the Superintendent of Public Instruction by June 30 of the year following the student's year of attendance.

AUTH: 20-5-323, 20-9-102, MCA
IMP: 20-5-320, 20-5-321, 20-5-323, 20-5-324, 20-7-431, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.301B.

10.10.311 BUS DEPRECIATION RESERVE FUND (1) Section 20-10-147, MCA, allows school districts to ~~each year~~ budget each year in a bus depreciation reserve fund an amount that does not exceed 20% of the original cost of a bus or a two-way radio. ~~Section 20-10-147, MCA, was amended effective July 1, 1991 to state that the~~ The amount budgeted may not, over time, exceed 150% of the original cost of the bus or radio.

~~(2) The depreciation on a bus that prior to July 1, 1991 was depreciated 100% or less, may be increased to 150% of its original cost, provided the bus is being used on a regular basis for school purposes. Buses not used after July 1, 1991 because, for example, they are in poor condition, may not be depreciated beyond 100% of their original cost.~~

(3) through (8) remain the same but are renumbered (2) through (7).

AUTH: 20-9-102, MCA
IMP: 20-10-147, MCA

Statement of Reasonable Necessity: The Superintendent of Public Instruction has determined that it is reasonable and necessary to amend ARM 10.10.311 to remove obsolete wording.

10.10.318 SCHOOL FLEXIBILITY PAYMENT (1) through (1)(a)(i) remain the same.

(ii) dividing by average statewide budgeted ANB for the previous five-year period. Average statewide budgeted ANB is calculated using the final budgeted ANB for fiscal years 20XX-5 through 20XX-1.

(b) and (i) remain the same.

(ii) dividing by the total statewide budgeted ANB for the previous fiscal year. Total statewide budgeted ANB is calculated using the final budgeted ANB for fiscal year 20XX-1.

(c) and (d) remain the same.

(e) "District student funding amount" means the current student amount multiplied by the district's budgeted ANB for fiscal year 20XX-1 plus the average student amount multiplied by the district's average budgeted ANB for fiscal years 20XX-5 through 20XX-1.

(f) through (3) remain the same.

AUTH: 20-9-102, 20-3-106, MCA
IMP: 20-9-541, 20-9-542, 20-9-543, 20-9-544, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.301.

10.10.610 DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Non-spending investment account" is a school district investment account from which monies are transferred back to the county treasurer to cover district warrants drawn on the district's fund or for cooperatives formed under 20-7-457, MCA, for cooperative warrants drawn on the cooperative's funds.

(2) "School district investment account" is defined as an investment account established by a Montana school district pursuant to 20-9-235, MCA, or by a cooperative as provided under ARM 10.10.611. "School district investment account" does not include an investment pool program hosted by the county as a countywide investment pool or a school district investment pool formed by schools or by a combination of schools and other local governments under 20-9-213, MCA.

(3) "Spending investment account" is a school district investment account from which the district or cooperative formed under 20-7-457, MCA, makes payments for district expenditures using electronic payments, either to vendors or to a subsidiary checking account used to issue checks from the district's school or cooperative's investment accounts. District wWarrants are not written on a district

fund held for a district or cooperative by a county treasurer ~~for which~~ if a spending investment account has been established for the fund.

AUTH: 20-9-102, 20-9-235, MCA
IMP: 20-9-235, MCA

Statement of Reasonable Necessity: The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.10.610 through 10.10.615 to allow a special education cooperative to establish an investment account and request the state to deposit directly to that account, as school districts are allowed to do under 20-9-235, MCA. This applies to special education cooperatives that receive state special education funding directly from the Superintendent of Public Instruction under 20-7-457, MCA.

10.10.611 ESTABLISHMENT OF INVESTMENT ACCOUNTS (1) ~~A~~ In accordance with 20-9-235, MCA, a school district may set up school district investment accounts for any fund or funds of the district. A full service education cooperative established under 20-7-451, MCA, and which receives state special education allowable cost payments directly from the Superintendent of Public Instruction under 20-7-457, MCA, may set up investment accounts for any fund or funds of the cooperative in accordance with 20-9-235, MCA.

(2) remains the same.

(3) All elected officials, school district employees, full service education cooperative employees, and investment firm employees with duties related to the investment must be bonded.

(a) remains the same.

(b) The district or full service education cooperative shall determine the amount for which the elected official or employee shall be bonded based on the amount of money or property handled and the opportunity for defalcation.

(4) Before establishing investment accounts, a school district or full service education cooperative must obtain written documentation that the investment firm or entity being contracted to administer the ~~school district~~ investment account(s):

(a) complies with 20-9-204, MCA, Article VIII, section 13 of the Montana Constitution and is qualified and competent to provide investment services to school districts and full service education cooperatives;

(b) through (d) remain the same.

(e) provides the district or full service education cooperative with a monthly report detailing:

(i) through (vi) remain the same.

(vii) at fiscal year-end, the amount of interest accrued as of June 30 and the fair value of the district's or full service education cooperative's share of pooled investments as of June 30 as prescribed by Governmental Accounting Standards Board (GASB) No. 31.

AUTH: 20-9-102, 20-9-235, MCA
IMP: 20-9-235, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.610.

10.10.612 SPENDING INVESTMENT ACCOUNTS (1) A district or full service education cooperative that establishes a spending investment account for a fund will issue payments from the fund using electronic payments or checks. District or full service education cooperative warrants may not be issued from a spending investment account.

(a) A district or full service education cooperative using spending investment accounts may establish a subsidiary checking account from which checks are issued. Districts may transfer money from the spending investment accounts to the district's or full service education cooperative's subsidiary checking account to pay checks written against district or cooperative funds held in spending investment accounts.

(b) A district or full service education cooperative issuing checks from a subsidiary checking account may apply facsimile signatures and seals as provided in 2-16-114 and 20-9-221, MCA.

(c) through (2) remain the same.

AUTH: 20-9-102, 20-9-235, MCA
IMP: 20-9-235, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.610.

10.10.613 AGREEMENT WITH THE COUNTY TREASURER (1) Before establishing a school district investment account or accounts, the trustees of a school district or a full service education cooperative shall enter into a written agreement with the county treasurer.

(2) and (3) remain the same.

(4) A separate agreement must be used for each elementary, high school, or K-12 district or full service education cooperative.

(5) The written agreement must, at a minimum, meet the statutory requirements of 20-9-235, MCA. The district or full service education cooperative and the county treasurer may include additional agreed-upon provisions.

AUTH: 20-9-102, 20-9-235, MCA
IMP: 20-9-235, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.610.

10.10.614 PAYMENTS INTO AN INVESTMENT ACCOUNT (1) The school district or a full service education cooperative for special education that receives direct special education allowable cost payments from the Superintendent of Public Instruction under 20-7-457(1), MCA, may apply in writing to the state Superintendent of Public Instruction to distribute the district's or cooperative's payments by direct electronic transfer of funds into an investment account as provided by 20-9-235 and 20-9-346(3), MCA.

(2) To qualify for the electronic transfer, the trustees shall submit a written

request to the state Superintendent, including a copy of the trustees' written agreement under ARM 10.10.613 for each affected fund and a copy of the direct deposit signup form (OMB standard form 1199A), signed by the district or cooperative and the investment firm, indicating the routing numbers for the electronic deposit into the school investment account.

(3) remains the same.

(a) the district or cooperative is currently in compliance with financial accounting and reporting requirements of the state Superintendent of Public Instruction;

(b) other funds of the district or cooperative held by the county treasurer do not have deficit cash balances; and

(c) the district's or cooperative's most recent audit report discloses no serious financial noncompliance issues, repeated or unresolved financial problems, or significant internal control problems.

(4) The state Superintendent of Public Instruction shall process an eligible district's or cooperative's request for direct depositing beginning with the next scheduled payment if the district's or cooperative's completed request is received by the 10th of a month, barring unforeseen delays.

(5) remains the same.

(6) The state Superintendent of Public Instruction may rescind the approval of a district's or cooperative's request to receive electronic transfers to investment accounts if the criteria of (3) and internal control provisions of ARM 10.10.615 are not met. Upon receipt of written notice, the trustees may request a hearing to be held within 30 days. If, after hearing, the conclusion is that the criteria of (3) are not being met, the state Superintendent of Public Instruction may discontinue transfers to the district's or cooperative's investment account after a waiting period of 60 days.

AUTH: 20-9-102, 20-9-235, MCA
IMP: 20-9-235, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.610.

10.10.615 INTERNAL CONTROLS AND ACCOUNTING RECORDS

(1) The trustees of a district or the management board of a full service education cooperative shall provide and enforce a system of internal controls to safe-guard the district's or full service education cooperative's money by providing the following procedural checks and balances:

(a) Each month, a school district or full service education cooperative that has established an ~~school district~~ investment account(s) shall reconcile:

(i) the district's or cooperative's records of investment balances;

(ii) county treasurer's transfers from the district's or cooperative's funds to the account(s);

(iii) transfers from the account(s) to the district or cooperative fund(s) held by the county treasurer;

(iv) and (v) remain the same.

(b) A person other than the district or full service education cooperative employee responsible for producing payments by check or electronic transfer,

including another district or cooperative employee, a county employee, a trustee, or a contracted accounting professional, shall review the monthly reconcilement to verify validity of:

(i) through (iii) remain the same.

(iv) authorization of expenditures by the appropriate school district or full service education cooperative official.

(c) remains the same.

(2) When directed by the school district or full service education cooperative, a county treasurer shall deposit the district's or cooperative's money directly into the appropriate investment account by issuing a treasurer's check or wire transfer of funds to the investment account. A treasurer may not direct payments to a subsidiary checking account.

(a) When directing investments, the school district or full service education cooperative shall provide written notification to the county treasurer stating the amount to deposit and the fund making the investment.

(b) A school district or full service education cooperative shall not purchase investments using district or cooperative warrants.

(3) For a non-spending investment account, a school district or full service education cooperative shall direct the investment firm to deposit redeemed investments and interest income to the credit of the specific and appropriate school district fund held by the county treasurer.

(a) The school district or full service education cooperative shall require that the investment firm, transferring money to the district's or cooperative's fund held by the county treasurer, inform the county treasurer in writing stating the fund(s) to which the proceeds should be deposited and the amount of the interest earnings and principal contained in the proceeds. Any losses incurred must also be reported by fund.

(b) The school district or full service education cooperative shall not make payments from a non-spending investment account.

(4) remains the same.

(5) A school district or full service education cooperative participating in a non-spending investment account shall monitor its cash balances maintained with the county treasurer and will promptly redeem investments to pay district or cooperative warrants and district bond principal and interest in a timely manner.

AUTH: 20-9-102, 20-9-235, MCA
IMP: 20-9-235, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.610.

10.15.101 DEFINITIONS The following definitions apply to ARM Title 10, chapters 16, 20, 21, 22, and 23:

(1) "Absent" means the student is not present during organized public school instruction for which he is enrolled. An enrolled student who is receiving services at an offsite instructional setting on the official enrollment count date is not absent for purposes of the official counts submitted to the state Superintendent of Public Instruction unless the student does not attend his next scheduled organized public

school instruction session, if any.

(2) through (6) remain the same.

(7) "BASE budget" means the minimum general fund budget a district is allowed to adopt. It is the sum of: 80% of the district's basic and per-ANB entitlements; 100% of the quality educator payment; 100% of the at-risk student payment; 100% of the Indian Education for All payment; 100% of the American Indian achievement gap payment; 140% of the district's special education allowable cost payment; and 40% of the district's related services block grant payment to cooperatives.

(8) and (9) remain the same.

(10) "Budgeted ANB" means the ANB used on the final general fund budget for a district. Depending on calculations performed under 20-9-311, MCA, the budgeted ANB will either be the current ANB or the three-year ANB.

(10) through (14) remain the same but are renumbered (11) through (15).

(16) "Current ANB" means the ANB calculated using the enrollment of the school year preceding the year for which the ANB applies for funding. That is, the current ANB for FY 20XX+1 is the ANB calculated using the official enrollment counts taken during FY 20XX.

(15) through (20) remain the same but are renumbered (17) through (22).

~~(21)~~ (23) "District mill value per district ANB" for FY 20XX+1 means the district's CY 20XX-1 mill value divided by the district's 20XX budgeted ANB.

(22) through (26) remain the same but are renumbered (24) through (28).

~~(27)~~ (29) "Facility guaranteed mill value per ANB" means the CY 20XX-1 statewide mill value multiplied by 1.40, then divided by the statewide FY 20XX high school or elementary budgeted ANB.

(28) and (29) remain the same but are renumbered (30) and (31).

~~(30)~~ (32) "GTBA budget area" means the portion of a district's general fund BASE budget minus direct state aid, ~~and~~ minus state special education allowable cost payments, minus the quality educator payment, minus the Indian Education for All payment, minus the at-risk student payment, and minus the American Indian achievement gap payment. For districts with lower than average tax bases, GTBA is paid to subsidize mills levied to fund the GTBA budget area.

(31) through (33) remain the same but are renumbered (33) through (35).

~~(34)~~ (36) "Maximum general fund budget" or "maximum GFB" means the maximum general fund budget a district is allowed to adopt. It is the sum of: 100% of the district's basic and per-ANB entitlements; 100% of the quality educator payment; 100% of the at-risk student payment; 100% of the Indian Education for All payment; 100% of the American Indian achievement gap payment; up to 200% of the district's special education allowable cost payment; and up to 100% of the district's related services block grant payment to cooperatives.

(35) through (38) remain the same but are renumbered (37) through (40).

~~(39)~~ (41) "Present" means the student is in attendance~~,~~ for the assigned organized public school program of instruction in which the student is enrolled or is receiving educational services at an off site instructional setting approved by the district.

~~(40)~~ (42) "Pupil-instruction (PI) days" are those days when school districts provide organized instruction for pupils enrolled in public schools while under the

supervision of a teacher. ~~Districts are required to conduct a minimum of 180 PI days in a school year.~~

~~(41)~~ (43) "Pupil-instruction-related (PIR) days" are those days of teacher activities, approved by the ~~Office~~ Superintendent of Public Instruction for the school year preceding the year to be funded, which are devoted to improving the quality of instruction. For calculation of ANB the PIR days may not exceed seven. ~~Once approved, PIR days may not be rescheduled without written approval of the Office of Public Instruction.~~

(42) through (44) remain the same but are renumbered (44) through (46).

~~(45)~~ (47) "Retirement fund" means the district fund authorized by 20-9-501, MCA, for financing the employer's contribution to the teachers' retirement systems, the public employees' retirement system, unemployment compensation, ~~and~~ social security, and Medicare.

(46) through (51) remain the same but are renumbered (48) through (53).

~~(52)~~ (54) "Statewide elementary GTB ratio" or "statewide high school GTB ratio" for GTBA funding of eligible districts' FY 20XX+1 BASE budgets means the ratio~~n~~ of 175% of the CY 20XX-1 statewide taxable valuation to the statewide elementary or high school total of FY 20XX ~~C~~GTBA budget area.

(53) remains the same but is renumbered (55).

~~(54)~~ (56) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB" means the CY 20XX-1 statewide mill value multiplied by 1.21, then divided by the statewide FY 20XX high school or elementary budgeted ANB.

(55) and (56) remain the same but are renumbered (57) and (58).

(59) "Three-year ANB" means the average of current ANB for a three-year period, as calculated under 20-9-311, MCA. Three-year ANB for FY 20XX is based on the average of current ANB for FY 20XX, FY20XX-1, and FY 20XX-2, rounded up to the nearest whole ANB.

~~(57)~~ (60) "Total per-ANB entitlement" ~~means the sum of a district's per-ANB entitlements based on the previous fiscal year enrollment count certified by OPI~~ is defined as specified in 20-9-306(14), MCA.

(58) remains the same but is renumbered (61).

AUTH: 20-9-102, MCA
IMP: Title 20, ch. 9, MCA

Statement of Reasonable Necessity: The Superintendent of Public Instruction has determined that it is reasonable and necessary to change definitions in ARM 10.15.101 as follows:

Amend (1) and renumbered (41) to implement HB 359, 2005 Session Laws, which allows students who participate in school courses or programs at off-site locations to be included for ANB in certain cases;

Amend (7) and renumbered (32) to reflect new general fund payments added under SB 1, 2005 Special Session Laws.

Add (1), (16), and renumbered (59) to define types of ANB used to implement the three-year averaging of ANB allowed under HB 624, 2005 Session Laws and amend renumbered (23), (29), and (60) to reflect the impacts on ANB types used in those definitions.

Amend renumbered (43) to remove an obsolete requirement and correct minor errors and omissions in renumbered (47) and (54).

10.16.3804 GENERAL PRINCIPLES OF SPECIAL EDUCATION FUNDING

(1) and (1)(a) remain the same.

(b) The distribution of the funds is based primarily on current ANB.

(c) through (3) remain the same.

AUTH: 20-7-431, 20-9-321, MCA
IMP: 20-7-431, 20-9-321, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.301.

10.16.3811 GENERAL PRINCIPLES OF THE SPECIAL EDUCATION ALLOWABLE COST PAYMENT CALCULATION (1) For purposes of calculating statewide allowable cost amounts, the Superintendent of Public Instruction shall use the most current information available as the basis for calculating the special education allowable cost payments for the ensuing fiscal year. If material differences in statewide factors used in the calculation are documented or legislative changes occur regarding the calculation, the ~~Office~~ Superintendent of Public Instruction may recalculate and notify all districts and counties. Current ANB will be used in the payment calculation for the purpose of reflecting relative district and program size. Use of ANB does not limit the age range for fund expenditures.

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

AUTH: 20-9-321, MCA
IMP: 20-9-321, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.301.

10.16.3812 CALCULATION OF SPECIAL EDUCATION ALLOWABLE COST PAYMENTS (1) The instructional services block grant rate for the ensuing fiscal year is calculated by multiplying the state special education appropriation by .525 and dividing by the ensuing year statewide current ANB of eligible districts, truncated to two decimal places.

(2) The related services block grant rate for the ensuing fiscal year is calculated by multiplying the state special education appropriation by .175 and dividing by the ensuing year statewide current ANB of eligible districts, truncated to two decimal places.

(3) through (4)(a)(i) remain the same.

(ii) divide (4)(a)(i) by the ensuing year's current ANB for all participating districts in all approved cooperatives to determine per ANB rate;

(iii) multiply (4)(a)(ii) by the cooperative's ensuing year's current ANB from member districts.

(b) and (i) remain the same.

(ii) use the following factors to distribute, on a weighted basis, the figure from (4)(b)(i) among approved cooperatives (weight assigned to each cooperative is

determined by dividing the number of rural miles within the boundaries of a cooperative by the total current ANB of member districts within the cooperative and add to that figure the number of member districts and full-time equivalent of itinerant personnel in the cooperative);

(A) and (B) remain the same.

(C) the most up-to-date current ANB reported by member school districts; and

(D) and (5) remain the same.

(6) The Superintendent of Public Instruction calculates an eligible district's special education allowable cost payment for the ensuing fiscal year by multiplying the instructional block grant rate by the district's ensuing fiscal year current ANB, adding the related services block grant rate multiplied by the district's ensuing fiscal year current ANB, adding the district's reimbursement for disproportionate costs, if applicable. If the district is a participating member of a cooperative, the special education allowable cost payment will not include the related services block grant.

(7) remains the same.

AUTH: 20-9-321, MCA
IMP: 20-9-321, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.301.

10.16.3816 DISTRIBUTION OF SPECIAL EDUCATION ALLOWABLE COST PAYMENTS (1) remains the same.

(2) A district's instructional and related services block grants are based on current ANB.

(a) and (b) remain the same.

AUTH: 20-9-321, MCA
IMP: 20-9-321, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.301.

10.20.102 CALCULATION OF AVERAGE NUMBER BELONGING (ANB)

(1) through (3) remain the same.

(4) The official count of enrolled students, as defined in ARM 10.15.101, is taken on the first Monday in October and the 1st of February, or the first school day that follows the ~~1st of February if that date~~ count date if the official count date is not a school day. A school district may not count as enrolled on the count date a student who:

(a) through (6) remain the same.

(7) For purposes of the enrollment count described in (4):

(a) a kindergarten student enrolled in a program designed to provide less than ~~180~~ 181 hours of pupil instruction time per school year is reported as enrolled but is excluded from eligibility for purposes of ANB. A kindergarten student enrolled in a program designed to provide ~~180~~ 181 hours or more of pupil instruction time per school year is reported as enrolled and is included in eligibility for purposes of ANB.

(b) remains the same.

(i) less than ~~180~~ 181 hours of pupil instruction time per school year is reported as enrolled but is excluded from eligibility for purposes of ANB;

(ii) ~~180~~ 181 to 359 hours of pupil instruction time per school year is reported as ~~part-time~~ one-quarter time enrolled;

(iii) ~~360 or more~~ 360 to 539 hours of pupil instruction time per school year is reported as ~~full-time~~ half-time enrolled;

(iv) 540 to 719 hours of pupil instruction time per school year is reported as three-quarter time enrolled; and

(v) 720 or more hours of pupil instruction time per school year is reported as full-time enrolled.

(8) Homebound students, as defined in ARM 10.15.101, and students who are confined to a treatment, medical, or custodial facility may be counted as enrolled on the court dates for ANB purposes if the student:

(a) through (13)(c) remain the same.

(14) A school district must conduct ~~90 days and~~ a minimum of 360 hours of pupil instruction for a kindergarten program, ~~180 days and~~ a minimum of 720 hours of pupil instruction for grades 1-3, ~~and 180 days and~~ a minimum of 1,080 hours of pupil instruction for grades 4-11, and ~~175 days and~~ a minimum of 1,050 hours for grade 12.

(a) If the school district fails to conduct the required ~~number of days and the~~ minimum number of hours for any school or program, the Superintendent of Public Instruction will reduce the direct state aid payments for the year in which the requirement was not met by ~~1/90th for each school day less than 180 school days~~ twice the hourly funding amount by:

(i) calculating the direct state aid per hour attributable to the school or program in proportion to the budgeted ANB of the school or program divided by the required minimum number of hours and multiplying by two;

(ii) subtracting the number of aggregate hours conducted by the school or program from the number of minimum aggregate hours required under 20-9-311, MCA;

(iii) multiplying (14)(a)(i) by (ii) to determine the amount of the funding penalty; and

(iv) withholding the adjustment from the ensuing year payments to the district.

(b) However, if a school district fails to conduct the minimum number of ~~days~~ hours by reason of one or more unforeseen emergencies as defined in 20-9-802, MCA, the Superintendent of Public Instruction shall reduce the direct state aid payments ~~by 1/180th~~ proportionally for each ~~school day~~ aggregate hour less than the minimum required by applying the calculation in (14)(a), divided by two.

(c) The reduction of state funding will be prorated based on enrollment for the portion of the district, such as one class, school, or grade level, for which the district fails to conduct the minimum pupil instruction ~~days and~~ hours.

(15) School districts will be funded based on the current ANB or three-year ANB, whichever generates the greatest maximum general fund budget. For the purpose of determining the BASE funding program of a district, current ANB and three-year ANB will be calculated using the following methods:

(a) To calculate current ANB:

(i) the enrollment reported by the school district on the October and February enrollment report forms to the ~~office~~ Superintendent of Public Instruction, pursuant to 20-9-311, MCA, will be adjusted and averaged by budget unit~~. After subtracting the prekindergarten enrollment and one-half of the kindergarten enrollment and adjusting for part-time enrollment from each report, the average will be multiplied by the total of PIR days plus PI days and divided by 180 to determine ANB;~~ as follows:

By budget unit: [(enrollment for first Monday in October + enrollment for February 1) - (kindergarten enrollment for students receiving less than ~~180~~ 181 hours of pupil instruction time per school year) - (one-half kindergarten enrollment for students receiving ~~180~~ 181 hours or more of pupil instruction time per school year) - (prekindergarten enrollment) - (part-time enrollment for students in grades 1 through 12 receiving less than ~~180~~ 181 hours of pupil instruction time per school year) - (0.75 times the part-time enrollment for students in grades 1 through 12 receiving 181 through 359 hours of pupil instruction time per school year) - (~~one-half of~~ (0.50 times the part-time enrollment for students in grades 1 through 12 receiving ~~180 - 359~~ 360 through 539 hours of pupil instruction time per school year) - (0.25 times part-time enrollment for students in grades 1 through 12 receiving 540 through 719 hours of pupil instruction time per school year) - (enrolled students reaching 19 years of age by September 10 of the school year)] divided by 2 to get the average of the two enrollment counts by budget unit;

~~Then: average of two enrollment counts by budget unit, multiplied~~

(ii) multiply (15)(a)(i) by the sum of PIR days plus PI days, divided by 180, rounded up to the next whole number, equals current ANB~~.~~ ; and

~~(b)~~ (iii) add the additional approved enrollment, as determined in ARM 10.20.103, ~~will be added~~ to the enrollment used to calculate the ~~final~~ current ANB ~~for BASE funding~~.

(b) To calculate three-year ANB, the Superintendent of Public Instruction will sum the current ANB by budget unit for the budget year and the two years preceding the year for which three-year ANB could be used for funding, divide the sum by three, and round up to the nearest whole number.

(c) To determine whether the current ANB or three-year ANB will be used for budgeting and funding purposes, the Superintendent of Public Instruction will calculate the district's maximum general fund budget using the current ANB as determined in (15)(a) for every budget unit of the district and also using the three-year ANB as determined in (15)(b) for every budget unit of the district. The ANB type that generates the highest maximum general fund budget will be used for budgeting and for determining the direct state aid funding for the district's general fund budget for the ensuing year.

AUTH: 20-9-102, 20-9-346, 20-9-369, MCA
IMP: 20-1-301, 20-1-302, 20-1-304, 20-7-117, 20-9-311, 20-9-313, 20-9-314, 20-9-805, MCA

Statement of Reasonable Necessity: The Superintendent of Public Instruction has determined that it is reasonable and necessary to amend ARM 10.20.102 to implement legislative changes under various bills of 2005 Session Laws and 2005

Special Session Laws. Sections (4), (7), and (14), reflect changes under SB 369, 2005 Session Laws which repealed the requirement for a minimum number of school days per year; established part-time ANB funding for one-quarter, one-half, three-quarters, and full-time enrollment based on hours of enrollment for the year; clarified the conditions under which a student may be considered enrolled for ANB purposes; and recognized the ability for districts to count ANB for resident students who participate in off-site distance learning courses and programs. Section (15) is changed to implement the three-year averaging of ANB required by HB 63, 2005 Session Laws, and (4) corrects wording but does not change existing meaning.

10.20.104 ANTICIPATED UNUSUAL ENROLLMENT INCREASE - ANB CALCULATION (1) and (2) remain the same.

(a) Estimate the district's anticipated enrollment for the next October count using information known to be accurate at the time the estimate is made. ~~Prekindergarten enrollment is not included in the estimate. One-half of the anticipated kindergarten enrollment and one-half of the anticipated part-time enrollment is subtracted.~~ By budget unit: [(estimated enrollment for first Monday in October) - (estimated kindergarten enrollment for students receiving less than 181 hours of pupil instruction time per school year) - (one-half estimated kindergarten enrollment for students receiving 181 hours or more of pupil instruction time per school year) - (estimated prekindergarten enrollment) - (estimated part-time enrollment for students in grades 1 through 12 receiving less than 181 hours of pupil instruction time per school year) - (0.75 times the part-time estimated enrollment for students in grades 1 through 12 receiving 181 through 359 hours of pupil instruction time per school year) - (0.50 times the estimated part-time enrollment for students in grades 1 through 12 receiving 360 through 539 hours of pupil instruction time per school year) - (0.25 times estimated part-time enrollment for students in grades 1 through 12 receiving 540 through 719 hours of pupil instruction time per school year) - (estimated enrolled students reaching 19 years of age by September 10 of the school year) + early graduates]. This is anticipated enrollment (AE).

(b) Determine the adjusted and averaged enrollment counts for October and February of the current school year ~~adjusted to remove one-half of the kindergarten enrollment and one-half of the part-time enrollment~~ using the calculation in ARM 10.20.102(15)(a)(i). The average of the October and February adjusted enrollment counts is current year enrollment (CYE).

(c) remains the same.

(d) Determine the anticipated increase in enrollment as a percentage of the current year enrollment by dividing the AEI calculated in (2)(c) by the current year enrollment. ~~AEI/CYE~~ AEI divided by CYE = % increase.

(e) If the anticipated increase in enrollment as a percentage of the current year enrollment calculated in (2)(d) exceeds 6%, the Superintendent of Public Instruction shall approve ~~increased ANB used to~~ the district's use of the AEI as determined in (3) in place of the current ANB for purposes of determining general fund payments and budget limitations in accordance with 20-9-311, MCA, to establish the ensuing year's BASE funding program and entitlement calculations in accordance with 20-9-314(5), MCA.

(3) The increased current ANB for the ensuing fiscal year will be calculated

as follows:

(a) remains the same.

(b) Determine AEI for each budget unit by subtracting CYE by budget unit from AE by budget unit. AEI by budget unit = AE by budget unit - CYE by budget unit. If the district has only one budget unit, go to (3)(d).

(c) and (d) remain the same.

(e) Multiply the sum calculated in (3)(d) by the total of PI days and PIR days approved for the current year and divide by 180 for each budget unit. Round the ANB up to the nearest whole number. This figure is used as current ANB for purposes of ARM 10.20.102(15) in determining general fund payments and budgeting limitations for the district.

(4) through (4)(b) remain the same.

(c) If the ANB recalculated in (4)(a) based on the actual October enrollment is less than the ANB ~~used for funding~~ calculated in (3)(e), (2) will be used to recalculate current ANB using actual enrollment as of the next February count in place of the anticipated enrollment.

(d) remains the same.

(e) If the ANB recalculated in (4)(c) based on the actual February enrollment is less than the ANB ~~used for funding~~ calculated in (3)(e), the anticipated unusual enrollment increase did not materialize and the ~~office~~ Superintendent of Public Instruction makes the following adjustments:

(i) the district's general fund budget of the current year will be adjusted, as needed, to comply with legal limitations and requirements using the higher of the ANB recalculated in (4)(a) or (4)(c) in place of the current ANB that was used when determining the budget for the year; and

(ii) remains the same.

AUTH: 20-3-106, 20-9-102, MCA
IMP: 20-9-166, 20-9-311, 20-9-314, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.301. Also ARM 10.20.104 includes changes from SB 359 (2005 Session Laws) that count part-time students for ANB based on hours of annual enrollment.

10.20.105 UNANTICIPATED ENROLLMENT INCREASE (1) remains the same.

(a) The enrollment determined from the enrollment reported on the fall enrollment report ~~(Form FR-4)~~ or the spring enrollment report form for official reporting is defined as the "current year enrollment" (CYE) for purposes of this calculation. ~~CYE must be adjusted by subtracting the prekindergarten enrollment, one-half of the kindergarten enrollment and one-half of the part-time enrolled students reported.~~ However, kindergarten enrollment for a variance which provides 90 full days of instruction in a single semester may be counted as one instead of one-half.

(b) Determine the prior year enrollment. For purposes of this calculation, "prior year enrollment" (PYE) will mean the adjusted and averaged enrollment used for ~~ANB purposes calculated from the official October and February counts of the~~

~~year preceding the year the increase of enrollment is being calculated, adjusted as described in (1)(a)~~ the current ANB or three-year ANB, whichever was used as budgeted ANB.

(c) remains the same.

(d) Determine the enrollment increase as a percentage of the prior year enrollment by dividing the enrollment increase calculated in (1)(c) by the prior year enrollment. ~~EI/PYE~~ EI divided by PYE = %.

(e) If the enrollment increase as a percentage of the prior year enrollment calculated in (1)(d) exceeds 6%, the Superintendent of Public Instruction will ~~approve an increase in ANB used to establish~~ recalculate and adjust the current year's basic entitlement and total per-ANB entitlement in accordance with 20-9-314(5), MCA, using the recalculation of ANB in (2).

(2) The ~~increased ANB~~ adjusted funding will be based on the impact of the increased enrollment for the current fiscal year ~~is~~ calculated as follows:

(a) through (e) remain the same.

(f) Round the result calculated in (2)(e) up to the next whole number to determine the funding adjustment ANB.

(3) The funding adjustment ANB calculated under (2) will be used only to determine the adjusted entitlements and increased funding for the unusual enrollment increase in the current year and will not result in an adjustment of ANB for purposes of future calculations of current ANB or three-year ANB under 20-9-311, MCA.

AUTH: 20-9-102, MCA
IMP: 20-9-313, 20-9-314, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.301.

10.21.101B CALCULATION OF STATEWIDE GTBA (1) remains the same.

(2) The statewide elementary or high school mill value per budgeted ANB for purposes of calculating FY 20XX+1 retirement fund GTBA is: [(calendar year 20XX-1 statewide taxable valuation x 1.21) / 1,000] / 20XX statewide elementary or high school budgeted ANB certified for the adopted budget.

(3) Facility guaranteed mill value per ANB for purposes of calculating FY 20XX+1 school facility entitlement guaranteed tax base is: [(calendar year 20XX-1 statewide taxable valuation x 1.40) / 1000] / FY 20XX statewide elementary or high school budgeted ANB certified for the adopted budget.

(4) remains the same.

AUTH: 20-9-102, 20-9-369, MCA
IMP: 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.301.

10.21.101E WHICH DISTRICTS QUALIFY FOR GTBA ON GENERAL FUND MILLS (1) through (2)(b) remain the same.

(3) For the initial year of operation for a non-operating district that re-opens

under 20-9-502 and 20-9-503, MCA, the district GTB ratio shall be calculated using the district budgeted ANB and BASE budget for the district's last year of operation.

AUTH: 20-9-102, 20-9-369, MCA
IMP: 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.301.

10.21.101G SCHOOL DISTRICT BOUNDARY CHANGES (1) If the boundaries of a school district will change in the ensuing year, the ~~Office~~ Superintendent of Public Instruction must be notified by April 25 of the year prior to the change. Upon notification of the change ~~OPI~~ the Superintendent of Public Instruction will recalculate the district mill value per ANB and subsidy per mill for the ensuing year using the sum of the current year taxable valuations, the sum of the ~~current year~~ budgeted ANB, and the sum of the GTBA budget areas of the territories within the district(s).

AUTH: 20-9-102, 20-9-369, MCA
IMP: 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.301.

10.21.101I SCHOOL FACILITY ADVANCES AND REIMBURSEMENTS

(1) through (8) remain the same.

(9) After the payment is made in May pursuant to 20-9-371, MCA, actual state advance amounts for the ensuing fiscal year will be calculated using budgeted ANB and district and facility guaranteed mill values for the year in which the advance applies and the most current percentage of state share which will be considered "prior year's" percentage in the year in which the payment is made. The State Superintendent of Public Instruction will notify the districts of the amount to estimate as revenue in their debt service funds by the final budget meeting.

(10) remains the same.

(11) Eligibility for a district with multiple bonding jurisdictions will be based on district budgeted ANB, district debt service mill value per budgeted ANB, and total district entitlement and obligations.

(12) and (13) remain the same.

AUTH: 20-9-102, 20-9-369, MCA
IMP: 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.301.

10.21.102B CALCULATION OF COUNTY MILL VALUES PER ANB

(1) remains the same.

(2) The county elementary or high school GTB mill value per ANB for purposes of calculating FY 20XX+1 retirement fund GTBA is: (calendar year 20XX-1 county taxable value/1,000) / 20XX county elementary or high school budgeted

ANB.

AUTH: 20-9-102, 20-9-369, MCA
IMP: 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.301.

10.21.102E CALCULATION OF GTBA TO QUALIFYING COUNTIES

(1) and (1)(a) remain the same.

(b) "A" * times county elementary or high school 20XX+1 budgeted ANB = "B"

(c) "B" * times certified elementary or high school FY 20XX+1 county retirement fund mills levied = dollar amount of 20XX+1 GTBA a county will receive in support of the elementary or high school county retirement fund.

AUTH: 20-9-102, 20-9-369, MCA
IMP: 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-370, 20-9-371, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.301.

10.22.102 GENERAL FUND SPENDING LIMITS (1) This rule is effective for fiscal year 2006-07 only.

(2) The trustees must adopt a budget at least equal to the BASE budget.

(3) If a district's current year budget does not exceed the ensuing year's maximum budget ~~allowed by statute for the ensuing year, the trustees must adopt a budget for the ensuing year that is at least equal to the ensuing year's BASE budget, but not greater than the ensuing year's maximum budget~~ and the district did not adopt a budget from FY 2000-01 to FY 2004-05 that exceeded the maximum general fund budget limit for that year, the following limits apply.

(a) Without voter approval ~~for any increase in the over-BASE levy amount~~, the trustees may adopt a budget ~~up to the ensuing year's maximum budget and not less than the ensuing year's BASE budget.~~ equal to the sum of the following:

(i) the ensuing year's BASE budget;

(ii) the previous year's over-BASE levy amount;

(iii) the fund balance available to reappropriate to fund the over-BASE budget;

(iv) the prior year's excess reserves under 20-9-141, MCA, available to fund the over-BASE budget; and

(v) the estimated tuition revenue available to fund the over-BASE budget.

(b) With voter approval of the budget exceeding (3)(a), the trustees may adopt a budget not greater than the ensuing year's maximum.

~~(2) The trustees of a district that has always adopted a budget above maximum since FY 2000, and whose current year budget exceeds the maximum budget for the ensuing fiscal year, must:~~

~~(a) adopt a budget that is at least equal to the ensuing year BASE budget and not more than the lesser of either:~~

~~(i) the district's current year budget; or~~

~~(ii) the ensuing year's maximum budget plus the difference between the~~

~~current year budget and the current year maximum budget amount;~~

~~(b) obtain voter approval for the over-maximum budget amount.~~

~~(3) The trustees of a school district that was equalized in the current year and whose current year budget exceeds the ensuing year's maximum budget due to an enrollment decrease of less than 30%, must:~~

~~(a) adopt a general fund budget that is at least equal to the ensuing year's BASE budget and not more than the current year budget;~~

~~(b) obtain voter approval for the over-maximum amount of budget;~~

~~(c) within five years of first adopting a budget which exceeds maximum due to an enrollment decrease of less than 30%, adopt a budget which does not exceed the district's maximum budget amount; and~~

~~(d) before adopting a general fund budget that exceeds the maximum budget, adopt a written plan to reach the district's maximum general fund budget as provided in (3)(c).~~

~~(4) The trustees of a school district that was equalized and whose current year general fund budget is greater than the maximum general fund budget established for the ensuing fiscal year due to an enrollment decrease of 30% or more must:~~

~~(a) adopt a general fund budget that is:~~

~~(i) at least equal to the ensuing year's BASE budget; and~~

~~(ii) not more than:~~

~~(A) in the first year following the enrollment decline, the ensuing year maximum plus [the prior year budget less the ensuing year maximum, times 80%];~~

~~(B) in the second year following the enrollment decline, the ensuing year maximum plus [the prior year budget less the ensuing year maximum, times 75%];~~

~~(C) in the third year following the enrollment decline, the ensuing year maximum plus [the prior year budget less the ensuing year maximum, times 66.7%];~~

~~(D) in the fourth year following the enrollment decline, the ensuing year maximum plus [the prior year budget less the ensuing year maximum, times 50%];~~

~~(E) in the fifth year following the enrollment decline, the ensuing year maximum.~~

~~(b) obtain voter approval for the over-maximum budget amount;~~

~~(c) within five years of first adopting a budget which exceeds maximum due to an enrollment decrease of 30% or more, adopt a budget within the limits of (1).~~

~~(5) The percentage of enrollment decrease for purposes of (3) and (4) is calculated by subtracting the ensuing year's ANB from the current year's ANB, dividing the result by the current year's ANB, and rounding up to the nearest whole number.~~

~~(6) For a non-operating district that is reopening, budget limitations for the general fund shall be based on the last operating year's budget for the general fund. This budget will be considered the prior year's budget and used in calculations to determine budget limitations for the year of reopening. These budget limitation calculations may not allow a general fund budget below BASE or above maximum as calculated for the year of reopening.~~

~~(a) For a non-operating district that reopens a school under 20-6-502, MCA, the applicability of school isolation provisions in 20-9-302, MCA, will be determined by the ANB in the last operating year and the ANB in the year the school reopens.~~

~~(7) For purposes of determining the spending limit for a school district participating in a full service cooperative for special education programs, the BASE budget amount and maximum general fund budget may include a portion of the payments received by the full service cooperative in support of special education programs. The State Superintendent of Public Instruction will notify each school district participating in a cooperative of its payments for use in setting its BASE budget and maximum general fund budget for the ensuing school fiscal year.~~

~~(8) A district that, after adopting a budget at or below the maximum general fund budget for at least one year, subsequently adopts a budget exceeding the maximum general fund budget under the provisions of 20-9-308, MCA, for declining enrollment, shall budget within the restrictions of the same mandatory five year phase-in for that category provided in 20-9-308, MCA, until the district budget is at or below the maximum general fund budget.~~

~~(9) The State Superintendent of Public Instruction shall monitor the general fund budgets of each school district to ensure compliance with the spending limits established in 20-9-308, MCA. The State Superintendent of Public Instruction may request a revised budget from any district whose general fund budget is not within the limits using the guidelines established in ARM 10.10.503.~~

(4) If a district's current year budget does not exceed the ensuing year's maximum budget and the district adopted a budget in at least one year from FY 2000-01 to FY 2004-05 that exceeded the maximum general fund budget limit for that year, the following limits apply:

(a) If the highest budget for FY 2000-01 to FY 2004-05 is less than the ensuing year maximum budget the trustees, without voter approval, may adopt a budget equal to the sum of:

(i) the ensuing year's BASE budget;

(ii) the previous year's over-BASE levy amount;

(iii) the fund balance available to reappropriate to fund the over-BASE budget;

(iv) the prior year's excess reserves under 20-9-141, MCA, available to fund the over-BASE budget; and

(v) the estimated tuition revenue available to fund the over-BASE budget.

(b) If the highest budget adopted for FY 2000-01 to FY 2004-05 exceeds the ensuing year maximum budget the trustees, without voter approval, may adopt the ensuing year maximum.

(c) With voter approval, the trustees may adopt the greater of the ensuing year maximum or the highest budget adopted for FY 2000-01 to FY 2004-05.

(5) If a district's current year budget exceeds the ensuing year's maximum budget, the following limits apply:

(a) Without voter approval the trustees may adopt a budget equal to the greater of:

(i) the ensuing year maximum budget; or

(ii) the sum of:

(A) the ensuing year's BASE budget;

(B) the previous year's over-BASE levy amount;

(C) the fund balance available to reappropriate to fund the over-BASE budget;

(D) the prior year's excess reserves under 20-9-141, MCA, available to fund the over-BASE budget; and

(E) the estimated tuition revenue available to fund the over-BASE budget.

(b) With voter approval of the amount of budget exceeding (5)(a):

(i) if the district did not adopt a budget in at least one year from FY 2000-01 to FY 2004-05 that exceeded the maximum general fund budget limit for that year, the trustees may adopt the prior year's adopted budget; and

(ii) if the district adopted a budget in at least one year from FY 2000-01 to FY 2004-05 that exceeded the maximum general fund budget limit for that year, the trustees may adopt the highest budget adopted for FY 2000-01 to FY 2004-05.

(6) For a nonoperating district that is reopening, budget limitations for the general fund shall be based on the last operating year's budget for the general fund. This budget will be considered the prior year's budget and used in calculations to determine budget limitations for the year of reopening. These budget limitation calculations may not allow a general fund budget below BASE or above maximum as calculated for the year of reopening.

(a) For a nonoperating district that reopens a school under 20-6-502, MCA, the applicability of school isolation provisions in 20-9-302, MCA, will be determined by the budgeted ANB in the last operating year and the budgeted ANB in the year the school reopens.

(7) For purposes of determining the spending limit for a school district participating in a full service cooperative for special education programs, the BASE budget amount and maximum general fund budget may include a portion of the payments received by the full service cooperative in support of special education programs. The state Superintendent of Public Instruction will notify each school district participating in a cooperative of its payments for use in setting its BASE budget and maximum general fund budget for the ensuing school fiscal year.

(8) The state Superintendent of Public Instruction shall monitor the general fund budgets of each school district to ensure compliance with the spending limits established in 20-9-308, MCA. The state Superintendent of Public Instruction may request a revised budget from any district whose general fund budget is not within the limits using the guidelines established in ARM 10.10.503.

(9) When budgeting for the first year of operation following a consolidation or annexation:

(a) the budgets of the combining districts for the year preceding the first year of operation as a consolidated or annexed district will be summed;

(b) the amount calculated in (9)(a) will be used in place of the current year budget in sections (2) through (4) for purposes of determining the consolidated or annexed district's ensuing year budget limitations;

(c) regardless of the relationship of the individual combining districts' adopted budgets to their individual BASE and maximum budgets for the year preceding the first year operating as a newly consolidated district, the amount calculated in (9)(a) will be assumed to have been no more than the maximum budget of that year for purposes of determining the ensuing year's budget of the newly consolidated district; and

(d) if a newly consolidated district adopts a budget that exceeds the maximum budget for the ensuing year, it will be assumed to be the first year of over-

maximum budgeting for the purposes of applying the limit on the number of years the district is allowed to adopt a budget that exceeds the maximum budget under 20-9-308, MCA.

AUTH: 20-9-102, MCA
IMP: 20-9-308, 20-9-315, MCA

Statement of Reasonable Necessity: The Superintendent of Public Instruction has determined it is reasonable and necessary to amend ARM 10.22.102 to implement the general fund budget limitations passed under HB 63, 2005 Session laws, which apply temporarily to FY 2005-06 and FY 2006-07. This amendment is effective only through 7/1/07. ARM 10.22.102 will be amended at that time to return to the original language.

10.22.204 BUDGET AMENDMENT LIMITATION (1) and (1)(a) remain the same.

(b) Divide the amount determined in (1)(a) by the prior fiscal year enrollment used to calculate ~~current fiscal year~~ budgeted ANB in accordance with 20-9-311, MCA, and ARM 10.20.102. The resulting per-pupil cost is the maximum permissible per-pupil expenditure for the budget amendment.

(c) Determine the total enrollment increase for the current year in accordance with ARM 10.20.105(1)(a) through (c). The enrollment count for the current year that will be used to calculate an increase in enrollment will be the October enrollment count as reported to OPI on the fall report ~~(FR-4)~~ or, for petitions received after February 1, the February count reported to OPI on the spring enrollment report.

(d) through (2) remain the same.

AUTH: 20-9-102, MCA
IMP: 20-9-165, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.301.

10.23.102 FUNDING THE BASE BUDGET LEVY (1) through (1)(b) remain the same.

(c) ~~state and county equalization aid~~ direct state aid;

(d) remains the same.

(e) qualified educator payments;

(f) Indian Education for All payments deposited into the general fund;

(g) at-risk student payments;

(h) American Indian student achievement gap payments;

~~(e)~~ (i) nonlevy revenue; and

~~(f)~~ (j) reappropriated fund balance.

(2) through (4)(b) remain the same.

AUTH: 20-9-102, MCA
IMP: 20-5-321, 20-5-322, 20-5-323, 20-5-324, 20-9-141, MCA

Statement of Reasonable Necessity: The Superintendent of Public Instruction has determined that it is reasonable and necessary to amend this rule to reflect the new general fund payments established under SB 1, 2005 Special Session Laws.

10.23.103 VOTED AMOUNT (1) remains the same.

(2) Except as provided in (3), ~~If~~ if adopting a general fund budget that exceeds the ensuing year's maximum general fund budget and is within limits of 20-9-308, MCA, the trustees must obtain voter approval for any amount budgeted above the ensuing year's maximum budget.

(3) For FY 2005-06 and FY 2006-07, the trustees adopting a general fund budget that exceeds the ensuing year's maximum general fund within the limits of 20-9-308, MCA, must obtain voter approval for the amount budgeted above the greater of:

(a) the ensuing year's maximum budget; or

(b) the sum of the BASE, plus the previous year's over-BASE levy amount, plus the fund balance reappropriated available to fund the over-BASE budget, plus the prior year's excess reserves used to fund the over-BASE budget, plus the estimated tuition revenues used to fund the over-BASE.

AUTH: 20-9-102, MCA
IMP: 20-9-353, MCA

Statement of Reasonable Necessity: The Superintendent of Public Instruction has determined it is reasonable and necessary to amend this rule to implement the temporary voting requirements passed in HB 624 in the 2005 Session Laws.

10.23.104 RETIREMENT LEVIES (1) through (2)(b) remain the same.

(i) the difference between the statewide mill value per ANB as defined in ARM 10.15.101 and the county mill value per ANB as defined in ARM 10.15.101 multiplied by the sum of all the county's elementary or high school budgeted ANB that is being used to calculate the districts' direct state aid for the school year for which the GTB funding is being sought.

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

AUTH: 20-9-102, 20-9-369, MCA
IMP: 20-9-368, 20-9-501, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.301.

10.23.108 ANB AND BASIC ENTITLEMENT CALCULATIONS IN ANNEXATIONS AND CONSOLIDATIONS (1) remains the same.

(a) Enrollment used to calculate the budgeted ANB of the school district that remains after the consolidation or annexation will be the enrollments of the separate school districts operating in the prior year, calculated as separate budget units.

(i) remains the same.

(ii) The enrollment of a district operating a school in the previous year that is subsequently closed when the districts are consolidated or annexed will be ~~counted~~

~~for~~ used in calculating current ANB and three-year ANB the first year the consolidation or annexation is effective. After the first year, the ~~actual enrollment of the combined district will be used to calculate ANB~~ closed school will be factored into ANB calculations using a zero enrollment amount in calculating three-year ANB by budget unit.

(b) and (i) remain the same.

(ii) The basic entitlement of a district operating a school in the previous year that is subsequently closed when the districts are consolidated or annexed will be calculated the first year using the enrollment for the prior year as a factor in determining the current ANB and three-year ANB for budgeting purposes. After the first year, the basic entitlement will be ~~the minimum basic entitlement in 20-9-306(6)(a) or (6)(b), MCA~~ calculated using enrollment of zero for the closed budget unit in the calculation of current ANB or three-year ANB to determine the budgeted ANB under 20-9-311, MCA.

(iii) The basic entitlement for a district which continues to operate a school after the districts are consolidated or annexed will be calculated using the enrollment used for budgeted ANB.

(c) and (d) remain the same.

AUTH: 20-9-102, MCA
IMP: 20-9-308, 20-9-311, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.301.

10.30.403 TRANSITION TO K-12 DISTRICTS (1) through (4)(b) remain the same.

(i) The ratio for prorating the BASE budget levy will be determined in the following manner:

Calculation of ratio for proration of GTBA budget area

	Elem.	H.S.	K-12
(A) 80% of Basic Entitlement	___	___	___
(B) 80% of Per-Student Entitlement	___	___	___
(C) Special Education Allowable Cost Payments:			
(I) Allowable costs, including disproportionate cost reimbursement times (Elementary current ANB divided by total K-12 ANB)	___		
(II) [Allowable costs, including disproportionate cost reimbursement times (High School current ANB divided by total K-12 current ANB)]		___	
(III) Total K-12 allowable cost payments			___
(D) Related Services Payment to			

Co-op	___	___	___
(E) 40% of Special Education Allowable Costs & Related Services Payment to Co-op [40 times (C)+(D)]	___	___	___
(F) BASE Budget Limit [(A)+(B)+(C)+(E)]	___	___	___
(G) Direct Aid Payment [(A+B) times the direct state aid percentage in 20-9-306, MCA]	G1	G2	G3
(H) GTBA Budget Area [(F)-(G)-(C)]	H1	H2	H3
(I) Prorated GTBA Budget Area	H1/H3	H2/H3	100%

(ii) through (6) remain the same.

AUTH: 20-3-106, MCA
IMP: 20-6-702, 20-6-703, 20-6-711, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.301.

10.30.406 EXCEPTIONS TO HIGH SCHOOL PROVISIONS (1) remains the same.

(a) The retirement fund of a K-12 district will be a high school retirement fund, and the eligibility for guaranteed tax base aid will be determined based on the high school mill value per ANB. The guaranteed tax base aid payment for the high school retirement fund will be awarded to a county with a K-12 district using the number of high school budgeted ANB in the county plus the elementary budgeted ANB of any K-12 district in the county times the statewide subsidy per mill per ANB as calculated by the ~~office~~ Superintendent of Public Instruction. The guaranteed tax base aid payment for the elementary retirement fund will be awarded to a county with a K-12 district using the number of elementary budgeted ANB from elementary districts in the county, but not including the elementary ANB from any K-12 districts in the county. However, the calculations for the statewide and the county mill value per ANB will utilize the elementary budgeted ANB of the K-12 district for the statewide and county elementary calculation and the high school budgeted ANB of the K-12 district for the statewide and county high school calculation.

(b) through (d) remain the same.

AUTH: 20-3-106, MCA
IMP: 20-6-702, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.301.

10.30.415 DISSOLUTION OF K-12 DISTRICTS (1) and (1)(a) remain the same.

(b) To determine prior year ANB for the elementary and high school portions of the dissolved K-12 district to be used to calculate spending limitations for the consolidated district(s), use budgeted ANB per elementary portion and budgeted

ANB per high school portion of the K-12 from the prior year.

AUTH: 20-3-106, MCA
IMP: 20-6-704, MCA

Statement of Reasonable Necessity: See statement following ARM 10.10.301.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted by mail to the Superintendent of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501, or by e-mail to opirules@mt.gov and must be received no later than 5:00 p.m. on December 7, 2006.

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

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

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

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

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

Certified to the Secretary of State October 30, 2006.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment of ARM 24.29.1401, 24.29.1402, 24.29.1404, 24.29.1415, 24.29.1430, 24.29.1510, 24.29.1517, 24.29.1521, and 24.29.1582, and the adoption of NEW RULES I and II, all related to allowable medical service billing rates for workers' compensation claims	) NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On December 7, 2006, at 1:00 p.m., or as soon thereafter as is feasible, the Department of Labor and Industry (department) will hold a public hearing to be held in the first floor conference room (room 104), Walt Sullivan Building, 1327 Lockey Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The substance of this proposal is identical to a proposal made by the department on April 20, 2006, MAR Notice No. 24-29-204, at page 1005 of the 2006 Montana Administrative Register, Issue No. 8. The proposal is being renoticed to cure a procedural error made by the department in the rulemaking process. On May 11, 2006, the department held a public hearing in Helena regarding the above-stated rules. All comments previously made on the proposed amendments and new rules will be considered by the department without the need for the commenter to resubmit those comments. The Final Notice for this proposal will contain the department's responses to all comments made to both notices.

3. The department 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 November 30, 2006, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Workers' Compensation Regulations Bureau, Department of Labor and Industry, Attn: Jeanne Johns, P.O. Box 8011, Helena, MT 59624-8011, telephone (406) 444-7710; fax (406) 444-3465; TDD (406) 444-5549; or e-mail jjohns@mt.gov.

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

<u>24.29.1401 INITIAL LIABILITY</u> (1) and (2) remain the same.

(3) Pursuant to 39-71-743, MCA, when a claim is covered under the Workers' Compensation or Occupational Disease acts, providers may not bill the injured worker for the difference between the initial amount billed and the amount reimbursed to the provider by the insurer as set by applicable statutes and rules, except for the co-pay provided by 39-71-704, MCA.

(a) For injured workers who are receiving benefits from the Uninsured Employers' Fund pursuant to 39-71-503, MCA, the provisions of this rule are subject to 39-71-510, MCA.

~~(3)~~(4) The injured worker is responsible for charges incurred for treatment of conditions which were not the result of the injury or for treatment when medical benefits have terminated according to 39-71-704~~(1) (d)~~, MCA.

AUTH: 39-71-203, MCA
IMP: 39-71-510, 39-71-704, 39-71-743, MCA

REASON: The Workers' Compensation Act (act) is intended in part to function as a statutory system of regulation of the allowable amounts of insurance coverage for a workers' compensation claim. In other words, parts of the act function as a form of managed care to regulate health care costs. Therefore, it is reasonably necessary to clarify that providers may not bill claimants the excess amounts due after the providers are reimbursed by an insurer according to the fee schedule set by these rules and other applicable statutes and rules. Providers may bill for the co-pay provided for in 39-71-704(7), MCA. It is also reasonably necessary to include the language in (3)(a) to provide for the contingency that the Uninsured Employers' Fund ("the UEF") may someday not have sufficient funds to fully pay on claims, and that 39-71-510, MCA, may be applicable, at the same time the rule is otherwise being amended. There is also reasonable necessity to add two statutes to the implementation citation to more fully identify the statutes the rule implements.

24.29.1402 PAYMENT OF MEDICAL CLAIMS (1) through (4) remain the same.

(5) For claims arising before July 1, 1993, no fee or charge ~~shall be~~ is payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer.

(6) For claims arising on or after July 1, 1993, no fee or charge is payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer, other than:

(a) the co-payment provided by 39-71-704, MCA. The decision whether to require a co-payment rests with the insurer, not the medical provider. If the insurer does not require a co-payment by the worker, the provider may not charge or bill the worker any fee. The insurer must give enough advance notice to known medical providers that it will require co-payments from a worker so that the provider can make arrangements with the worker to collect the co-payment;

(b) the charges for a nonpreferred provider, after notice is given as provided in 39-71-1102, MCA; ~~or~~

(c) the charges for medical services obtained from other than a managed care organization, once an organization is designated by the insurer as provided in

39-71-1101, MCA; or ~~shall be payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer. The decision whether to require a co-payment rests with the insurer, not the medical provider. If the insurer does not require a co-payment by the worker, the provider may not charge or bill the worker any fee. The insurer must give enough advance notice to known medical providers that it will require co-payments from a worker so that the provider can make arrangements with the worker to collect the co-payment.~~

(d) the charges for medical services denied by the insurer on the basis that the services meet both of the following criteria:

(i) the medical services do not return the injured worker to employment; and

(ii) the medical services do not sustain medical stability.

(7) For injured workers who are receiving benefits from the Uninsured Employers' Fund pursuant to 39-71-503, MCA, the provisions of this rule are subject to 39-71-510, MCA.

AUTH: 39-71-203, MCA
IMP: 39-71-203, 39-71-510, 39-71-704, MCA

REASON: Hiett v. Missoula County Public Schools, 2003 MT 213, ¶ 35, 317 Mont. 95, 75 P.3d 341, interpreted 39-71-704, MCA, to provide that medical services will be covered by the Workers' Compensation Act if those services are necessary to sustain medical stability, even if the services do not return a worker to employment. Therefore, it is reasonably necessary to incorporate this precedent into the rule in order to clarify when an injured worker is responsible for payment of medical care pursuant to 39-71-704, MCA. Because Hiett interpreted language that became effective on July 1, 1993, and that still exists in statute today, it is appropriate to indicate this rule change applies to all claims after July 1, 1993.

It is also reasonably necessary to clarify that for any injured workers receiving benefits from the UEF, any requirements in the rule are subject to the statutory provisions that govern the UEF. Specifically, if the UEF reduces benefits payments to prorated amounts as provided by 39-71-510, MCA, it is possible that claimants may be liable to medical providers for the difference between the amount paid by the UEF and the amount allowed under the fee schedule. So as not to mislead readers, the proposed rule clarifies that it is subject to 39-71-510, MCA. Finally, it is necessary to amend the rule to make it easier to read for users.

24.29.1404 DISPUTED MEDICAL CLAIMS (1) Disputes arising over the following issues are resolved by a hearing before the department upon written application of a party to the dispute or the injured worker:

(a) ~~Amounts~~ amounts payable to medical providers, when benefits available directly to claimants are not an issue~~,~~;

(b) ~~Access~~ access to medical records~~,~~;

(c) ~~Timeliness~~ timeliness of payments to medical providers~~.~~; or

(d) requirements for documentation submitted by a provider to an insurer pursuant to ARM 24.29.1513 as a condition of the payment of medical fees.

(2) All other disputes arising over medical claims, including travel expense reimbursement to injured workers, shall be brought before a department mediator as provided in part 24 of the Workers' Compensation Act.

(2) and (3) remain the same, but are renumbered (3) and (4).

AUTH: 39-71-203, MCA
IMP: 39-71-203, 39-71-704, MCA

REASON: It is reasonably necessary to clarify the disputes that must be resolved by a hearing rather than mediation, pursuant to 39-71-704(6), MCA. Specifically, disputes between insurers and medical providers related to medical service fees and concerning documentation requirements or disallowed procedures must go to hearing rather than mediation. There is also reasonable necessity to make technical corrections in earmarking, capitalization, and punctuation matters while the rule is otherwise being amended.

24.29.1415 IMPAIRMENT RATING DISPUTE PROCEDURE (1) This section applies to dates of injury beginning July 1, 1987, through June 30, 1991. An evaluator must be a qualified physician licensed to practice in the state of Montana under Title 37, chapter 3, MCA, and board certified ~~or board eligible~~ in ~~his~~ an area of specialty appropriate to the injury of the claimant, except that if the claimant's treating physician is a chiropractor, the evaluator may be a chiropractor who is certified as an impairment evaluator under Title 37, chapter 12, MCA. The claimant's treating physician may not be one of the evaluators to whom the claimant is directed by the department.

(2) remains the same.

(3) The department shall give written notice to the parties of the time and place of the examination. If the claimant fails to give 48 hours notice of ~~his~~ the claimant's inability to attend the examination, ~~he~~ the claimant is liable for payment of the evaluator's charges.

(4) and (5) remain the same.

(6) The impairment evaluators shall operate according to the following procedures:

(a) The evaluator shall submit a report of ~~his~~ the evaluator's findings to the department, claimant, and insurer within 15 days of the date of the examination.

(b) remains the same.

(c) The second evaluator shall submit a report of ~~his~~ the second evaluator's findings to the department, claimant, and insurer, within 15 days of the date of the examination.

(d) through (f) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-711, MCA

REASON: It is reasonably necessary to delete the "board eligible" qualification because the department has recently been advised the term is no longer used within

the medical profession. It is also reasonably necessary to make the rule gender neutral while the rule is otherwise being amended.

24.29.1430 HOSPITAL RATES ~~BEGINNING~~ FROM JULY 1, 1998, THROUGH JUNE 30, 2001 (1) through (3) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: It is reasonably necessary to amend the catchphrase of this rule due to proposed New Rule I, discussed below.

24.29.1510 SELECTION OF PHYSICIAN FOR CLAIMS ARISING ON OR AFTER JULY 1, 1993 (1) For claims arising on or after July 1, 1993, "treating physician" has the meaning provided by 39-71-116~~(29)~~, MCA ~~(1993)~~.

(2) remains the same.

(3) Selection of the treating physician, referrals made by the treating physician, and changes of treating physician must all be made in accordance with the provisions of 39-71-1101, MCA ~~(1993)~~. Treatment from a physician's assistant or an advanced practice nurse, when the treatment is under the direction of the treating physician, does not constitute a change of physician and does not require prior authorization pursuant to ARM 24.29.1517.

(4) Subject to 39-71-1101, MCA, ARM 24.29.1517, and any other applicable rule or statute, nothing in this rule prohibits the claimant from receiving treatment from more than one physician if required by the claimant's injury or occupational disease.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: It is reasonably necessary to amend (1) to delete the reference to (29) because statutory changes have caused renumbering of the reference. It is also reasonably necessary to delete the reference to the year 1993 in (3) because the later versions of the statute are applicable to later claims.

In addition, Anderson v. Albertson's, Inc., 2004 MT WCC 59, WCC No. 2004-1058, held that 39-71-704, MCA, does not limit the number of physicians who can treat a claimant. Therefore, it is reasonably necessary to indicate that a claimant may receive treatment from as many physicians as required by their injury or occupational disease.

Also, Travelers Property Casualty v. Martini, 2002 MT WCC 31, held that prior authorization is not required for treatment by an advance practice nurse employed by the treating physician when the treating physician is still primarily responsible for the claimant's treatment. Therefore, it is reasonably necessary to clarify that treatment by a physician's assistant or advance practice nurse under the direction of the treating physician does not require prior authorization.

24.29.1517 PRIOR AUTHORIZATION (1) When prior authorization is required as provided by (4), the provider must request the authorization a reasonable amount of time in advance of the time the procedure is scheduled to be performed. The request must contain enough information to allow the insurer to make an informed decision regarding authorization. The insurer may not unreasonably withhold its authorization. An ~~insurers'~~ insurer's denial must contain an explanation of the reasons for its denial. Reasonableness will be judged in light of the circumstances surrounding the medical procedure and the claim.

(2) through (6) remain the same.

(7) If medical services related to the injury or occupational disease are denied pursuant to this rule because a provider failed to try to obtain prior authorization, an injured worker cannot be billed for those denied medical services pursuant to 39-71-743, MCA.

(8) When an insurer denies liability for an injury or occupational disease, and the insurer then later assumes liability for a particular condition, the insurer may not deny payment for the medical services provided for that condition during the period of denial based solely on failure to obtain prior authorization.

AUTH: 39-71-203, MCA
IMP: 39-71-704, 39-71-743, MCA

REASON: It is reasonably necessary to amend this rule to clarify that an injured worker cannot be excess billed for medical services if the medical provider does not obtain prior authorization pursuant to this rule. This proposed change is a specific clarification in addition to the proposed change to ARM 24.29.1401 discussed above.

Further, the department has become aware of situations in which an insurer initially denies liability for an injury, then when the insurer later assumes liability for the injury, but the insurer denies past treatment due to the provider's failure to obtain prior authorization. Because it is impossible for a provider to obtain prior authorization for a specific procedure or treatment when an insurer denies all liability for a claim, the department believes it is reasonably necessary to clarify the rule. Specifically, when an insurer later assumes liability for a particular condition, the proposed amendments provide that the insurer also assumes liability for any medical services that were denied pursuant to this rule. It is also reasonably necessary to add the internal cross-reference to make the rule clearer for the reader and to correct the typographical error, and also to add the reference to 39-71-743, MCA, as an implemented statute.

24.29.1521 MEDICAL EQUIPMENT AND SUPPLIES (1) Reimbursement for ~~provider supplied~~ medical equipment and supplies dispensed through a medical provider is limited to the lesser of $30.00 or 30% above the cost of the item including freight, except prescription medicines are limited to charges allowed under 39-71-727, MCA. An invoice documenting the cost of the equipment or supply must be sent to the insurer upon the insurer's request.

(2) remains the same.
(3) This rule does not apply to:
(a) equipment supply houses that are not also health care providers~~,~~;
(b) hospitals~~,~~; or
(c) pharmacies.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: It is reasonably necessary to clarify reimbursement of medical supplies dispensed by a medical provider because the former wording proved confusing for readers of the rule. It is also reasonably necessary to set out (earmark) the subsections of (3) for clarity.

24.29.1582 PROVIDER FEES--OCCUPATIONAL AND PHYSICAL THERAPY SPECIALTY AREA FOR SERVICES PROVIDED ~~ON OR AFTER~~ FROM JULY 1, 2002, THROUGH SEPTEMBER 30, 2003 (1) through (8) remain the same.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: It is reasonably necessary to amend the catchphrase of this rule due to proposed New Rule II, discussed below.

5. The proposed new rules provide as follows:

NEW RULE I HOSPITAL RATES BEGINNING JULY 1, 2001 (1) Any hospital, other than one licensed as a medical assistance facility or critical access hospital under Title 50, chapter 5, MCA, that changes its usual and customary charges on or after July 1, 2001, must have its rates adjusted by the use of a discount factor. The discount factor is computed by taking the existing discount factor for that hospital, divided by the quantity 1 + ORI, where ORI is the overall percentage rate change adopted by the hospital, divided by 100.

(2) For hospital services rendered by a hospital not licensed as a medical assistance facility or critical access hospital under Title 50, chapter 5, MCA, the amount payable by an insurer for those services performed during the fiscal year starting July 1, 2001, is that hospital's discount factor in effect on June 30, 2001, plus the percentage increase in the state's average weekly wage. The adjusted discount factor is computed by multiplying the existing discount factor for that hospital times (1 + the percentage increase).

(3) The department will thereafter recalculate each hospital's discount factor to take into account changes to the hospital's usual and customary charges. The department will also annually recalculate, effective July 1 of each year, each hospital's discount factor to take into account the percentage increase in the state's average weekly wages made during the previous calendar year. If for any year the

state's average weekly wage does not increase, the rates will be held at the existing level until there is a net increase in the state's average weekly wage.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: Chapter 192, L. of 2001 (Senate Bill 194), added critical access hospitals to the facilities with rates designated by 39-71-704(3)(g), MCA. It is reasonably necessary to conform the hospital rate rules to the statute by adding critical access hospitals to the language of the rules. Proposed New Rule I copies the text of the rule for the previous time period, ARM 24.29.1430, adds critical access hospitals to medical assistance facilities as required by 39-71-704(3)(g), MCA, and updates the date used for the effective date of the discount factor. It is reasonably necessary to adopt New Rule I rather than amend ARM 24.29.1430 because all the users of these rules are accustomed to rules that are set out by time period, and because providers have requested a specific rule on the matter, rather than mere reference to the applicable statute.

NEW RULE II PROVIDER FEES--OCCUPATIONAL AND PHYSICAL THERAPY SPECIALTY AREA FOR SERVICES PROVIDED ON OR AFTER OCTOBER 1, 2003 (1) Fees for services provided by occupational therapists and physical therapists are payable only for the procedure codes listed below, and unless otherwise specified are payable according to the unit values listed in the RVP.

(2) Nothing in this rule is to be construed so as to broaden the scope of a provider's practice. Each provider is to limit services to those that can be performed within the limits and restrictions of the provider's professional licensure. Providers may only charge for services performed that are consistent with the scope of their practice and licensure.

(3) Except as provided by (6), the conversion factor used depends on the date the service was rendered:

(a) Effective July 1, 2002, the conversion factor for services performed by a licensed occupational therapist, or a licensed physical therapist within their scope of practice, is set at $4.25.

(b) Beginning January 1, 2003, the conversion factor will be adjusted in the manner specified by ARM 24.29.1536.

(4) Only the following codes found in the RVP may be billed for services provided by occupational therapists and physical therapists:

(a) All physical medicine and rehabilitation codes, except 97770 through 97781, may be billed. Code 97799 may be billed only for providing the following services and requires a separate written report describing the service provided when billing for this code:

(i) face-to-face conferences with payor representative(s) to update the status of a patient upon request of the payor;

(ii) a report associated with nonphysician conferences required by the payor; or

(iii) completion of a job description or job analysis form requested by the payor.

(b) Special services, procedures, and report codes 99070 and 99080 Nt bw billed. A separate written report must be submitted describing the service provided when billing for these codes.

(5) The explanations, protocols, comments, and directions for use contained in both the CPT manual and the RVP are to be applied to the procedure codes contained in this rule.

(6) Effective July 1, 2002, code 97750 is payable at $26.50 per 15-minute unit for a maximum of 24 15-minute increments of service per day. Beginning January 1, 2003, and each year annually thereafter, the amount payable per 15-minute unit for code 97750 shall increase by the percentage increase in the state's annual average weekly wage. If for any year the state's average weekly wage does not increase, the rate will be held at the existing level until there is a net increase in the state's average weekly wage.

(7) When physical or occupational therapists are billing code 97033 (iontophoresis), medication charges and electrode charges must each be billed separately for each visit using CPT code 99070.

(8) When occupational therapists or physical therapists are performing orthotics fitting and training (code 97504) or checking for orthotic/prosthetic use (code 97703), supplies and materials provided may be billed separately for each visit using CPT code 99070.

AUTH: 39-71-203, MCA
IMP: 39-71-704, MCA

REASON: Chapter 101, L. of 2003 (House Bill 542) allows occupational therapists to perform iontophoresis. It is reasonably necessary to amend the provider fee rule for physical and occupational therapists to clarify that occupational therapists may now bill for iontophoresis under procedure code 97033. Chapter 101 became effective on October 1, 2003. Proposed New Rule II copies the text of the rule for the previous time period, ARM 24.29.1582, and amends (4) and (7) in order to add iontophoresis to the procedures billable by occupational therapists. It is reasonably necessary to adopt New Rule II rather than amend ARM 24.29.1582 because all the users of these rules are accustomed to rules that are set out by time period, and because providers have requested a specific rule on the matter, rather than mere reference to the applicable statute.

6. 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: Jeanne Johns, Workers' Compensation Regulations Bureau, Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59624-8011; by facsimile to (406) 444-3465; or by e-mail to jjohns@mt.gov, and must be received by no later than 5:00 p.m., December 14, 2006.

7. An electronic copy of this Notice of Proposed Amendment and Adoption is available through the department's web site at http://dli.mt.gov/events/calendar.asp, under the Calendar of Events, Administrative Rules Hearings section. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

8. The department maintains lists 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 mailing lists 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 Department of Labor and Industry administrative rulemaking proceedings or other administrative proceedings. Such written requests may be mailed to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey St., Room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

10. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

/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 October 30, 2006

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

In the matter of the proposed amendment of ARM 24.171.401 fees, 24.171.512 inactive license, 24.171.702 transfer of river-use days, 24.171.2301 unprofessional conduct and misconduct, and the proposed adoption of NEW RULES I - III pertaining to guide logs	) NOTICE OF PUBLIC HEARING) ON PROPOSED AMENDMENT) AND ADOPTION

TO: All Concerned Persons

1. On December 8, 2006, at 1:00 p.m., a public hearing will be held in room 471, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) 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 Outfitters (board) no later than 5:00 p.m., December 1, 2006, to advise us of the nature of the accommodation that you need. Please contact Debbie Tomaskie, Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2373; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdout@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of an ongoing rule review process, the board determined it is reasonably necessary to generally update the board's administrative rules. Most of the amendments are technical in nature, such as the modification of punctuation and style to comply with ARM formatting requirements. Other technical changes include renumbering within rules following amendment of the rules and substituting neutral terms for gender specific language. Accordingly, the board believes that there is reasonable necessity to generally amend the existing rules at this time. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.171.401 FEES (1) Fees for outfitters, operations plan, guide, or professional guides shall be as set forth below. The following fees are nonrefundable.

(a) through (e) remain the same.

(f) Annual fee for each additional hunting camp, added after January 1, 1999, 5000

and located beyond a 100-mile radius of the outfitter's base of operations and that is in ~~a~~n Department of Fish, Wildlife, and Parks administrative region other than the region containing the outfitter's base of operations

(g) through (i) remain the same.

(j) Nonresident outfitters, guides, or professional guides will pay the fee their residency state charges for the similar license if in excess of the amount established by the board for the license. Otherwise they will pay the Montana resident fee.

(k) through (n) remain the same.

AUTH: 37-1-131, 37-1-134, 37-47-201, 37-47-306, MCA
IMP: 37-1-134, 37-1-141, 37-47-304, 37-47-306, 37-47-307, 37-47-308, 37-47-310, 37-47-316, 37-47-317, 37-47-318, MCA

REASON: The board has determined that it is reasonable and necessary to amend this rule to correspond with language in 37-47-318, MCA, by clarifying that the administrative regions referenced in the rule are those designated by the Montana Department of Fish, Wildlife, and Parks.

24.171.512 INACTIVE LICENSE (1) An outfitter may submit a written request to have ~~his or her~~ the outfitter's license placed on inactive status at the time of renewal. Such request must be submitted with a completed application for renewal and all required renewal fees.

~~(2) An outfitter may have his license placed on inactive status for a period not exceeding the remainder of the license year in which the request is made, and may not remain inactive for more than one consecutive licensure year without approval of the board on an annual basis.~~

(3) through (5) remain the same but are renumbered (2) through (4).

AUTH: 37-1-319, MCA
IMP: 37-1-319, MCA

REASON: It is reasonable and necessary to amend this rule and delete the requirement that outfitters wishing to remain on inactive status obtain board review and approval on an annual basis. This requirement was time consuming for board staff and it was determined by the board to be unnecessary for the adequate protection of the public. It is reasonable and necessary to amend the rule prior to the next license renewal cycle so inactive licensees have timely notice of the elimination of this requirement.

24.171.702 TRANSFER OF RIVER-USE DAYS (1) ~~When a fishing outfitter transfers all river-use days that have been allocated to that fishing outfitter as part of the complete sale or transfer of a business, and i~~ If requested by either the outfitter-owner transferring the river-use days or the prospective new owner receiving them, board staff shall determine the outfitter-owner's record of river-use days to ensure accuracy of the allocation of river-use days to be transferred.

(2) remains the same.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-47-201, 37-47-310, MCA

REASON: The question of a potential discrepancy between statutory language at 37-47-310, MCA, "any river-use days," and the current language proposed to be stricken from this rule, "all river use days," was brought to the board. The board has determined that reasonable necessity exists to amend this rule and delete the potentially conflicting language. The board determined that maintaining potentially misleading language in this rule does not clarify the implemented statute.

24.171.2301 UNPROFESSIONAL CONDUCT AND MISCONDUCT

(1) through (1)(i) remain the same.

(j) personally collect, or designate an agent to collect, all fees from clients. The outfitter is solely responsible for complying with ~~his or her~~ the outfitter's deposit and deposit refund policy;

(k) maintain current, true, complete, and accurate records at all times;

(l) remains the same.

(m) obtain and maintain a reasonable degree of supervision over the guide or professional guide to ~~insure~~ ensure that the services offered are being provided in accordance with the laws and rules, with particular regard to those laws and rules pertaining to the health, safety, and welfare of the participants, the public, and landowners;

(n) through (2)(b) remain the same.

(c) not provide services to clients who have not been specifically referred to the guide or professional guide from the endorsing outfitter; and

(d) when advertising guiding services, shall clearly designate the license number of the guide, and the name, address, and telephone number of the endorsing outfitter.

(3) remains the same.

(a) provide services with respect for the rights of others, private and public property, and provide for the health, safety, and well-being of their clients, employees, and the general public;

(b) through (d) remain the same.

(e) not use any narcotic drug, alcohol, or any other drug or substance, to the extent that the use impairs the user physically or mentally, while engaged by a client;

(f) remains the same.

(g) not conduct a licensed function that is not authorized and listed on ~~his or her~~ the licensee's license;

(h) not harass, assault, or abuse clients, employees, outfitters, guides, or professional guides, or members of the general public, verbally or otherwise;

(i) and (j) remain the same.

(k) clearly designate who the responsible outfitter is in any advertisement of outfitting, guiding, or professional guiding services;

(l) carry ~~his or her~~ the licensee's current license at all times when providing services;

(m) not have hunting or fishing privileges suspended, revoked, placed on probation, or voluntarily surrendered in the state of Montana or any other jurisdiction;

(n) through (q) remain the same.

(r) not fail to respond to board inquiries and requests; ~~or~~

(s) not remit a "nonsufficient fund check" or a check on a closed account for board fees or fines~~.~~ ; or

(t) maintain a current, true, complete, legible, and accurate log book of all individuals guided on the Beaverhead and Big Hole rivers, and submit the log books to the board office postmarked by December 1 of each license year.

AUTH: 37-1-319, 37-47-201, ~~37-47-341,~~ MCA
IMP: 37-1-312, 37-47-341, MCA

REASON: The board has determined it is reasonable and necessary to add the above language to the existing unprofessional conduct rule in order to identify noncompliance with NEW RULES I, II, and III as unprofessional conduct and to avoid potential confusion among licensees. Authority cites are being amended to accurately reflect the sources of the board's rulemaking authority.

5. The proposed new rules provide as follows:

NEW RULE I GUIDE LOG BOOKS FOR BEAVERHEAD AND BIG HOLE RIVERS (1) Guides, or outfitters working as guides, shall:

(a) maintain a current, true, complete, legible, and accurate log book of all individuals guided on the Beaverhead and Big Hole rivers; and

(b) make the current log book available for inspection by board staff or an agent of the board at any time while providing services on these two rivers.

(2) Guides, or outfitters working as guides, shall:

(a) ensure the log book is current before departing on these two rivers; and

(b) keep the log book current to the day at all times while providing services.

(3) All log books will be submitted to the board office, and must be postmarked no later than December 1 of each license year. Failure to present a current log book for inspection, or submit the postmarked log books by December 1 of each license year, will be deemed unprofessional conduct.

AUTH: 37-1-131, 37-1-319, 37-47-201, MCA
IMP: 37-47-201, 37-47-301, MCA

REASON: The board has determined that it is reasonable and necessary to adopt NEW RULES I, II, and III to assist with the enforcement of Montana Department of Fish, Wildlife, and Parks (FWP) river-use day regulations on the Beaverhead and Big Hole rivers. Requiring the log books will allow board investigators or FWP wardens to clearly identify which outfitter clients are associated with at the time they are on the river, and board staff will subsequently cross reference the guide logs with the outfitter logs submitted at the end of the year to ensure compliance with the FWP river-use day rules. The board also determined that requiring the ongoing maintenance and inspection of the log books will enable the board to more

immediately address situations of the unauthorized use of river-use days. It is reasonable and necessary to adopt these new rules at this time to ensure the rules are in effect prior to the upcoming 2007 fishing season.

NEW RULE II GUIDE LOG BOOK INFORMATION REQUIREMENTS

(1) Guide log books shall be maintained on forms prescribed by the board and shall contain information as required by the board. The information required shall include but not be limited to:

(a) names of individuals guided;
(b) dates individuals were guided;
(c) individuals automated licensing system (ALS) number;
(d) stream or lake fished;
(e) stream section;
(f) name of the outfitter to whom the clients belong;
(g) name of guide or outfitter acting as a guide;
(h) outfitter license number;
(i) guide license number; and
(j) year of reported record.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-47-201, 37-47-301, MCA

NEW RULE III CONFIDENTIALITY OF GUIDE RECORDS (1) Submitted guide records shall be maintained as confidential information and shall not be released to any person or organization without:

(a) approval of the board;
(b) written permission of the outfitter;
(c) subpoena or order of a court; or
(d) written request of a state or federal agency for the purpose of furthering investigation of criminal activities.

AUTH: 37-1-131, 37-47-201, MCA
IMP: 37-47-201, 37-47-301, MCA

6. 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 Debbie Tomaskie, Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdout@mt.gov and must be received no later than 5:00 p.m., December 18, 2006.

7. 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.outfitter.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text

will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The Board of Outfitters 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 that 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 Outfitters administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2309, e-mailed to dlibsdout@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

10. A department attorney will be assigned to preside over and conduct this hearing.

BOARD OF OUTFITTERS
KELLY FLYNN, CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

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

Certified to the Secretary of State October 30, 2006

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 32.3.104, 32.3.201, 32.3.212, and adoption of NEW RULES I through VI pertaining to disease control	)))))	NOTICE OF PROPOSED AMENDMENT AND ADOPTION NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On December 20, 2006, the Department of Livestock proposes to amend and adopt the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on December 11, 2006, to advise us of the nature of the accommodation that you need. Please contact Marc Bridges, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; phone: (406) 444-7323; TTD number: 1-800-253-4091; fax: (406) 444-1929; e-mail: mbridges@mt.gov.

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

32.3.104 SUBJECT DISEASES OR CONDITIONS (1) Diseases or conditions affecting multiple species that ~~requiring~~ require reporting, and quarantine when indicated, under department rules are:

~~Brucellosis,~~
~~Tuberculosis,~~
~~Scabies,~~
~~Anthrax,~~
~~Rabies,~~
~~Pseudorabies,~~
~~Pullorum,~~
~~New Castle Disease,~~
~~Scrapie,~~
~~Contagious Equine Metritis,~~
~~Vesicular Stomatitis,~~
~~Foot Rot in sheep, Pediculosis in sheep; and any other domestic and exotic dangerous diseases and conditions of all animals.~~

(a) Anthrax (Bacillus anthracis) (quarantine);
(b) Bluetongue;
(c) Brucellosis, bovine (Brucella abortus) (quarantine);
(d) Brucellosis, caprine and ovine (Brucella melitensis) (quarantine);
(e) Brucellosis, porcine (Brucella suis) (quarantine);

(f) Crimean Congo hemorrhagic fever (quarantine);
(g) Echinococcosis/hydatidosis;
(h) Foot and mouth disease (FMD) (quarantine);
(i) Heartwater (Cowdria ruminantium) (quarantine);
(j) Heartworm;
(k) Japanese encephalitis (quarantine);
(l) Leishmaniasis;
(m) Leptospirosis;
(n) Listeriosis;
(o) Mange, psoroptic (Psoroptes ovis) (quarantine);
(p) Mange, chorioptic (Chorioptes bovis);
(q) Mange, sarcoptic (Sarcoptes scabiei bovis);
(r) New and Old World Screwworm (Cochliomya [Callitroga] hominivorax Chrysomya bezziana) (quarantine);
(s) Paratuberculosis (Johne's Disease, Mycobacterium paratuberculosis);
(t) Plague (Yersinia pestis);
(u) Pseudorabies (Aujeszky's disease) (quarantine);
(v) Q-Fever (Coxiella burnetti);
(w) Rabies (quarantine);
(x) Rift Valley fever (quarantine);
(y) Rinderpest (quarantine);
(z) Salmonellosis (Salmonella enteritidis enteritidis);
(aa) Trichinellosis (Trichinella spiralis);
(ab) Tuberculosis (Mycobacterium bovis) (quarantine);
(ac) Tularemia (Francisella tularensis);
(ad) Vesicular stomatitis (VS) (quarantine);
(ae) West Nile fever/encephalitis (WNV).

(2) Diseases or conditions affecting bovines that require reporting, and quarantine when indicated, under department rules are:
(a) Bovine anaplasmosis (Anaplasma marginale, A. centrale);
(b) Bovine babesiosis (Babesia bovis, B. bigemina) (quarantine);
(c) Bovine genital campylobacteriosis (Campylobacter fetus venerealis);
(d) Bovine spongiform encephalopathy (BSE) (quarantine);
(e) Bovine viral diarrhea (BVD);
(f) Contagious bovine pleuropneumonia (Mycoplasma mycoides mycoides) (quarantine);
(g) Enzootic bovine leukosis (BLV);
(h) Hemorrhagic septicemia (Pasteurella multocida, serotypes B/Asian or E/African);
(i) Infectious bovine rhinotracheitis/infectious pustular vulvovaginitis (IBR/IPV);
(j) Lumpy skin disease (quarantine);
(k) Malignant catarrhal fever (MCF, Bovine malignant catarrh, wildebeest associated);
(l) Theileriosis (Theileria annulata, T. parva) (quarantine);
(m) Trichomoniasis (Tritrichomonas [Trichomonas] foetus);

(n) Trypanosomosis (Tse-tse borne, Trypanosoma congolense, T. vivax, T. brucei brucei) (quarantine).

(3) Diseases or conditions affecting caprines or ovines that require reporting, and quarantine when indicated, under department rules are:

(a) Caprine arthritis/encephalitis (CAE);

(b) Contagious agalactia (Mycoplasma agalactiae, M. capricolum, M. putrefaciens, M. mycoides mycoides, M. mycoides mycoides LC) (quarantine);

(c) Contagious caprine pleuropneumonia (Mycoplasma capricolum capripneumoniae) (quarantine);

(d) Contagious footrot (Bacteroides nodosus and Fusobacterium necrophorum) (quarantine);

(e) Enzootic abortion of ewes (Ovine psittacosis, Chlamydia psittaci);

(f) Nairobi sheep disease (quarantine);

(g) Ovine epididymitis (Brucella ovis);

(h) Ovine progressive pneumonia/Maedi-Visna (OPP);

(i) Pediculosis (Linognathus ovillus, L. pedalis, L. oviformis, L. stenopsis, Damalinia ovis, D. caprae, D. limbatus, or Holokartikos crassipes) (quarantine);

(j) Peste des petits ruminants (quarantine);

(k) Salmonellosis (Salmonella abortusovis);

(l) Scrapie (quarantine);

(m) Sheep pox and goat pox (quarantine).

(4) Diseases or conditions affecting equines that require reporting, and quarantine when indicated, under department rules are:

(a) African horse sickness (quarantine);

(b) Contagious equine metritis (CEM, Taylorella equigenitalis) (quarantine);

(c) Dourine (Trypanosoma equiperdum) (quarantine);

(d) Equine encephalomyelitis (Eastern [EEE] or Western [WEE]);

(e) Equine infectious anemia (EIA) (quarantine);

(f) Equine influenza (Virus Type A);

(g) Equine piroplasmosis (Babesiosis, Babesia [Piroplasma] equi, B. caballi) (quarantine);

(h) Equine rhinopneumonitis (EHV-1 and EHV-4);

(i) Equine viral arteritis (EVA);

(j) Glanders (Pseudomonas mallei) (quarantine);

(k) Surra (Trypanosoma evansi) (quarantine);

(l) Venezuelan equine encephalomyelitis (VEE) (quarantine).

(5) Diseases or conditions affecting porcines that require reporting, and quarantine when indicated, under department rules are:

(a) African swine fever (quarantine);

(b) Classical swine fever (Hog cholera) (quarantine);

(c) Nipah virus encephalitis (quarantine);

(d) Porcine cysticercosis (Cysticercus cellulosae);

(e) Porcine reproductive and respiratory syndrome (PRRS);

(f) Swine vesicular disease (quarantine);

(g) Transmissible gastroenteritis (TGE).

(6) Diseases or conditions affecting avians that require reporting, and quarantine when indicated, under department rules are:

(a) Avian chlamydiosis (Ornithosis and psittacosis, Chlamydia psittaci);
(b) Avian infectious bronchitis;
(c) Avian infectious laryngotracheitis (ILT);
(d) Avian mycoplasmosis (Mycoplasma gallisepticum or M. synoviae);
(e) Duck virus hepatitis (DVH);
(f) Exotic Newcastle disease (END) (quarantine);
(g) Fowl cholera (Avian pasteurellosis, Pasteurella multocida);
(h) Fowl typhoid (Salmonella gallinarum) (quarantine);
(i) Highly pathogenic avian influenza (HPAI, fowl plague) (quarantine);
(j) Infectious bursal disease (Gumboro disease);
(k) Marek's disease;
(l) Pullorum disease (Salmonella pullorum) (quarantine);
(m) Turkey rhinotracheitis (Avian pneumovirus).

(7) Diseases or conditions affecting aquaculture (commercial food fish) that require reporting, and quarantine when indicated, under department rules are:
(a) Viral hemorrhagic septicemia;
(b) Spring viremia of carp;
(c) Infectious hematopoietic necrosis;
(d) Epizootic hematopoietic necrosis;
(e) Oncorhynchus masou virus disease.

(8) Diseases and conditions affecting cervids that require reporting, and quarantine when indicated, under department rules are:
(a) Chronic wasting disease (CWD) (quarantine).

(9) Diseases and conditions affecting lagomorphs that require reporting, and quarantine when indicated, under department rules are:
(a) Myxomatosis;
(b) Rabbit hemorrhagic disease (quarantine).

(2) and (3) remain the same but are renumbered (10) and (11).

AUTH: 81-2-102, 81-2-103, 81-20-101, MCA
IMP: 81-2-102, 81-20-101, MCA

32.3.201 DEFINITIONS (1) through (1)(g) remain the same.

(h) "Virgin bull" means a sexually intact male bovine less than 12 months of age or a sexually intact male bovine 12 to 24 months of age that is accompanied by a signed affidavit from the owner or manager as having had no potential breeding contact with sexuallly intact female cattle.

AUTH: 81-2-102, 81-2-103, 81-20-101, MCA
IMP: 81-2-102, 81-2-103, 81-20-101, MCA

32.3.212 ADDITIONAL REQUIREMENT FOR CATTLE (1) through (1)(d) remain the same.

(2) All sexually intact male cattle entering Montana must meet the trichomoniasis testing and certification requirements set forth in [NEW RULE II], except as provided below:

(a) those being transported through Montana with no intent to unload in the state. In an emergency situation, the cattle may be unloaded in compliance with quarantine rules promulgated by the department at ARM 32.3.106 through 32.3.111;

(b) those consigned directly to a licensed slaughtering establishment or to a licensed livestock market and then directly to a licensed slaughtering establishment;

(c) those consigned directly to a feedlot approved by the state veterinarian and then directly to either a licensed slaughtering establishment or to a licensed livestock market and then directly to a licensed slaughtering establishment;

(d) virgin bull;

(e) those imported for exhibition or rodeo purposes and held in confined facilities;

(f) those imported as part of state veterinarian approved seasonal grazing operations without changing ownership, following a risk assessment. Sexually intact male cattle imported as part of state veterinarian approved seasonal grazing operations may be subject to herd-specific testing and certification requirements as determined by the state veterinarian.

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

AUTH: 81-2-102, 81-2-103, ~~81-20-101,~~ 81-2-707, MCA
IMP: 81-2-102, 81-2-703, ~~81-20-101,~~ MCA

4. The rules proposed for adoption provide as follows:

NEW RULE I DEFINITIONS In this subchapter:

(1) "Epidemiological investigation" means the scientific investigation conducted to determine the population of cattle or cattle herds that may be affected with or exposed to trichomoniasis.

(2) "Exposed herd notification" means owners or managers of exposed herds have been notified by the Department of Livestock or its agent that the owner's herd may have been exposed to a test positive animal or test positive herd.

(3) "Exposed herds" means cattle herds that have, within the previous twelve months, had direct commingling or cross-fence contact with a test positive animal or a test positive herd during the time of potential breeding activity.

(4) "Herd" means a group or groups of sexually intact cattle 12 months of age or older under common ownership or supervision that have commingled during the previous 12 months.

(5) "Hold order" means a restriction placed on test positive animals, test positive herds, or exposed herds prohibiting their movement from a premises or a portion of a premises to minimize exposure to other animals or herds.

(6) "Individual identification" means an official United States Department of Agriculture (USDA) eartag, a breed registry tattoo, an official state-issued trichomoniasis eartag, or any other means of permanent identification approved by the state veterinarian.

(7) "Official trichomoniasis test" means the sampling procedure conducted by a licensed veterinarian of the preputial content of a sexually intact male bovine and submitted to a laboratory accredited by the American Association of Veterinary Laboratory Diagnosticians or a laboratory approved by the state veterinarian to

identify Tritrichomonas foetus by direct microscopic examination, in vitro cultivation, PCR testing, or other test approved by the state veterinarian.

(8) “Test positive animal” means an animal in which a laboratory accredited by the American Association of Veterinary Laboratory Diagnosticians or a laboratory approved by the state veterinarian has identified Tritrichomonas foetus by direct microscopic examination, in vitro cultivation, PCR testing, or other test approved by the state veterinarian.

(9) “Test positive herd” means a herd of cattle in which a licensed veterinarian or an approved laboratory has identified Tritrichomonas foetus in one or more animals by direct microscopic examination, in vitro cultivation, PCR testing, or other test approved by the state veterinarian.

(10) "Trichomoniasis” means a sexually transmitted disease of cattle caused by the protozoan organism Tritrichomonas (Trichomonas) foetus.

AUTH: 81-2-102, 81-2-103, MCA
IMP 81-2-102, MCA

NEW RULE II OFFICIAL TRICHOMONIASIS TESTING AND CERTIFICATION REQUIREMENTS (1) The following official trichomoniasis testing and certification requirements apply to all nonvirgin, sexually intact male cattle imported into Montana or sold, loaned, or leased in Montana, except as provided in ARM 32.3.212:

(a) Nonvirgin male cattle must be negative to three official trichomoniasis tests;

(i) The tests must be conducted at intervals of no less than seven days between each test;

(ii) There must be no breeding activity during the intervals between the three tests or between the final of the three negative tests and the time of import, sale, loan, or lease; and

(iii) All tested male cattle must be individually identified at the time of test;

(b) The following statement must be on the certificate of veterinary inspection: “The bull(s) identified on this certificate were negative to three official trichomoniasis tests. The three tests were conducted at intervals of no less than seven days between each test. There was no breeding activity during the intervals between the three tests or between the final test and time of import, sale, loan, or lease in Montana.”

AUTH: 81-2-102, 81-2-103, 81-2-707, MCA
IMP: 81-2-102, 81-2-703, MCA

NEW RULE III REPORTING TRICHOMONIASIS (1) All licensed laboratories and all licensed Montana veterinarians conducting trichomoniasis testing of cattle in Montana shall report test positive animals to the department within one working day of such test or diagnosis.

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-107, MCA

NEW RULE IV CONFIRMATORY TESTING OF TEST POSITIVE ANIMALS

(1) The Department of Livestock may require or recommend a retest or supplemental testing of test positive animals to confirm infection.

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, MCA

NEW RULE V DISPOSITION OF TEST POSITIVE ANIMALS (1) Test positive animals shall be subject to an immediate hold order and shall remain on the premises where the animal was found to be infected, the owner's premise, or another premises approved by the state veterinarian and are subject to the department's general disease control administrative rules.

(2) Test positive animals shall be individually identified with an identification device approved by the state veterinarian.

(3) Test positive animals shall remain on a hold order until they are:

(a) consigned directly to a licensed slaughtering establishment;

(b) consigned directly to a licensed livestock market and then directly to a licensed slaughtering establishment; or

(c) consigned directly to a licensed feedlot and then directly to a licensed slaughtering establishment.

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-108, MCA

NEW RULE VI EPIDEMIOLOGICAL INVESTIGATION AND EXPOSED HERD NOTIFICATION (1) Upon receipt of a report of a test positive animal or a test positive herd, the department shall conduct an epidemiological investigation to identify animals or herds that were potentially exposed to a test positive animal or a test positive herd.

(2) Upon completion of the epidemiological investigation, the department or its agent shall issue an exposed herd notification notifying all owners or managers of exposed herds that the herd may have been exposed to a test positive animal or test positive herd. The department will provide owners of exposed herds with educational materials pertaining to trichomoniasis, including detection, prevention, control, eradication, and management strategies.

(3) Exposed herds may be subject to a hold order and official trichomoniasis testing and certification requirements as set forth in [NEW RULE II].

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-108, MCA

REASON: ARM 32.3.104 is proposed for amendment in order to revise the list of diseases or conditions affecting multiple species which will require reporting or quarantine (when indicated in the rules) in the state of Montana. This list of diseases has not been revised since 1988, and has become outdated. The proposed revised list is necessary to identify many other animal diseases or

conditions which must be reported to prevent the introduction or spread of infectious, contagious, communicable, or dangerous diseases in this state.

The proposed amendments to ARM 32.3.201, 32.3.212, and proposed adoption of New Rules I through VI are necessary to make Trichomoniasis in cattle a reportable disease in the state of Montana consistent with the USDA's National Animal Health Reporting System requirements. The rules will also allow a means of neighbor notification. The livestock industry had previously identified concerns about the possibility of Trichomoniasis being imported into the state. The proposed rules include mandatory testing of bulls imported into the state, and for change of ownership providing consistency with many Western states.

The AUTHORITY and IMPLEMENTING citations for ARM 32.3.104, 32.3.201, and 32.3.212 are being amended to delete inappropriate statutory citations, and to add appropriate statutory citations.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to Marc Bridges, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to mbridges@mt.gov to be received no later than 5:00 p.m., December 18, 2006.

6. If persons who are directly affected by the proposed actions wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m., December 18, 2006.

7. If the department receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; 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 public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25, based upon the population of the state.

8. An electronic copy of this proposal notice is available through the department's web site at www.mt.gov/liv.

9. The Montana Department of Livestock maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by this department. 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 the area of interest that the person wishes to receive notices regarding. Such written request may be mailed or delivered to Marc Bridges,

301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; faxed to (406) 444-1929 "attention Marc Bridges"; or e-mailed to mbridges@mt.gov. Request forms may also be completed at any rules hearing held by the department.

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

DEPARTMENT OF LIVESTOCK

BY: /s/ Marc Bridges
Marc Bridges
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

Certified to the Secretary of State October 30, 2006.

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

In the matter of the amendment of ARM 37.5.103, 37.5.305, 37.5.307, 37.5.313, 37.5.331, 37.5.503, 37.5.505, 37.78.103, 37.78.206, and 37.78.810 pertaining to fair hearing procedures and temporary assistance for needy families (TANF)	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On December 4, 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 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 November 27, 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; e-mail 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.

37.5.103 PUBLIC ASSISTANCE, DAYCARE, MEDICAL, LICENSURE, AND REFUGEE ASSISTANCE PROGRAMS: APPLICABLE HEARING PROCEDURES

(1) Hearings contesting adverse department actions under the programs specified in (1)(a) through (1)(k) are available to the extent granted in and according to the provisions of ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337, except as otherwise provided by department rule.

(a) through (b) remain the same.

(c) ~~families achieving independence in Montana (FAIM) financial assistance;~~ Temporary Assistance for Needy Families (TANF);

(d) through (k) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 41-3-1103, 52-1-103, 53-2-201, 53-2-904, 2-3-406, 53-4-212, 53-4-606, 53-6-111, 53-6-113, 69-8-412, MCA

37.5.305 APPLICABILITY OF NOTICE REQUIREMENTS (1) This rule,

ARM 37.5.503, and 37.5.505 apply only to claimants under the following programs:

(a) remains the same.

(b) ~~families achieving independence in Montana (FAIM) financial assistance;~~ Temporary Assistance for Needy Families (TANF);

(c) through (l) remain the same.

AUTH: 50-1-202, 53-2-201, 53-6-113, MCA
IMP: 41-3-1103, 50-1-202, 52-1-103, 53-2-201, 53-2-904, 53-4-202, 53-4-606, 53-6-111, 53-6-113, 53-6-131, 53-20-305, 69-8-412, MCA

37.5.307 OPPORTUNITY FOR HEARING (1) A claimant who is aggrieved by an adverse action of the department shall be afforded the opportunity for a hearing as provided in this chapter.

(a) through (b) remain the same.

(c) A request for a hearing by a claimant must be received by the department within 90 days ~~after~~ from the date of mailing of notice of the adverse action, except as otherwise provided in these rules.

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

AUTH: 2-4-201, 41-3-208, 41-3-1142, 52-2-111, 52-2-112, 52-2-403, 52-2-704, 52-3-304, 52-3-804, 53-2-201, 53-2-606, 53-2-803, 53-3-102, 53-4-111, 53-4-212, 53-4-403, 53-4-503, 53-5-304, 53-6-111, 53-6-113, 53-7-102, 53-20-305, MCA
IMP: 2-4-201, 41-3-202, 41-3-205, 41-3-1103, 52-2-603, 52-2-704, 52-2-726, 53-2-201, 53-2-306, 53-2-606, 53-2-801, 53-4-112, 53-4-212, 53-4-404, 53-4-503, 53-4-513, 53-5-304, 53-6-111, 53-6-113, 53-20-305, MCA

37.5.313 DISMISSAL OF HEARING (1) A hearing may be dismissed when:

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

(ii) a request for hearing contesting an adverse department action under the food stamp program or the ~~families achieving independence in Montana (FAIM)~~ Temporary Assistance for Needy Families (TANF) financial assistance program may be withdrawn by oral request of the claimant;

(iii) through (3) remain the same.

AUTH: 53-2-201, 53-2-606, 53-4-212, 53-6-113, 53-7-102, MCA
IMP: 53-2-201, MCA

37.5.331 NOTICE OF APPEAL AND REVIEW OF PROPOSAL FOR DECISION (1) remains the same.

(2) The notice of appeal must be made to and shall be decided by the Board of Public Assistance, Department of Public Health and Human Services, Office of Fair Hearings, P.O. Box 202953, Helena, MT 59620-2953 in cases arising from the following programs:

(a) ~~FAIM;~~ Temporary Assistance for Needy Families (TANF);

(b) through (8)(b) remain the same.

AUTH: 52-2-704, 52-2-726, 53-2-201, 53-2-606, 53-4-212, 53-6-113, 53-7-

102, MCA

IMP: 52-2-704, 53-2-201, 53-2-606, MCA

37.5.503 NOTICE UPON APPLICATION FOR PUBLIC ASSISTANCE

(1) At the time of application for benefits administered by the department, including but not limited to ~~FAIM,~~ Temporary Assistance for Needy Families (TANF), food stamps, Medicaid, LIEAP, LIWAP, refugee assistance, and daycare benefits, a claimant shall be informed in writing of:

(a) through (e) remain the same.

AUTH: 53-2-201, 53-2-606, 53-4-212, 53-6-113, 53-7-102, MCA
IMP: 53-2-201, MCA

37.5.505 NOTICE UPON ADVERSE PUBLIC ASSISTANCE ACTION

(1) Upon an adverse action by the department affecting benefits administered by the department, including but not limited to ~~FAIM,~~ Temporary Assistance for Needy Families (TANF), food stamps, Medicaid, LIEAP, LIWAP, refugee assistance, and daycare benefits, the claimant shall be provided adequate and timely notice.

(a) through (e)(iv) remain the same.

(f) in the case of benefits received under all programs except the food stamp program:

(i) through (iii) remain the same.

(iv) claimant is a child receiving benefits under the ~~FAIM~~ TANF program and is removed from his home by judicial determination or is voluntarily placed in foster care by legal guardian;

(v) through (vi) remain the same.

(4) through (7) remain the same.

AUTH: 53-2-201, 53-2-606, 53-4-212, 53-6-113, 53-7-102, MCA
IMP: 53-2-201, MCA

37.78.103 TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF): DEFINITIONS The following definitions apply to this chapter:

(1) through (8) remain the same.

(9) ~~"Community service" means any hours a participant volunteers in a recognized volunteer position.~~ "Community service" means structured programs and embedded activities in which TANF participants perform work for the direct benefit of the community under the auspices of public or nonprofit organizations.

(10) through (29) remain the same.

~~(30) "Job search" means activities that include but are not limited to:~~

~~(a) completing and submitting job applications;~~

~~(b) completing resumes or master applications; and~~

~~(c) career exploration, to investigate details/duties of a career path to determine true interest in a career. Examples include researching the dictionary of occupational titles, exploring the internet and interviewing with an employer or employee.~~

(30) Job search and job readiness assistance means the act of seeking or obtaining employment, preparation to seek or obtain employment, including life skills training, and substance abuse treatment, mental health treatment, or rehabilitation activities for those who are otherwise employable.

(a) such treatment or therapy must be determined to be necessary and certified by a qualified medical or mental health professional.

~~(31) "Job skills training directly related to employment" means training that may include but is not limited to:~~

~~(a) activities designed to familiarize participants with work place expectations and help them develop appropriate work behavior;~~

~~(b) classes that contribute to and prepare the participant for employment (e.g., skill specific classes, resume preparation and writing, interviewing skills and self-esteem); and~~

~~(c) any post secondary education not considered vocational educational training.~~

(31) "Job skills training directly related to employment" means training or education for job skills required by an employer to provide an individual with the ability to obtain employment or to advance or adapt to the changing demands of the workplace.

(32) through (36) remain the same.

~~(37) "On-the-job-training (OJT)" means training in the private or public sector given to an employment and training participant which occurs while the participant is engaged in productive work and provides knowledge or skills essential to the full and adequate performance of the job.~~

(37) "On the job training" means training in the private or public sector that is given to a paid employee while he or she is engaged in productive work and that provides knowledge and skills essential to the full and adequate performance of the job.

(38) through (56) remain the same.

(57) "Unsubsidized employment" means full or part-time employment or self-employment in the public or private sector that is not subsidized by TANF or any other public program.

~~(57)~~ (58) "Valid loan" means a lender delivers a sum of money to a borrower pursuant to a written or oral agreement that the borrower will repay the sum in the future. The obligation to repay must be absolute and not contingent on the occurrence of an uncertain event.

~~(58) "Vocational educational training" means the pursuit of a degree or certificate less than a bachelor degree.~~

(59) "Vocational educational training" means organized educational programs that are directly related to the preparation of individuals for employment in current or emerging occupations requiring training other than a baccalaureate degree.

~~(59)~~ (60) "WoRC Employability Plan" means a negotiated document listing employment and training activities, and mutual obligations of the WoRC program and the participant regarding the course of action leading to the individual's employment and the number of hours and the time limits within which such activities and obligations shall be performed.

~~(60)~~ (61) "Work activities" means all activities used to meet federal

participation requirements at 45 CFR 261.30.

~~(61) "Work experience" means assessment, preparation, orientation and placement in a formal job site training experience.~~

(62) "Work experience" means placement in a formal job site training experience that provides an individual with an opportunity to acquire the general skills, training, knowledge, and work habits necessary to obtain employment. All work experience placements have a detailed training plan. The main purpose of work experience is to improve the employability of those who cannot find unsubsidized employment.

~~(62)~~ (63) "Work Readiness Component (WoRC)" means the activities case management component of the TANF Cash Assistance Program.

AUTH: 53-4-212, MCA
IMP: 53-4-211, 53-4-601, MCA

37.78.206 TANF: GENERAL ELIGIBILITY REQUIREMENTS

(1) through (2) remain the same.

(3) The following are not eligible for TANF Cash Assistance:

(a) through (f) remain the same.

~~(g) an individual who was convicted after August 22, 1996, of any offense which is classified as a felony in the jurisdiction where the offense occurred and which has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the federal Controlled Substance Act, 21 USC 802(6);~~

(g) all members of the assistance unit which includes an individual who was convicted after August 22, 1996, of any offense which is classified as a felony in the jurisdiction where the offense occurred and which has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the federal Controlled Substance Act, 21 USC 802(6) who is not in compliance with the conditions of supervision, whose sentence associated with the felony conviction has not been discharged or the individual is not actively participating in treatment, if required;

(h) through (k) remain the same.

(l) all members of the assistance unit if any member of the assistance unit who is required by ARM 37.78.806 to participate in employment and training fails or refuses without good cause to negotiate and sign a WoRC Employability Plan~~.~~ ;

(m) an individual who is sanctioned for noncompliance in employment and training activities negotiated in the Family Investment Agreement and/or WoRC Employability Plan or sanctioned for failure to accept and maintain employment without good cause; and

(n) an individual who is serving an intentional program violation as outlined in ARM 37.78.505.

(4) through (6) remain the same.

AUTH: 53-2-201, 53-4-212, MCA
IMP: 53-2-201, 53-4-211, 53-4-231, MCA

37.78.810 TANF CASH ASSISTANCE EMPLOYMENT AND TRAINING: WORK EXPERIENCE PLACEMENT (WEX) (1) ~~The work experience placement (WEX) component is an activity of TANF employment and training designed to improve the employability of participants by assigning a participant to train in a nonprofit organization or public agency or in a for profit private agency.~~ "Work experience" means placement in a formal job site training experience that provides an individual with an opportunity to acquire the general skills, training, knowledge, and work habits necessary to obtain employment. All work experience placements have a detailed training plan. The main purpose of work experience is to improve the employability of those who cannot find unsubsidized employment. ~~The~~ Other specific purposes of the work experience placement component are to:

(a) through (c) remain the same.

(2) ~~After consulting with the participant and giving due consideration to the participant's preferences, the department shall determine whether the participant shall participate in WEX rather than in some other component, what work site the participant will be assigned to and how many hours per week the participant shall be required to participate. However, participants may not be required to participate more than 40 hours per week in work experience component activities, including hours spent in volunteer activities or paid employment.~~ After consulting with the participant and review of the WEX site goals and training plan, the department shall determine what work experience training site will best suit the individualized needs of the participant and how many hours per week the participant shall be required to participate. However, participants may not be required to participate more than 40 hours per week in work experience component activities.

(3) through (4) remain the same.

AUTH: 53-4-212, MCA
IMP: 53-2-201, 53-4-211, 53-4-601, 53-4-613, MCA

3. ARM 37.5.103(1)(c), 37.5.305(1)(b), 37.5.313(1)(a)(ii), 37.5.331(2)(a), 37.5.503(1), and 37.5.505(1) and (3)(f)(iv) are proposed to be updated to replace FAIM references with Temporary Assistance for Needy Families (TANF). The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 created the Temporary Assistance for Needy Families (TANF) Program that superseded the FAIM Cash Assistance Program and is the sole authority in place since the end of the State FAIM Waiver, December 31, 2003. This is only a program name change.

ARM 37.5.307(1)(c) is proposed to be updated to change the word "after" to "from" as the Medicaid Code of Federal Regulations (CFR) specifically states "from". This will bring consistency to the TANF and Medicaid programs.

Following is a brief overview of the TANF manual sections with substantive changes.

TANF 701-1 - Family Investment Agreement/WoRC Employability Plan TANF 701-1 is being updated to reflect who is a “work eligible” individual under the TANF Reauthorization regulations; therefore mandated to participate in employment and training activities.

TANF 701-2 - WoRC Participation TANF 701-2 is being updated to reflect the increased hours of participation based on the TANF Reauthorization regulations and the necessity to no longer attribute 12 hours toward each individual's participation hours for travel time to and from work activities and case management as these are not allowed within the new definition of allowable work activities. The increased hours of scheduled and verified participation will be 132 hours per month for single parent households and 152 hours per month per individual for two-parent households.

TANF 701-3 - Participation Components TANF 701-3 is being updated to reflect the new work activity definitions based on the federal guidance as to what constitutes an allowable work activity in the TANF Reauthorization regulations contained in the Deficit Reduction Act of 2005. Under TANF Reauthorization states are limited as to what constitutes an allowable work activity for purposes of meeting the work participation rate as mandated by the Administration for Children and Families. The department also added several new work activity definitions, again, as allowed by TANF regulations.

TANF 701-4 - WoRC Participation and Reconciliation TANF 701-4 is being updated to reflect the work activity reconciliation processes that are changing based on the TANF Reauthorization regulations. The system reconciliation involving closed TANF cases must be changed. Only the actual, verified hours of work activities will be reported in the TANF File.

TANF 702-1 - Conciliation TANF 702-1 is being removed from the manual as the formal conciliation process is being discontinued. Based on the strict requirements for participation in work activities contained in the TANF Reauthorization regulations, it has been determined that noncompliance without good cause in work activities will lead to an immediate referral for sanction.

TANF 702-2 - WoRC Sanction Review Process/Good Causes TANF 702-2 is being updated to reflect the removal of the conciliation process and emphasize the sanction committee review process and good cause situations and procedures. TANF Reauthorization adds ten days of excused absences from work activities per calendar year for good cause reasons which will resolve some participation concerns.

TANF 702-3 - Sanction TANF 702-3 is being updated to reflect the removal of the conciliation process. TANF Reauthorization adds ten days of excused absences from work activities per calendar year for good cause reasons, which will resolve some participation concerns. This section is also being updated to reflect the requirement for a sanctioned parent, considered a work eligible under the TANF Reauthorization regulations, to continue to participate in work activities.

ARM 37.78.103 has been updated to reflect the federal definitions of allowable work activities as defined in TANF Reauthorization contained in the Deficit Reduction Act

of 2005. Under the TANF Reauthorization states are limited as to what constitutes an allowable work activity for purposes of meeting the work participation rate as mandated by the Administration for Children and Families. Failure to meet this work participation rate will result in monetary penalties to the state.

This change will impact an average of approximately 3072 TANF participants who currently are mandated to participate in work activities. There will be no additional cost to the state unless a penalty is imposed for failure to meet the work participation rate.

ARM 37.78.206(3)(g) has been updated to fulfill the mandate of Senate Bill 29, 2005 Laws of Montana, Chapter 230, which removed the disqualification for an individual convicted of a drug-related felony offense from receiving TANF Cash Assistance. Under Senate Bill 29, an individual convicted of a drug-related felony offense may nevertheless qualify for TANF Cash Assistance if he or she was actively complying with the conditions of supervision was actively participating in treatment if required, or whose sentence associated to the felony conviction has been discharged. All members of an assistance unit that includes a convicted drug felony who is not in compliance with the conditions of supervision, not actively participating in treatment if required, or whose sentence has not been discharged are ineligible for TANF Cash Assistance.

This change will impact an average of approximately 77 TANF participants who were disqualified for TANF for drug-related felony issues and who are now eligible for TANF under Senate Bill 29. The average increase for TANF families would be $77.00 per month. The increased annual cost to the TANF program is estimated at $71,148, which would be funded with federal TANF block grant funding. There will be no additional cost to the state.

This ARM has also been updated to reflect current policy which indicates that intentional program violators as outlined in ARM 37.78.505 and individuals sanctioned for noncompliance in employment and training activities negotiated in the family investment and/or WoRC Employability Plan or sanctioned for failure to accept and maintain employment without good cause, as outlined in ARM 37.78.508, are not eligible for TANF Cash Assistance.

ARM 37.78.810 has been updated to reflect the federal definition of Work Experience Placement (WEX) as an allowable work activity as defined in TANF Reauthorization contained in the Deficit Reduction Act of 2005. Under TANF Reauthorization, states are limited as to what constitutes an allowable work activity for purposes of establishing the work participation rate as mandated by the Administration for Children and Families. Failure to meet this work participation rate will result in monetary penalties to the state.

This change will impact an average of approximately 3072 TANF participants who currently are mandated to participate in work activities. There will be no additional cost to the state unless a penalty is imposed for failure to meet the work participation

rate.

4. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on December 7, 2006. Data, views, or arguments may also be submitted by facsimile (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.

/s/ Francis Clinch
Rule Reviewer

/s/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State October 30, 2006.

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

In the matter of New Rules I through IV, and the amendment of ARM 37.85.406, 37.86.105, 37.86.205, 37.86.506, 37.86.2801, 37.86.2803, 37.86.2901, 37.86.2905, 37.86.2912, 37.86.2918, 37.86.2943, 37.86.2947, 37.86.3001, 37.86.3005, 37.86.3007, 37.86.3009, 37.86.3016, 37.86.3018, 37.86.3020, 37.86.3025, 37.88.206, 37.88.306, 37.88.606, and 37.88.1106 pertaining to Medicaid reimbursement of hospitals, provider based entities, and birthing centers	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Interested Persons

1. On December 1, 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 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 November 22, 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; e-mail dphhslegal@mt.gov.

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

RULE I PROVIDER BASED ENTITY SERVICES, GENERAL (1) For services provided on or after August 1, 2003, hospitals receiving provider based status from the Centers for Medicare and Medicaid Services (CMS) must send a copy of the CMS letter granting provider based status to the department's hospital program officer at Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951 and must receive department approval prior to billing as a provider based clinic.

(2) Medicaid does not allow self-attestation of provider based status.

(3) The provider based entity must provide the department a list of facilities, clinics, and all professional staff and their Medicaid provider numbers who will be billing provider based visits to Medicaid.

(4) Notification must be provided to the department within 30 days of staff changes.

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

RULE II PROVIDER BASED ENTITY SERVICES, RECIPIENT ACCESS AND NOTIFICATION (1) Hospitals granted a provider based status by the department may not restrict access to Medicaid clients and must comply with antidumping rules in 42 CFR 489.20.

(2) A physician, clinic, or mid-level practitioner who practices primary care and is a provider based entity, except as described in (3) is required to participate in the Passport to Health and Team Care programs (ARM 37.86.5101 through 37.86.5120 and ARM 37.86.5201 through 37.86.5306). The provider:

(a) must sign a Passport to Health contract;

(b) must accept auto-assignment;

(c) must not limit or restrict acceptance of Medicaid clients unless that same limit/restriction applies to non-Medicaid clients;

(d) must set a Passport to Health caseload limit of at least 100 per physician or mid-level unless the department grants approval for a lower level; and

(e) can only disenroll clients from his/her caseload per the Passport to Health agreement and subject to approval by the department.

(3) A physician, clinic, or mid-level practitioner is exempt from the requirement to participate in the Passport to Health program if the following is met:

(a) the provider is not practicing primary care; or

(b) the provider has requested removal from the department and the department has granted approval.

(4) A clinic, physician, or mid-level practitioner who does not practice primary care and is a provider based entity is exempt from the requirement to participate in the Passport to Health program but is required to accept new Medicaid clients at the same rate non-Medicaid clients are accepted.

(5) Recipients must be notified that they will be assessed two cost shares for Medicaid and/or two copayment and deductible charges for cross-over claims.

(a) Notices must be clearly posted in all clinics and facilities and the recipient must be provided written notice before the delivery of services as in 42 CFR 413.65(g)(7)(i), (ii), (iii), and (iv).

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

RULE III PROVIDER BASED ENTITY SERVICES, COMPLIANCE, AND PENALTIES (1) In the absence of compliance with any provider based entity requirements of [RULE I, II, or IV];

(a) the department will recover the difference between the amount of payments that were actually made to the provider based entity for both the professional and facility portions and the amount of payments that the department estimates should have been made to the professional only under ARM 37.86.105;

(b) the provider based entity may not bill as nor receive payment as a provider based entity until the department determines that the provider based entity is again in compliance with these rules;

(c) the provider may not continue to bill as a provider based entity after 30 days from the date of notice of determination of noncompliance;

(i) the department may terminate all payment to the provider, facility, or organization as of the date the department issued notice of noncompliance if the provider does not terminate billing as in (1)(c).

(2) A notice of failure of compliance with provider based entity status will be sent in writing to the provider based entity.

(a) If the department does not receive a response within 30 days after notification to the provider based entity, the department will make 100% payment deductions until full recovery is made. Recovery will be undertaken even though the provider disputes in whole or in part the department's determination of the overpayment and requests a fair hearing.

(b) The amount of any overpayment constitutes a debt due the department as of the date of initial request for payment and may be recovered from any person, party, transferee, or fiduciary who has benefited from either the payment or from a transfer of assets.

(3) Providers aggrieved by adverse determinations by the department may request an administrative review and fair hearing as provided in ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337.

AUTH: 53-6-101, 53-6-113, MCA
IMP: 53-6-101, MCA

RULE IV PROVIDER BASED ENTITY SERVICES, REIMBURSEMENT

(1) Reimbursement of the provider based entity facility component will be on a rate-per-service basis using the outpatient prospective payment system (OPPS) schedules or Medicare fee schedules as in ARM 37.86.3007, 37.86.3016, 37.86.3018, 37.86.3020, and 37.86.3025 except as follows:

(a) Provider based entity facility component billed under revenue code 510 will be reimbursed at 80% of the applicable rate.

(b) The facility component of provider based entities provided by exempt hospitals or critical access hospitals as defined in ARM 37.86.2901(4) and (8) will be interim reimbursed a hospital specific outpatient cost to charge ratio.

(2) Reimbursement of the provider based entity professional component will be reimbursed as provided in ARM 37.86.105, 37.86.205, 37.86.506, 37.88.206, and 37.88.606.

(3) Provider based entity facilities must bill using revenue code 510 for CPT codes for Evaluation and Management services (E and M codes) and procedural codes with the exception of laboratory services as in ARM 37.86.3007(3).

(4) Provider based entity professionals must bill using the correct site-of-service so that appropriate payment amounts may be determined as in ARM 37.86.105, 37.86.205, 37.86.506, 37.88.206, and 37.88.606.

(a) Unless otherwise noted, only CPT codes for Evaluation and Management

services and procedural codes may be billed for professional reimbursement in provider based entities.

(i) All other billable supplies, injectibles, drugs, imaging, diagnotics, lab, and any other services must be billed under the appropriate revenue code using the provider based entity facility provider number.

(5) Provider based entities providing obstretric services (which may include antepartum, delivery, and/or postpartum) must bill as a nonprovider based provider.

(6) Vaccines For Children (VFC) services must bill as a nonprovider based provider.

AUTH: 53-6-101, 53-6-113, MCA
IMP: 53-6-101, MCA

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

37.85.406 BILLING, REIMBURSEMENT, CLAIMS PROCESSING, AND PAYMENT (1) through (3) remain the same.

(4) Except as provided in (7) ~~of this rule~~, all Medicaid claims submitted to the department are to be submitted on a state claim form which is:

(a) through (15) remain the same.

(16) A person enrolled as an individual provider may not submit a claim for services that the provider did not personally provide, inclusive of services provided by another person under the provider's supervision, unless authorization to bill for and receive reimbursement for services the provider did not personally provide is stated in administrative rule or a Montana Medicaid program manual and is in compliance with any supervision requirements in state law or rule governing the provider's professional practice and the practice of assistants and aides. Other providers, including but not limited to hospitals, nursing facilities, and home health agencies, may bill for and receive reimbursement for services provided by supervised persons in accordance with the Medicaid rules and manual and any supervision requirements in state law or rule governing professional practice.

(17) through (20) remain the same.

~~(21) There is an emergency reimbursement reduction in effect for the following provider types for services provided January 10, 2003 through June 30, 2003:~~

~~(a) inpatient hospital;~~
~~(b) outpatient hospital;~~
~~(c) early periodic screening;~~
~~(d) diagnostic and treatment;~~
~~(e) nutritional services;~~
~~(f) chiropractic;~~
~~(g) podiatry;~~
~~(h) physical therapy;~~
~~(i) speech-language pathology;~~
~~(j) occupational therapy;~~
~~(k) audiology;~~

~~(l) optometry;~~
~~(m) public health clinic;~~
~~(n) dental;~~
~~(o) prosthetic devices;~~
~~(p) durable medical equipment and supplies;~~
~~(q) non-emergency transportation;~~
~~(r) ambulance;~~
~~(s) physician;~~
~~(t) ambulatory surgical center;~~
~~(u) non-hospital lab and x-ray;~~
~~(v) denturist;~~
~~(w) mid-level practitioner;~~
~~(x) qualified Medicare beneficiary (QMB) services;~~
~~(y) QMB chiropractic; and~~
~~(z) freestanding dialysis clinics.~~

~~(22) The net pay reimbursement for the provider types listed in (21) is 7% less than the amount provided in the following rules: ARM 37.83.811, 37.83.812, 37.83.825, 37.85.212, 37.86.105, 37.86.205, 37.86.506, 37.86.610, 37.86.705, 37.86.1004, 37.86.1005, 37.86.1406, 37.86.1806, 37.86.1807, 37.86.2005, 37.86.2207, 37.86.2209, 37.86.2211, 37.86.2405, 37.86.2505, 37.86.2605, 37.86.2801, 37.86.2904, 37.86.2905, 37.86.2907, 37.86.2912, 37.86.2914, 37.86.2916, 37.86.2918, 37.86.2920, 37.86.2924, 37.86.2925, 37.86.3005, 37.86.3006, 37.86.3007, 37.86.3009, 37.86.3011, 37.86.3014, 37.86.3016, 37.86.3018, 37.86.3020, 37.86.3022, 37.86.3205 and 37.86.4205.~~

~~(a) For purposes of this rule, "net pay reimbursement" means the allowed amount minus third party liability payments, copayments, coinsurance, incurments, and other deductions.~~

(21) The method of determining payment rates for provider based entities will be the same as for other professional and facility providers except as otherwise provided in [RULES I and IV].

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-131, 53-6-141, 53-6-149, MCA

37.86.105 PHYSICIAN SERVICES, REIMBURSEMENT/GENERAL REQUIREMENTS AND MODIFIERS (1) Providers must bill for services using the procedure codes and modifiers set forth, and according to the definitions contained, in the ~~Health Care Financing Administration's~~ Centers for Medicare and Medicaid Services' (CMS) Healthcare Common Procedure Coding System (HCPCS). Information regarding billing codes, modifiers, and HCPCS is available upon request from the ~~Health Policy and Services~~ Health Resources Division at the address stated in ARM 37.86.101(3).

(2) through (2)(b) remain the same.

(3) Reimbursement for services of a psychiatrist, except as otherwise provided in this rule, is the lower of:

(a) remains the same.

(b) to address problems of access to mental health services, subject to funding, up to ~~125%~~ 150% of the reimbursement for physicians provided in accordance with the methodologies described in ARM 37.85.212.

(4) through (4)(b) remain the same.

(5) Reimbursement and claim completion instructions for Medicaid designated provider based entities are found in [RULES I and IV].

AUTH: 53-6-101, 53-6-113, MCA
IMP: 53-6-101, 53-6-113, 53-6-141, MCA

37.86.205 MID-LEVEL PRACTITIONER SERVICES, REQUIREMENTS AND REIMBURSEMENT (1) remains the same.

(2) Medicaid coverage of mid-level practitioner services is available according to the requirements and procedures specified for physicians under ARM 37.86.101, 37.86.104, and 37.86.105.

(3) remains the same.

(4) Coverage of mid-level practitioner services is limited to the provision of services by the following providers:

(a) mid-level practitioners who are considered to have an independent employment status.;

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

(6) Reimbursement for immunizations, family planning services, administration of injectables, radiology, laboratory and pathology, cardiography and echocardiography services and for early and periodic screening, diagnostic and treatment services (EPSDT) is the lower of:

(a) remains the same.

(b) 100% of the reimbursement for physicians provided in accordance with the methodologies described in ARM 37.85.212 and 37.86.105.

(7) through (9)(g) remain the same.

(10) Reimbursement and claim completion instructions for Medicaid designated provider based entities are found in [RULES I and IV].

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

37.86.506 PODIATRY SERVICES, REIMBURSEMENT (1) remains the same.

(2) Reimbursement and claim completion instructions for Medicaid designated provider based entities are found in [RULES I and IV].

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, 53-6-111, 53-6-131, 53-6-141, MCA

37.86.2801 ALL HOSPITAL REIMBURSEMENT, GENERAL

(1) through (2) remain the same.

(3) Medicaid reimbursement shall not be made unless the provider has obtained authorization from the department or its designated review organization

prior to providing any of the following services:

(a) remains the same.

~~(b) inpatient rehabilitation services;~~

~~(c)~~ (b) except as provided in (4) all inpatient ~~and outpatient hospital~~ services provided in preferred hospitals located more than 100 miles outside the borders of the state of Montana;

~~(d)~~ (c) services related to organ transplantations covered under ARM 37.86.4701 and 37.86.4705; or

~~(e)~~ (d) outpatient partial hospitalization, as required by ARM 37.88.101.

(4) Upon the request of a preferred hospital located more than 100 miles outside the borders of the state of Montana, the department may grant retroactive authorization for the provision of the hospital's services under the following circumstances only:

(a) remains the same.

(b) the hospital is retroactively enrolled as a Montana Medicaid provider, and the enrollment includes the dates of service for which authorization is requested; ~~or~~

(c) the hospital can document that at the time of admission it did not know, or have any basis to assume, that the patient was a Montana Medicaid client~~.~~; or

(d) the hospital can document that the admission was an emergency admit for purposes of stabilization or stabilization for transfer. The hospital must call for authorization within two working days (Monday through Friday) of the admission.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA
IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.2803 ALL HOSPITAL REIMBURSEMENT, COST REPORTING

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

(d) For cost report periods ending on or after January 1, 2006, for each hospital which is a critical access or exempt hospital, as defined in ARM 37.86.2901, reimbursement for reasonable costs of ~~outpatient~~ hospital services shall be limited to 101% of allowable costs, as determined in accordance with (1).

(e) For cost report periods ending on or after January 1, 2007, for each hospital which is a preferred out-of-state hospital, as defined in ARM 37.86.2901, reimbursement for reasonable costs of inpatient hospital services shall be limited to 100% of allowable costs, as determined in accordance with (1).

(2) All hospitals reimbursed under ARM 37.86.2904, 37.86.2907, 37.86.2912, 37.86.2914, 37.86.2916, 37.86.2918, 37.86.2920, 37.86.2924, 37.86.2925, 37.86.2947, or 37.86.3005 must submit, as provided in (3), an annual Medicare cost report in which costs have been allocated to the Medicaid program as they relate to charges. The facility shall maintain appropriate accounting records which will enable the facility to fully complete the cost report.

(3) All hospitals reimbursed under ARM 37.86.2904, 37.86.2905, 37.86.2907, 37.86.2912, 37.86.2914, 37.86.2916, 37.86.2918, 37.86.2920, 37.86.2924, 37.86.2925, 37.86.2947, or 37.86.3005 must file the cost report with the Montana Medicare intermediary and the department on or before the last day of the fifth calendar month following the close of the period covered by the report. For fiscal periods ending on a day other than the last day of the month, cost reports are due

150 days after the last day of the cost reporting period.

(a) through (5) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-149, MCA

37.86.2901 INPATIENT HOSPITAL SERVICES, DEFINITIONS

(1) "Administratively necessary days" or "inappropriate level of care services" means those services for which alternative placement of a patient is planned and/or effected and for which there is no medical necessity for acute level inpatient hospital care.

(2) "Bad debt" means inpatient and outpatient hospital services provided in which full payment is not received from the patient or from a third party payor, for which the provider expected payment and the persons are unable or unwilling to pay their bill. Bad debts may be for services provided to patients who have no health insurance or patients who are underinsured and are net of payments made toward these services. For the purpose of uncompensated care, bad debt is measured on the basis of revenue forgone, at full established rates, and bad debt does not include either provider discounts or Medicare bad debt.

~~(2)~~ (3) "Border hospital" means a hospital located outside Montana, but no more than 100 miles from the border.

(4) "Charity care" means inpatient and outpatient hospital services in which hospital policies determine the patient is unable to pay and did not expect to receive full reimbursement. Charity care results from a provider's policy to provide health care services free of charge (or where only partial payment is expected) to individuals who meet certain financial criteria. For the purpose of uncompensated care, charity care is measured on the basis of revenue forgone, at full established rates. Charity care does not include contractual write-offs.

~~(3)~~ (5) "Cost outlier" means an unusually high cost case that exceeds the cost outlier thresholds as set forth in ARM 37.86.2916.

~~(4)~~ (6) "Critical access hospital" means a limited-service rural hospital licensed by the Montana Department of Public Health and Human Services.

~~(5)~~ (7) "Direct nursing care" means the care given directly to the patient which requires the skills and expertise of an RN or LPN.

~~(6)~~ (8) "Discharging hospital" means a hospital, other than a transferring hospital, that formally discharges an inpatient. Release of a patient to another hospital, as described in ~~(21)~~ (24) or a leave of absence from the hospital will not be recognized as a discharge. A patient who dies in the hospital is considered a discharge.

~~(7)~~ (9) "Distinct part rehabilitation unit" means a unit of an acute care general hospital that meets the requirements in 42 CFR 412.25 and 412.29 (1992).

~~(8)~~ (10) "DRG hospital" means a hospital reimbursed pursuant to the diagnosis related group (DRG) system. DRG hospitals are classified as such by the Centers for Medicare and Medicaid Services (CMS) in accordance with 42 CFR 412.

~~(9)~~ (11) "Exempt hospital" means, for purposes of determining whether a hospital is exempt from the prospective payment system under ARM 37.86.2905, an acute care hospital that is located in a Montana county designated on or before July

1, 1991 as continuum code 8 or continuum code 9 by the United States Department of Agriculture under its rural-urban continuum codes for metro and nonmetro counties.

~~(10)~~ (12) "Hospital reimbursement adjustor~~"~~ (HRA)" means a payment to a Montana hospital as specified in ARM 37.86.2928 and 37.86.2940.

~~(11)~~ (13) "Hospital resident" means a recipient who is unable to be cared for in a setting other than the acute care hospital as provided in ARM 37.86.2921.

~~(12)~~ (14) "Inpatient" means a person who has been admitted to a hospital for bed occupancy for purposes of receiving inpatient hospital services. A person generally is considered an inpatient if formally admitted as an inpatient with an expectation that the patient will remain more than 24 hours. The physician or other practitioner is responsible for deciding whether the patient should be admitted as an inpatient. Inpatient hospital admissions are subject to retrospective review by the Medicaid Peer Review Organization (PRO) to determine whether the inpatient admission was medically necessary for Medicaid payment purposes.

~~(13)~~ (15) "Inpatient hospital services" means services that are ordinarily furnished in a hospital for the care and treatment of an inpatient under the direction of a physician, dentist, or other practitioner as permitted by federal law, and that are furnished in an institution that:

(a) is maintained primarily for the care and treatment of patients with disorders other than:

(i) tuberculosis; or

(ii) mental diseases, except as provided in ~~(12)(d)~~ (15)(d);

(b) is licensed or formally approved as a hospital by the officially designated authority in the state where the institution is located;

(c) except as otherwise permitted by federal law, meets the requirements for participation in Medicare as a hospital and has in effect a utilization review plan that meets the requirements of 42 CFR 482.30; or

(d) provides inpatient psychiatric hospital services for individuals under age 21 pursuant to ARM Title 37, chapter 88, subchapter 11.

~~(14)~~ (16) "Low income utilization rate" means a hospital's percentage rate as specified in ARM 37.86.2935.

~~(15)~~ (17) "Medicaid inpatient utilization rate" means a hospital's percentage rate as specified in ARM 37.86.2932.

(18) "Preferred out-of-state hospital" means a hospital located more than 100 miles outside the borders of Montana that has signed a contract with the department to provide specialized services prior approved by the department.

~~(16)~~ (19) "Qualified rate adjustment payment" (QRA) means an additional payment as provided in ARM 37.86.2910 to a county owned, county operated, or partially county funded rural hospital in Montana where the hospital's most recently reported costs are greater than the reimbursement received from Montana Medicaid for inpatient care.

~~(17)~~ (20) "Routine disproportionate share hospital" means a hospital in Montana which meets the criteria of ARM 37.86.2931.

~~(18)~~ (21) "Rural hospital" means for purposes of determining disproportionate share hospital payments, an acute care hospital that is located within a "rural area" as defined in 42 CFR 412.62(f)(iii).

~~(19)~~ (22) "Sole community hospital" means a DRG reimbursed hospital classified as such by the Centers for Medicare and Medicaid Services (CMS) in accordance with 42 CFR 412.92(a) through (d) and/or hospitals with less than 51 beds.

~~(20)~~ (23) "Supplemental disproportionate share hospital" means a hospital in Montana which meets the criteria in ARM 37.86.2925.

~~(21)~~ (24) "Transferring hospital" means a hospital that formally releases an inpatient to another inpatient hospital or inpatient unit of a hospital.

(25) "Uncompensated care" means hospital services provided in which no payment is received from the patient or from a third party payor. Uncompensated care includes charity care and bad debts.

~~(22)~~ (26) "Urban hospital" means an acute care hospital that is located within a metropolitan statistical area, as defined in 42 CFR 412.62(f)(2).

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, 53-6-149, MCA

37.86.2905 INPATIENT HOSPITAL SERVICES, GENERAL REIMBURSEMENT (1) Except as provided in (2), which is applicable to exempt hospitals, preferred out-of-state hospitals, ~~and~~ critical access hospitals (CAH), ~~in-state~~ and inpatient hospital service providers, including inpatient rehabilitation services and services in a setting that is identified by the department as a distinct rehabilitation unit, will be reimbursed under the DRG prospective payment system described in ARM 37.86.2907, 37.86.2912, 37.86.2914, 37.86.2916, 37.86.2918, 37.86.2920, and 37.86.2924.

(2) Exempt hospital, preferred out-of-state hospitals, and CAH interim reimbursement is based on a hospital specific Medicaid inpatient cost to charge ratio, not to exceed 100%. Exempt hospitals, preferred out-of-state hospitals, and CAHs will be reimbursed their ~~actual~~ allowable costs as determined according to ARM 37.86.2803.

(3) Preferred out-of-state hospitals must sign individual agreements with the department agreeing to reimbursement requirements under ARM 37.86.2947 and prior authorization requirements under ARM 37.86.2801.

(a) Preferred out-of-state hospitals must agree to all department rules applicable to inpatient hospital providers.

~~(3)~~ (4) Except as otherwise specified in these rules, facilities reimbursed under the DRG prospective payment system may be reimbursed, in addition to the prospective DRG rate, for the following:

(3)(a) through (3)(i) remain the same but are renumbered (4)(a) through (4)(i).

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.2912 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, CAPITAL-RELATED COSTS (1) remains the same.

(2) Prior to settlement based on audited costs, the department will make interim payments for each facility's capital-related costs as follows:

(a) remains the same.

(b) All border and out-of-state hospitals that are reimbursed under the DRG prospective payment system will be paid the statewide average capital cost per ~~case~~ claim as a~~n interim~~ final capital-related cost payment. The statewide average capital cost per ~~case~~ claim is ~~$229~~ $336. ~~This rate shall be the final capital-related cost with respect to which the department waives retrospective cost settlement in accordance with these rules.~~

(c) The department will make interim capital add-on payments with each in-state DRG inpatient hospital claim paid.

(d) The interim payment made to CAH and exempt facilities is based on the hospital specific cost to charge ratio and includes capital costs.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA
IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2918 INPATIENT HOSPITAL, READMISSIONS AND TRANSFERS

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

(4) Outpatient hospital services, including provider based entity hospital outpatient services, other than diagnostic services that are provided within the 24 hours preceding the inpatient hospital admission must be bundled into the inpatient claim.

(5) Diagnostic services (including clinical diagnostic laboratory tests) provided in any outpatient hospital setting including provider based entities within 72 hours prior to the date of admission are deemed to be inpatient services and must be bundled into the inpatient claim.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA
IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2943 BORDER INPATIENT HOSPITAL REIMBURSEMENT

(1) Inpatient hospital services provided in border hospitals will be reimbursed under the DRG prospective payment system described in ARM 37.86.2907, 37.86.2912, 37.86.2914, 37.86.2916, 37.86.2918, 37.86.2920, and 37.86.2924.

(2) In addition to the prospective rate, border hospitals will be reimbursed for cost outliers as set forth in ARM 37.86.2916, and for capital costs as set forth in ARM 37.86.2912, but shall not be reimbursed in addition to the DRG payment ~~for medical education costs, neonatal intensive care stop-loss reimbursement or certified registered nurse anesthetist costs~~ under ARM 37.86.2810, 37.86.2914, 37.86.2924, 37.86.2925, 37.86.2928, 37.86.2931, 37.86.2932, 37.86.2935, and 37.86.2940.

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

37.86.2947 OUT-OF-STATE INPATIENT HOSPITAL REIMBURSEMENT

(1) Inpatient hospital services provided in hospitals located more than 100 miles outside the borders of the state of Montana ~~will be reimbursed 50% of usual~~

~~and customary billed charges for medically necessary services~~ shall receive reimbursement as follows:

(a) Preferred out-of-state hospitals will be reimbursed hospital specific inpatient cost to charge ratio on interim.

(b) Preferred out-of-state hospitals will be reimbursed 100% of their allowable costs determined according to ARM 37.86.2803.

(c) All other out-of-state hospitals shall receive DRG reimbursement as in ARM 37.86.2907.

(i) In addition to the prospective rate, out-of-state DRG hospitals will be reimbursed for cost outliers as set forth in ARM 37.86.2916, and for capital costs as set forth in ARM 37.86.2912, but shall not be reimbursed in addition to the DRG payment under ARM 37.86.2810, 37.86.2914, 37.86.2924, 37.86.2925, 37.86.2928, 37.86.2931, 37.86.2932, 37.86.2935, and 37.86.2940.

(ii) All out-of-state hospitals that are reimbursed under the DRG prospective payment system will be paid the statewide average capital cost per claim as a final capital-related cost payment. The statewide average capital cost per claim is $336.

(2) Preferred out-of-state and DRG out-of-state hospitals shall not be reimbursed under ARM 37.86.2810, 37.86.2914, 37.86.2924, 37.86.2925, 37.86.2928, 37.86.2931, 37.86.2932, 37.86.2935, and 37.86.2940.

~~(2)~~ (3) Medicaid reimbursement for inpatient services for preferred out-of-state hospitals shall not be made to hospitals located more than 100 miles outside the borders of Montana unless the provider has obtained authorization from the department or its designated review organization prior to providing services. All inpatient services provided in an emergent situation must be authorized within ~~48 hours~~ two working days (Monday through Friday).

(a) Hospitals who have not obtained prior authorization under ARM 37.86.2801(4) may receive DRG reimbursement which is not eligible for cost settlement under ARM 37.86.2803.

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

37.86.3001 OUTPATIENT HOSPITAL AND BIRTHING CENTER SERVICES, DEFINITIONS (1) "Ambulatory payment classification (APC)" means Medicare's ambulatory payment classification assignment groups of CPT or HCPCS codes.

(2) "Bad debt" means inpatient and outpatient hospital services provided in which full payment is not received from the patient or from a third party payor, for which the provider expected payment and the persons are unable or unwilling to pay their bill. Bad debts may be for services provided to patients who have no health insurance or patients who are underinsured and are net of payments made toward these services. For the purpose of uncompensated care, bad debt is measured on the basis of revenue forgone, at full established rates, and bad debt does not include either provider discounts or Medicare bad debt.

(3) "Birthing center" means a licensed outpatient center for primary care with medical resources as defined at 50-5-101, MCA, that is used as an alternative to a homebirth or a hospital birth.

(4) "Charity care" means inpatient and outpatient hospital services in which hospital policies determine the patient is unable to pay and did not expect to receive full reimbursement. Charity care results from a provider's policy to provide health care services free of charge (or where only partial payment is expected) to individuals who meet certain financial criteria. For the purpose of uncompensated care, charity care is measured on the basis of revenue forgone, at full established rates. Charity care does not include contractual write-offs.

~~(2)~~ (5) "Conversion factor" means an adjustment equal to Medicare's highest urban rate for Montana as published at 67 Federal Register (FR) 43616 (June 28, 2002).

~~(3)~~ (6) "Diagnostic service" means an examination or procedure performed on an outpatient or on materials derived from an outpatient to obtain information to aid in the assessment or identification of a medical condition.

~~(4)~~ (7) "Full-day partial hospitalization program" means a partial hospitalization program providing services at least six hours per day, five days per week.

~~(5)~~ (8) "Half-day partial hospitalization program" means a partial hospitalization program providing services for at least four but less than six hours per day, at least four days per week.

~~(6)~~ (9) "Healthcare common procedures coding system (HCPCS)" means the national uniform coding method maintained by the Centers for Medicare and Medicaid Services (CMS) that incorporates the American Medical Association (AMA) Physicians Current Procedural Terminology (CPT) and the three HCPCS unique coding levels, I, II, and III.

~~(7)~~ (10) "ICD-9-CM" means the International Classification of Diseases, Ninth Revision based on the official version of the United Nations World Health Organization's Ninth Revision.

~~(8)~~ (11) "Imaging service" means diagnostic and therapeutic radiology, nuclear medicine, CT scan procedures, magnetic resonance imaging services, ultra-sound, and other imaging procedures.

~~(9)~~ (12) "Outpatient" means a person who:

(a) has not been admitted by a hospital or birthing center as an inpatient;

(b) is expected by the hospital or birthing center to receive services in the hospital for less than 24 hours;

(c) is registered on the hospital or birthing center records as an outpatient; and

(d) receives outpatient ~~hospital~~ services from the hospital or birthing center, other than supplies or drugs alone, for nonemergency medical conditions.

~~(10)~~ (13) "Outpatient hospital services" means preventive, diagnostic, therapeutic, rehabilitative, or palliative services provided to an outpatient by or under the direction of a physician, dentist, or other practitioner as permitted by federal law, by an institution that:

(a) is licensed or formally approved as a hospital by the officially designated authority in the state where the institution is located; and

(b) except as otherwise permitted by federal law, meets the requirements for participation in Medicare as a hospital.

~~(11)~~ (14) "Outpatient prospective payment system~~"~~ (OPPS)" means

Medicare's outpatient prospective payment system mandated by the Balanced Budget Refinement Act of 1999 (BBRA) and the Medicare, Medicaid, SCHIP Benefits Improvement and Protection Act (BIPA) of 2000.

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

(16) "Provider-based entity" means a provider that is either created by, or acquired by, a main provider for purposes of furnishing health care services under the name, ownership, and administrative and financial control of the main provider as in 42 CFR 413.65. Both professional and facility (hospital outpatient department) providers are included together under this definition.

~~(13)~~ (17) "Qualified rate adjustment~~"~~ (QRA)" payment means an additional payment to a county owned, operated, or partially county funded rural hospital in Montana as provided in ARM 37.86.3005, when the hospital's most recently reported costs are greater than the reimbursement received from Montana Medicaid for outpatient care.

(18) "Uncompensated care" means hospital services provided in which no payment is received from the patient or from a third party payer. Uncompensated care includes charity care and bad debts.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.3005 OUTPATIENT HOSPITAL SERVICES, REIMBURSEMENT AND QUALIFIED RATE ADJUSTMENT PAYMENT (1) The department will reimburse for outpatient hospital services and birthing center services compensable under the Montana Medicaid program as provided in this rule.

(2) Outpatient hospital services that are not provided by exempt hospitals or critical access hospitals as defined in ARM 37.86.2901 will be reimbursed under ARM 37.86.3007, 37.86.3009, 37.86.3016, 37.86.3018, 37.86.3020, ~~and~~ 37.86.3025, 37.86.3109, and [RULE IV] for medically necessary services.

(3) Birthing center services as defined in ARM 37.86.3001 will be reimbursed under ARM 37.86.3007, 37.86.3016, 37.86.3018, and 37.86.3020, for medically necessary services.

~~(3)~~ (4) For critical access hospitals and exempt hospitals, interim reimbursement for outpatient hospital services is based on hospital specific Medicaid outpatient cost to charge ratio, not to exceed 100%. Critical access hospitals and exempt hospitals will be reimbursed their actual allowable costs determined according to ARM 37.86.2803. ~~If a provider fails or refuses to submit the financial information, including the Medicare cost report, necessary to determine the cost to charge ratio, the provider's interim rate will be 50% of its usual and customary charges (billed charges).~~

~~(4)~~ (5) Subject to the availability of sufficient county and federal funding, the department will pay in addition to the established Medicaid rates provided in this rule a qualified rate adjustment payment to an eligible rural hospital in Montana as provided in ARM 37.86.2810.

AUTH: 53-2-201, 53-6-113, MCA

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

37.86.3007 OUTPATIENT HOSPITAL AND BIRTHING CENTER SERVICES, PROSPECTIVE PAYMENT METHODOLOGY, CLINICAL DIAGNOSTIC LABORATORY SERVICES (1) Clinical diagnostic laboratory services, including automated multichannel test panels (commonly referred to as "ATPs") and lab panels, will be reimbursed on a fee basis as follows with the exception of hospitals reimbursed under ARM 37.86.3005 and specific lab codes which are paid under ARM 37.86.3020:

(a) The fee for a clinical diagnostic laboratory service is the ~~lesser of the provider's usual and customary charge (billed charges) or the~~ applicable percentage of the Medicare fee schedule as follows:

(i) 60% of the prevailing Medicare fee schedule for a birthing center or where a hospital laboratory acts as an independent laboratory, i.e., performs tests for persons who are nonhospital patients;

(ii) and (iii) remain the same.

(b) For clinical diagnostic laboratory services~~:~~

~~(i)~~ where no Medicare fee has been assigned, ~~the fee is 62% of usual and customary charges (billed charges) for a hospital designated as a sole community hospital as defined in ARM 37.86.2901 or 60% of usual and customary charges (billed charges) for a hospital that is not designated as a sole community hospital as defined in ARM 37.86.2901~~ but a Medicaid fee has been assigned, the fee is the amount set in ARM 37.85.212; or

~~(ii)~~ (c) ~~if a Medicaid fee has been assigned, the fee is the amount set in ARM 37.85.212(9)~~ if there is no Medicare or Medicaid fee, the service will be reimbursed at hospital specific outpatient cost to charge ratio as in ARM 37.86.2803. Birthing centers will be reimbursed the statewide outpatient cost to charge ratio.

~~(c)~~ (2) For purposes of this rule, clinical diagnostic laboratory services include the laboratory tests listed in codes defined in the HCPCS and listed in the Clinical Diagnostic Fee Schedule (CLAB) published December 14, 2005.

~~(d)~~ (3) Specimen collection will be reimbursed separately for drawing a blood sample through venipuncture or for collecting a urine sample by catheterization. Specimen collection will be reimbursed as specified in the department's outpatient fee schedule as adopted in ARM 37.86.3025, whether or not the specimens are referred to physicians or other laboratories for testing. No more than one collection fee may be allowed for each patient visit, regardless of the number of specimens drawn.

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

37.86.3009 OUTPATIENT HOSPITAL SERVICES, PAYMENT METHODOLOGY, EMERGENCY VISIT SERVICES ~~(1) Emergency visits are emergency room services for which the ICD-9-CM presenting diagnosis code (admitting diagnosis code) or the diagnosis code (primary or secondary diagnosis code) chiefly responsible for the services provided is a diagnosis designated by the department as an emergency diagnosis in the Medicaid emergency diagnosis list or~~

~~the claim includes a CPT code designated by the department as an emergency procedure code. Passport provider authorization is not required for these visits. For purposes of this rule, the department adopts and incorporates by reference the Emergency Diagnosis and Procedure Code List effective January 1, 2005. The Emergency Diagnosis and Procedure Code List is available upon request from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

~~(2)~~ (1) For emergency visits that are not provided by exempt hospitals or critical access hospitals as defined in ARM 37.86.2901 ~~and meet (1)~~, reimbursement will be based on the ambulatory payment classifications APC methodology in ARM 37.86.3020, (except) ~~for~~ emergency room visits ~~on evenings and weekends for Medicaid clients from birth to 24 months of age~~ with CPT codes 99281 and 99282 will be reimbursed based on clinical fees for APC 00600.

(a) Passport to Health provider authorization is not required for emergency room visits. ~~Evenings are defined as from 6 p.m. on Monday, Tuesday, Wednesday, and Thursday until 8 a.m. of the following day.~~

~~(b) Weekends are defined as from 6 p.m. Friday until 8 a.m. on Monday.~~

~~(3) For emergency visits not meeting (1), reimbursement will be a prospective fee for evaluation and stabilization as specified in the department's outpatient fee schedule plus ancillary reimbursement for laboratory, imaging and other diagnostic services not included in the APR reimbursement. The evaluation and stabilization fee is considered payment in full.~~

~~(4) An evaluation and stabilization fee is an all inclusive bundled payment per visit which covers all outpatient services provided to the patient, including but not limited to nursing, pharmacy, supplies, equipment, and other outpatient hospital services.~~

~~(5)~~ (2) Physician services are separately billable according to the applicable rules governing billing for physician services.

~~(6) For emergency visits which the medical professional rendering the screening and evaluation determine are emergent but not on the department's emergency list, a hospital may send the claim and emergency room documentation for review to the department for payment of a fee other than the evaluation and stabilization fee.~~

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

37.86.3016 OUTPATIENT HOSPITAL AND BIRTHING CENTER SERVICES, PROSPECTIVE PAYMENT METHODOLOGY, IMAGING SERVICES

(1) Imaging services will be reimbursed ~~as in ARM 37.86.3020~~ with the exception of hospitals reimbursed under ARM 37.86.3005(3) ~~and except~~ as follows:

(a) For each imaging service or procedure, the fee will be the ~~lesser of the provider's usual and customary charges (billed charges) or 100% of the Medicare~~ APC rate as in ARM 37.86.3020 or Medicare fee if no APC rate exists. The imaging services reimbursed under this subsection are the individual imaging service codes defined in the CPT/HCPCS.

(b) For imaging services where no APC rate or Medicare fee has been

assigned, ~~the fee is 62% of usual and customary charges (billed charges) for a hospital designated as a sole community hospital as defined in ARM 37.86.2901 or 60% of usual and customary charges (billed charges) for a hospital that is not designated as a sole community hospital as defined in ARM 37.86.2901~~ a Medicaid fee will be set in accordance with the resource based relative value scale (RBRVS) methodology found at ARM 37.86.212.

(c) For imaging services where no APC rate, Medicare fee, or Medicaid fee has been assigned, outpatient hospital-specific percent of charges will be paid. Birthing centers will be reimbursed the statewide outpatient cost to charge ratio.

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

37.86.3018 OUTPATIENT HOSPITAL AND BIRTHING CENTERS SERVICES, PROSPECTIVE PAYMENT METHODOLOGY, OTHER DIAGNOSTIC SERVICES (1) Other diagnostic services will be reimbursed as follows with the exception of hospitals reimbursed under ARM 37.86.3005(3):

(a) ~~the lesser of the provider's usual and customary charges (billed charges) or 100% of~~ the fee will be the ~~Medicare~~ APC rate as in ARM 37.86.3020 or the Medicare fee for the same service if no APC rate exists. The individual diagnostic services reimbursed under this subsection are those defined in the CPT/HCPCS;

~~(b) other diagnostic services without a Medicare APC rate and for which no Medicare APC rate has been assigned will be reimbursed under the retrospective cost basis as specified in ARM 37.86.3005(3); or~~

~~(c)~~ (b) for other diagnostic services without an APC rate or Medicare fee, ~~but for which~~ a Medicaid fee ~~has been~~ will be assigned~~, the fee will be set~~ in accordance with the RBRVS methodology in ARM 37.85.212~~.~~; or

(c) for other diagnostic services where no APC rate, Medicare fee, or Medicaid fee has been assigned, outpatient hospital specific percent of charges will be paid. Birthing centers will be reimbursed the statewide outpatient cost to charge ratio.

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

37.86.3020 OUTPATIENT HOSPITAL AND BIRTHING CENTER SERVICES, OUTPATIENT PROSPECTIVE PAYMENT SYSTEM (OPPS) METHODOLOGY, AMBULATORY PAYMENT CLASSIFICATION (1) Outpatient hospital or birthing center services that are not provided by exempt hospitals or critical access hospitals as defined in ARM 37.86.2901(4) and (8) will be reimbursed on a rate-per-service basis using the Outpatient Prospective Payment System (OPPS) schedules. Under this system, Medicaid payment for ~~hospital~~ outpatient services included in the OPPS is made at a predetermined, specific rate. These outpatient services are classified according to a list of APCs published annually in the Code of Federal Regulations (CFR). The rates for OPPS are determined as follows:

(a) The department uses a conversion factor for each APC group as defined

at ARM 37.86.3001(2). The APC based fee equals the Medicare specific relative weight for the APC times the conversion factor that is the same for all APCs with the exceptions of services in ARM 37.86.3025. APCs are based on classification assignment of CPT/HCPCS codes.

(b) remains the same.

(c) APCs are an all inclusive bundled payment per visit which covers all outpatient services provided to the patient, including but not limited to nursing, pharmacy, laboratory, imaging services, other diagnostic services, supplies and equipment, and other outpatient services. For purposes of OPPS, a visit includes all outpatient hospital or birthing center services related or incident to the outpatient visit that are provided the day before or the day of the outpatient visit.

(d) remains the same.

(e) If the OPPS does not assign a Medicare fee or APC for a particular procedure code, ~~but for which~~ a Medicaid fee ~~has been~~ will be assigned~~, the fee will be set~~ in accordance with the resource based relative value scale (RBRVS) methodology found at ARM 37.85.212. If there is not a Medicaid fee, the service will be reimbursed at hospital specific outpatient cost to charge ratio as in ARM 37.86.2803. Birthing centers will be reimbursed the statewide outpatient cost to charge ratio.

~~(i) If a provider fails or refuses to submit the financial information, including the Medicare cost report, necessary to determine the cost to charge ratio, the provider's reimbursement will be 50% of its usual and customary charges (billed charges).~~

(f) and (f)(i) remain the same.

(g) The department follows Medicare guidelines for procedures defined as "inpatient only". When these procedures are performed in the outpatient hospital or birthing center setting, the claim will be denied.

(h) remains the same.

(2) The department adopts and incorporates by reference the OPPS Schedules published by the Centers for Medicare and Medicaid Services (CMS) in ~~70 Federal Register 217 , November 10, 2005,~~ 71 Federal Register 163, August 23, 2006, proposed effective date January 1, ~~2006~~ 2007. A copy may be obtained through the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

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

37.86.3025 OUTPATIENT HOSPITAL SERVICES, REIMBURSEMENT FOR SERVICES NOT PAID UNDER THE AMBULATORY PAYMENT CLASSIFICATION SYSTEM (1) Therapy services will be paid 90% of the reimbursement provided in accordance with the RBRVS methodologies in ARM 37.85.212. Therapy services include physical therapy, occupational therapy, and speech-language pathology and are subject to requirements and restrictions as in ARM 37.86.606.

(2) through (4)(b) remain the same.

(5) Professional services, except as in ~~(6) and (7)~~ [RULE I and IV], must bill separately on a professional billing form according to applicable rules governing

billing for professional services.

~~(6) For services provided on or after August 1, 2003, hospitals receiving a provider based status from CMS must send a copy of the CMS letter granting provider based status to the department's hospital program officer at Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951 and must receive department approval prior to billing as a provider based clinic.~~

~~(a) Physicians, mid-levels, and other professionals billing for services on a professional billing form for services provided in a provider based clinic must show hospital outpatient as the place of service on the claim and will receive payment as in ARM 37.86.105(2).~~

~~(b) Physicians, mid-levels, and other professionals providing services that have both a professional and technical component in a provider based clinic may bill only for the professional component of the service. The technical component shall be billed under the hospital's provider number using the appropriate coding and modifiers.~~

~~(c) Hospitals granted a provider based status by the department may not restrict access to Medicaid clients.~~

~~(7)~~ (6) Interim payment for certified registered nurse anesthetists (CRNAs) will be reimbursed at hospital specific outpatient cost to charge ratio and settled as a pass through in the cost settlement, as provided in ARM 37.86.2924.

~~(8)~~ (7) The department adopts and incorporates by reference the Outpatient Hospital Fee Schedule dated January 1, ~~2005~~ 2007. A copy may be obtained through the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

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

37.88.206 LICENSED CLINICAL SOCIAL WORK SERVICES, REIMBURSEMENT (1) Providers must bill for covered services using the procedure codes and modifiers set forth and according to the definitions contained in the ~~health care financing administration's~~ CMS's Healthcare Common Procedure Coding System (HCPCS). Information regarding billing codes, modifiers, and HCPCS is available upon request from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(2) through (2)(a)(ii) remain the same.

(3) Reimbursement and claim completion instructions for Medicaid designated provider based entities are found in [RULE I and IV].

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

37.88.306 LICENSED PROFESSIONAL COUNSELOR SERVICES, REIMBURSEMENT (1) Providers must bill for covered services using the procedure codes and modifiers set forth, and according to the definitions contained,

in the ~~health care financing administration's~~ CMS's Healthcare Common Procedure Coding System (HCPCS). Information regarding billing codes, modifiers, and HCPCS is available upon request from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(2) through (2)(a)(ii) remain the same.

(3) Reimbursement and claim completion instructions for Medicaid designated provider based entities are found in [RULES I and IV].

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

37.88.606 LICENSED PSYCHOLOGIST SERVICES, REIMBURSEMENT

(1) Providers must bill for covered services using the procedure codes and modifiers set forth and according to the definitions contained in the ~~health care financing administration's~~ CMS's Healthcare Common Procedure Coding System (HCPCS). Information regarding billing codes, modifiers, and HCPCS is available upon request from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(2) through (2)(a)(ii) remain the same.

(3) Reimbursement and claim completion instructions for Medicaid designated provider based entities are found in [RULE I and IV].

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

37.88.1106 INPATIENT PSYCHIATRIC SERVICES, REIMBURSEMENT

(1) through (3)(b) remain the same.

(4) Reimbursement for inpatient psychiatric services provided to Montana Medicaid recipients in facilities located outside the state of Montana will be ~~as provided in ARM 37.86.2905~~ reimbursed 50% of usual and customary billed charges for medically necessary services.

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

4. The Department of Public Health and Human Services (the department) is proposing New Rules I through IV and the amendment of ARM 37.85.406, 37.86.105, 37.86.205, 37.86.506, 37.86.2801, 37.86.2803, 37.86.2901, 37.86.2905, 37.86.2912, 37.86.2918, 37.86.2947, 37.86.2943, 37.86.3001, 37.86.3005, 37.86.3007, 37.86.3009, 37.86.3016, 37.86.3018, 37.86.3020, 37.86.3025, 37.88.206, 37.88.606, and 37.88.1106 pertaining to Medicaid reimbursement of hospitals, provider based entities and birthing centers. The department has several goals it wishes to accomplish with this rule change:

The department proposes to add federal definitions of uncompensated and charity care and bad debt to Montana rules for cost reporting purposes. Montana has always used the federal definitions. There is no monetary effect to this change.

Statewide average capital cost per case is used as a reimbursement for border facilities. We are adding this as a reimbursement to our new out-of-state facilities. This add-on payment has increased to $336. This change is estimated to cost $11,800 per year.

The department is changing its inpatient reimbursement methodology for out-of-state hospitals. Out-of-state facilities are being divided into two types of facilities, Prospective Payment System (PPS) and those paid by cost. This change will save the department $1,300,000 per year.

The department is changing its criteria for determining how services are reimbursed for emergency room services. This change will increase reimbursement to providers by about $896,000 per year.

Coverage of provider based entity services were added in August 2003. The department is taking this opportunity to clearly define what a provider based entity is, what rules apply to these entities, and to change reimbursement. This change will save the department $355,000 per year.

The department is defining birthing centers and their coverage, and adding reimbursement of a facility fee to these centers. It is difficult to measure this impact. The difference between the professional and facility inpatient reimbursement for uncomplicated deliveries, $4,508, and professional and facility reimbursement, $3,242, is $1,266 per delivery.

The department is rewriting the rules for lab, imaging, and diagnostic services while it adds these services for birthing centers. The language in the previous rules made it difficult for providers to understand the payment methodologies for these services.

The Children's Mental Health Bureau does not want to change the reimbursement structure of out-of-state Residential Treatment Facilities; therefore, to maintain clarity we are changing the rule to reflect our current reimbursement structure.

The department is also taking this opportunity to update terms and to conform the rules to current format. No substantive effect is intended by such amendments.

ARM 37.86.2803 and 37.86.3001

The department is adding the United States Department of Health and Human Services Centers for Medicare and Medicaid Services (CMS) definitions of uncompensated care, charity care, and bad debt to both the inpatient and outpatient hospital definition rules. These definitions are used for cost reporting and upper payment limits for the hospital provider assessment. The department has used

these definitions for many years in its calculations. Adding the definitions to rule was a request by CMS. This has no financial impact on facilities.

ARM 37.86.2912, 37.86.2943, and 37.86.2947

The department is raising the statewide average capital cost per claim to $336. This is an increase of $107 per claim. The department will also make this payment to the newly designated out-of-state PPS facilities. This is a final payment. Capital for border and out-of-state PPS facilities will not be cost settled. The department is also stating in rule a long held practice of reimbursing Critical Access Hospital (CAH) and Exempt facilities, capital costs as part of their interim cost to charge ratio, and including capital in their final cost settlements. This change will have a financial impact on approximately 110 claims per year at a cost to the department of $11,800.

ARM 37.86.2801, 37.86.2803, 37.86.2901, 37.86.2905, and 37.86.2947

The department deals with approximately 125 out-of-state facilities per year for both outpatient and inpatient services. The majority of these are one time only visits for outpatient emergency services or inpatient births. Generally only 45 of these facilities provide inpatient services with ten providing the vast majority of the services on a regular basis. The services provided by these facilities are usually cancer, burn, trauma, transplant, or surgical services (primarily neonatal and pediatric) that cannot be provided at a Montana facility. Since March 2002, the department has required prior authorization and reimbursed all out-of-state inpatient services at 50% of charges with no cost settlement. At that time 50% was an aggregate cost to charge ratio for the majority of the out-of-state facilities that the department dealt with on a regular basis.

In some cases, out-of-state facilities have refused to accept Montana Medicaid payment unless the department signs an exclusive contract with them for the service. Some Montana facilities have made reciprocal agreements with specialty hospitals in other states in order to provide coverage for those subspecialties that are not available in Montana at this time. Under current rule we are not able to negotiate any cost based payment to these facilities.

The department recently requested cost reports from the largest out-of-state facilities and discovered the aggregate cost to charge ratio has changed. In addition, the prior authorization requirement has caused some facilities who do not have experience with Montana's rules to not receive reimbursement for medically necessary services that could not have been provided in Montana.

After analysis, the department has decided to break out-of-state facilities into two groups for inpatient reimbursement and prior authorization purposes. The majority of the 45 inpatient facilities, which provide one time services that could have been provided in Montana will be treated as PPS facilities and reimbursed instate Diagnostic Related Groups (DRGs). The other facilities will be deemed "preferred hospitals" and will be reimbursed hospital specific cost to charge ratios on the

interim and cost settled. Preferred facilities will have to request prior authorization of services so the department may determine that the services are not available in Montana. Preferred facilities will be required to sign contracts with the department agreeing to abide by all other medical provider rules and regulations. The department will then coordinate approval of hospital, transportation, Passport to Health, and any other authorizations necessary for these services. Should the facility for some reason not obtain prior authorization under these rules the department will still offer them the opportunity to request reimbursement. Reimbursement without prior authorization will be the instate DRG payment and will not be subject to cost settlement.

The department examined and rejected several other reimbursement options. This option will enable the department to not only save money but to insure the delivery of medically necessary services that are not available under other circumstances to Montana Medicaid recipients. This rule change is estimated to save the department $1,300,000 per year.

ARM 37.86.3009

Currently the department reimburses emergency room visits that do not meet the definition of "emergency medical conditions" a screening and evaluation fee and for any diagnostics necessary to determine an emergency medical condition. All other services on the claim are paid at "$0.00". After analysis, the department has concluded that, in fact, the majority of emergency department visits do not meet the definition of an "emergency medical condition". These visits are generally coded with CPT codes 99281 or 99282. These visits amount to the same thing as a clinic visit. Because the current procedure for determining if a visit is an "emergency medical condition" is cumbersome on both the department and the provider, the department has decided to change the rules to reimburse all services provided in an emergency department (except for those in a CAH or Exempt facility) under the regular OPPS reimbursement policy, except those claims with codes 99281 and 99282. Instead of paying the higher emergency room fee for these codes, a clinic fee will be paid regardless of "emergency medical condition". The department will do regular retro reviews to make sure that facilities are not up-coding to receive higher reimbursement. The impact to hospital and department staff in the easing of the current review process has not been measured, however, it is acknowledged by all that it is substantial. The department worked with the hospitals and Emergency Department (ED) physicians to develop other methods of keeping ED costs down while at the same time eliminating the administrative burden of the current process. This choice was deemed to be the best of the various options. The monetary impact of this change is an increase in department reimbursement of $896,000 per year.

ARM 37.85.406, 37.86.105, 37.86.205, 37.86.506, 37.86.2918, 37.86.3025, 37.88.206, 37.88.606, and New Rules I through IV

Coverage of provider based entity services were added August 2003. The department is taking this opportunity to clearly define what a provider based entity is,

what rules apply to these entities, and to change reimbursement.

These changes are to ARM 37.85.406, 37.86.105, 37.86.205, 37.86.506, 37.86.2918, 37.86.3025, 37.88.206, 37.88.606, and New Rules I through IV. In August 2003, Healthcare Financial Managers Association (HFMA) and Montana Hospital Association (MHA) asked the department to follow Medicare and allow for provider-based billing in order to insure access. They made the argument that hospital owned physician groups could decide to severely limit or not accept Medicaid patients and thus limit access in some parts of the state if we did not change our reimbursement methodology for these entities and follow Medicare.

Basically, this rule allows these facilities to bill an office visit as both a "technical" component on a UB, receiving an Ambulatory Payment Classification (APC) payment, and bill for the "professional" component on a 1500, receiving a Resource Based Relative Value System (RBRVS) payment for site differential "facility" instead of receiving a RBRVS payment for office place of service. By nature the facility site of service payment is the lower.

One of the new provider-based facilities recently explained to the department how their status as a provider-based facility has allowed for more access to Medicaid recipients. There are two large family practice clinics in the community. Over the past year one of the clinics has refused to accept any new Medicaid recipients over the age of five. In addition, current adult Medicaid recipients of this clinic are reporting to the hospital's ED that they are having trouble getting timely appointments. By joining forces with the hospital, the provider-based clinic has been able to add more staff and change their hours of operation to better accommodate appointments for Medicaid recipients.

Analysis by the department, however, has determined that there are several of the now 13 provider based entities that are in fact not accepting Medicaid patients. In addition it has been determined that current provider based entity reimbursement is 39.2% higher than reimbursement in a physician clinic. The department looked at various other options including elimination of provider based reimbursement, allowing only billing of the professional component with a slight raise in RBRVS reimbursement or a 50% reduction to the technical portion. It was decided the option chosen by the department would have the least impact. The other proposed provider based rules, with the exception of Passport to Health enrollment, are the same rules used by Medicare and so will have no impact on current billing practices. The proposed requirement of Passport to Health enrollment is to insure access for Medicaid recipients.

The department has made the choice to continue provider based entity reimbursement. However, it is taking this opportunity to clearly establish rules regarding allowed services, access issues, and billing practices. In addition, the department is cutting reimbursement to the technical portion of the evaluation and management and procedural portions of the facility payment by 20%. This is a 10.8% reduction in reimbursement to the current rate received by these entities, yet

it is still 38.4% more than any other physician practice receives from Montana Medicaid. The budget impact of this change is a savings to the department of $335,000 per year.

ARM 37.86.3001, 37.86.3005, 37.86.3007, 37.86.3009, 37.86.3016, 37.86.3018, and 37.86.3020

The department is defining birthing centers and their coverage and adding reimbursement of a facility fee to these centers. Birthing centers are licensed as an "outpatient center for primary care". This allows a facility to provide, under the direction of a licensed physician, either diagnosis, treatment, or both, to ambulatory patients and the facility is not an outpatient center for surgical services.

Routine births may be reimbursed in a hospital outpatient setting where the patient is not expected to remain for 24 hours or more. Complicated deliveries are not reimbursable in an outpatient setting and must be inpatient only. Reimbursement for normal deliveries with no complications is under the OPPS APC payment methodology. Physician reimbursement is the same as if the newborn were delivered in an inpatient setting.

We propose reimbursing normal uncomplicated pregnancies and deliveries in birthing centers as we would any other outpatient delivery in a provider based facility. They would bill appropriate physician charges as usual and receive RBRVS reimbursement. Any diagnostic or lab services and the delivery would be billed on a facility claim form, once enrolled as an outpatient provider. Montana Medicaid reimburses for very few outpatient births each year in state (most are out-of-state emergency deliveries). The highest number has been 12 births in one year. The difference between the professional and facility inpatient reimbursement for uncomplicated deliveries ($4,508) and professional and birthing center facility reimbursement ($3,242) is $1,266 per delivery. There will be a savings to the department but it is difficult to determine the amount.

The department looked at various other reimbursement methodologies but determined that the proposed payment method best reflected the birthing services offered in an inpatient setting versus the services offered in an outpatient setting at a birthing center.

37.86.3020

Medicaid adopted Medicare's Outpatient Prospective Payment System (OPPS) August 2003. CMS annually updates Medicare Payment Rules for Outpatient Hospital Services for prospective payment hospitals January 1st of each year. The proposed changes to ARM 37.86.3020 or the rule, which includes updates to APC weights, editing, coding, and modifier changes, is published in August of each year and the final rule published in November of each year.

Changes for 2007 include removing and adding drug and biological codes, adding

inflation rates for some drug and biological prices, changing the brachytherapy source payment method from pass through to PPS, proposing modification to the method for coding clinic and emergency department visits, changes to the blood product table, and removing some codes from the inpatient only list. Medicaid has adopted Medicare's final rule each year since 2003 and will do so again for each calendar year starting January 1, 2007.

ARM 37.86.3007, 37.86.3016, and 37.86.3018

While adding coverage of lab, imaging, and other diagnostics for birthing centers, the department determined that these rules were difficult to follow and were not clearly written. The department is taking this opportunity to correct this. There is no monetary impact.

ARM 37.86.105

The department is correcting reimbursement for psychiatrists. This change was actually made July 1, 2005 but inadvertently left out of this rule. This rule change raises the rate of payment for psychiatrists from 125% of the RBRVS to 150%. Montana has a lack of psychiatrists statewide who will serve Medicaid individuals. This creates access problems for Medicaid recipients with mental health issues. Lack of community psychiatric care often results in institutionalization for longer term care. There is no budget impact as this has been in place two years and is now part of our base and our caseload.

37.88.1106

We are adjusting ARM 37.88.1106(4) to remove reference to 37.86.2905. ARM 37.86.2905 is being revised to reflect a change in the rate of reimbursement for out-of-state hospitals. Children's Mental Health Bureau does not want to change the reimbursement structure of out-of-state residential treatment facilities; therefore, to maintain clarity we are changing the rule to reflect our current reimbursement structure.

FISCAL IMPACT

Total changes:

SFY07 decrease in expenditures, Total SFY07=$373,600
SFY08 decrease in expenditures, Total SFY08=$747,200

Persons and entities affected

In Montana there are 42 critical access hospitals, two exempt hospitals, 37 DRG border hospitals, and 15 DRG hospitals eligible to receive Medicaid reimbursement. There are approximately 200 out-of-state hospitals eligible to receive Medicaid reimbursement.

The proposed changes to emergency room reimbursement affects all hospitals.

The proposed state-wide average capital cost per case increase affects border hospitals.

Proposed changes to out-of-state inpatient reimbursement affects all out-of-state hospitals.

There are 13 in-state provider based facilities and 26 out-of-state provider based facilities affected by this rule change.

There are currently two licensed birthing centers in Montana. Medicaid reimburses approximately 4,300 births per year with generally no more than 12 in an outpatient setting.

There are 21 out of state Residential Treatment Centers affected by this rule change.

There were approximately 75 in-state and 141 out-of-state psychiatrists affected by the increase in reimbursement correction.

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 December 7, 2006. Data, views, or arguments may also be submitted by facsimile (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.

/s/ John Koch for
Rule Reviewer

/s/ John Chappuis for
Director, Public Health and Human Services

Certified to the Secretary of State October 30, 2006.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 1.2.419 regarding the scheduled dates for the 2007 Montana Administrative Register	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 30, 2006, a public hearing will be held at 10:00 a.m. in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m. on November 21, 2006, to advise us of the nature of the accommodation that you need. Please contact Jean Branscum, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-5596; FAX (406) 444-4263; e-mail jabranscum@mt.gov.

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

1.2.419 FILING AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadline, and publication dates for material to be published in the Montana Administrative Register are listed below:

~~2006 Schedule~~

~~Filing~~	~~Publication~~
~~January 3~~	~~January 12~~
~~January 13~~	~~January 26~~
~~January 30~~	~~February 9~~
~~February 13~~	~~February 23~~
~~February 27~~	~~March 9~~
~~March 13~~	~~March 23~~
~~March 27~~	~~April 6~~
~~April 10~~	~~April 20~~
~~April 24~~	~~May 4~~
~~May 8~~	~~May 18~~
~~May 22~~	~~June 1~~
~~June 12~~	~~June 22~~
~~June 26~~	~~July 6~~

~~July 17~~	~~July 27~~
~~July 31~~	~~August 10~~
~~August 14~~	~~August 24~~
~~August 28~~	~~September 7~~
~~September 11~~	~~September 21~~
~~September 25~~	~~October 5~~
~~October 16~~	~~October 26~~
~~October 30~~	~~November 9~~
~~November 13~~	~~November 22~~
~~November 27~~	~~December 7~~
~~December 11~~	~~December 21~~

2007 Schedule

Filing	Publication
January 2	January 11
January 16	January 25
January 29	February 8
February 12	February 22
February 26	March 8
March 12	March 22
April 2	April 12
April 16	April 26
April 30	May 10
May 14	May 24
May 29	June 7
June 11	June 21
June 25	July 5
July 16	July 26
July 30	August 9
August 13	August 23
August 27	September 6
September 10	September 20
September 24	October 4
October 15	October 25
October 29	November 8
November 13	November 21
November 26	December 6
December 10	December 20

(2) remains the same.

AUTH: 2-4-312, MCA
IMP: 2-4-312, MCA

4. ARM 1.2.419 is proposed to be amended to set dates pertinent to the publication of the Montana Administrative Register during 2007. The schedule is proposed during the month of November in order that it may be adopted during December to allow state agencies the opportunity to plan their rulemaking schedule to meet program needs for the upcoming year.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Jean Branscum, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing jabranscum@mt.gov, and must be received no later than 5:00 p.m., December 7, 2006.

6. Janice Doggett, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, has been designated to preside over and conduct the hearing.

7. The Secretary of State 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 administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Bureau, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-4263, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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

/s/ Mark A. Simonich for
BRAD JOHNSON
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 30th day of October 2006.

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

In the matter of the adoption of New Rules I, II, and III and the amendment of ARM 12.6.2205, 12.6.2210, 12.6.2215, and 12.6.2220 pertaining to exotic species	)))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On July 20, 2006, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-321 regarding the adoption and amendment of the above-stated rules at page 1771 of the 2006 Montana Administrative Register, Issue No. 14. On August 10, 2006, the commission published MAR Notice No. 12-323 at page 1935 of the 2006 Montana Administrative Register, Issue No. 15, notifying the public of the public comment deadline since the deadline had inadvertently been omitted from MAR Notice No. 12-321.

2. The commission has adopted the following new rules with the following changes, stricken matter interlined, new matter underlined:

Rule I (ARM 12.6.2208)
Rule II (ARM 12.6.2211)
Rule III (ARM 12.6.2203)

NEW RULE I (ARM 12.6.2208) LIST OF CONTROLLED SPECIES (1) The following birds are classified as controlled species:

(a) exotic waterfowl in the family ~~Anayidae~~ Anatidae that are not classified as prohibited.

(2) A person may possess the controlled fish species listed in (2)(a) and (b) without ~~completion and approval of a department application~~ obtaining a controlled species permit. However, individuals possessing these species shall submit a completed reporting form to the department upon acquiring the fish and shall follow restrictions established in [NEW RULE III] regarding ponds where fish are held. The following fish are classified as controlled species:

(a) Koi – *Cyprinus carpio* (for use in outdoor ponds); and

(b) Goldfish – *Carassius ~~auaratus~~ auratus* (for use in outdoor ponds).

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA
IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

NEW RULE II (ARM 12.6.2211) APPLICATION FOR A PERMIT TO POSSESS A CONTROLLED SPECIES (1) An applicant may be eligible for a controlled species permit if the applicant:

(a) is at least 18 years of age; and

(b) has not been convicted of any violation of exotic wildlife regulations~~,~~ or any offense involving the illegal commercialization of wildlife, ~~or any offenses involving cruelty to animals~~, within three years of the date of application. Any offense involving cruelty to animals will permanently prohibit a person from obtaining a permit to possess a controlled species animal.

(2) To obtain a controlled species permit a person shall make written application to the department on forms provided by the department. The application must specify:

(a) the applicant's name;

(b) the applicant's date of birth;

(c) the applicant's address;

(d) the controlled species and the approximate number proposed to be kept or reared at the above address;

(e) the type of facilities the applicant intends to use for confinement of the controlled species, including cage specifications; and

(f) the source from which the applicant intends to acquire the controlled species.

(3) In order for an applicant to receive a permit, the applicant shall agree to comply with all permit conditions.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA
IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

NEW RULE III (ARM 12.6.2203) REQUIREMENTS FOR CARE AND HOUSING OF EXOTIC WILDLIFE HELD IN CAPTIVITY (1) Exotic wildlife held in captivity must be treated in a humane manner and cannot be restrained with a chain, rope, or other holding device. Facilities for care of captive exotic wildlife must be maintained in a sanitary condition, be large enough to provide room for exercise, be sturdy enough to prevent escape, and provide protection to the public. Food, water, and ~~cover~~ shelter must be provided in sufficient quantity and quality to maintain the exotic wildlife in a healthy condition.

(2) Specific conditions for the housing of exotic wildlife may be required by the department. Requirements for mammals will be consistent with those under 9 CFR, Ch. 1, Part 3 “Standards for Humane Handling, Care, Treatment and Transportation.”

(3) All ponds containing controlled exotic ~~wildlife~~ fish must be registered with the department. Ponds used to hold controlled exotic ~~wildlife~~ fish (including koi and goldfish):

(a) must not be larger than 400 square feet;

(b) must not be within the 100-year flood plain;

(c) must be at least 200 yards from any open water;

(d) must not receive diverted surface water; and

(e) must not have an effluent or discharge to surface water.

(4) Adequate veterinary care must be provided to identify and minimize the spread of diseases. All exotic wildlife held in captivity must be in compliance with and are subject to the current Compendium of Animal Rabies Prevention and Control.

AUTH: 87-5-702, 87-5-704, 87-5-705, 87-5-712, MCA
IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

3. The commission amended the following rules with the following changes, stricken matter interlined, new matter underlined:

ARM 12.6.2205
ARM 12.6.2210
ARM 12.6.2215
ARM 12.6.2220

12.6.2205 EXOTIC WILDLIFE: LIST OF NONCONTROLLED SPECIES
(1) The following mammals are classified as noncontrolled species:
(a) African pygmy hedgehog - *Atelerix albiventris* and *Atelerix algirus*;
(b) Wallaby (Bennets) - *Macropus rufogriseus*;
(c) Wallaby (Tammar) - *Macropus eugenii*; and
(d) Sugar gliders - *Petaurus breviceps*.;
(e) Two-toed sloth - *Choloepus didoctylus;*
(f) Serval cat - *Leptailurus serval*;
(g) Jungle cat - *Felis chaus*; and
(h) Degus (bush-tailed rat) - *Octodon degus*.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA
IMP: 87-5-707, 87-5-708, 87-5-711, 87-5-712, MCA

12.6.2210 CONTROLLED SPECIES PERMITS (1) The department may authorize a permit for possession, sale, purchase, or exchange of a controlled species in Montana. A controlled species permit must require the permitee:

(a) to provide annual reports to the department of on forms provided by the department, unless the department has given written authorization for a different format concerning births, deaths, sales, and purchases of any controlled species;

(b) to provide a viable bio-security plan to control the spread of disease and an emergency response plan to protect emergency personnel and the species involved;

(c) to report the escape of any controlled species to the department within 24 hours of the escape and accept responsibility and liability for recapture costs;

(d) to report any injuries to humans inflicted by the controlled species to local public health officials within 24 hours of infliction of the injury;

(e) to report injuries inflicted by the exotic species on other domestic animals to the Department of Livestock within 24 hours of infliction of the injury; and

(f) to report injuries inflicted by the exotic species on Montana wildlife to the department within 24 hours of infliction of the injury.

(2) through (6) remain as proposed.

AUTH: 87-5-702, 87-5-704, 87-5-705, 87-5-712, MCA
IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

12.6.2215 LIST OF PROHIBITED SPECIES (1) and (2) remain as proposed.

(3) The following fish are classified as prohibited species:

(a) Bighead carp - *Hypophthalmichthys nobilis*;

(b) Black carp - *Mylopharyngodon piceus*;

(c) Grass carp - *Ctenopharyngodon idella*;

(d) Silver carp - *Hypophthalmichthys molitrix*;

(e) Snakehead fish - genera *Channa* and *Parachanna* (29 species)~~.~~ ;

(f) Zander (European ~~pike perch~~ pikeperch) - *Sander ~~lucipoerca~~ lucioperca*; and

(g) Walking catfish - *Clarias batrachus.*

(4) The following mammals are classified as prohibited species:

(a) Nutria - *Myocastor coypus*;

(b) Short-tailed opossum - *Monodelphis domestica*;

(c) Virginia opossum - *Didelphis virginiana*;

(d) Brush-tailed possum - *Trichosurus vulpecula*;

(e) Southern flying squirrel - *Glaucomys volans*; and

(f) Primates in the family Cebidae.

(5) and (6) remain as proposed.

~~(7) The following birds are classified as prohibited species:~~

~~(a) Mute swans - *Cygnus olor.*~~

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA
IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

12.6.2220 PROHIBITED SPECIES PERMITS (1) The department may issue a permit for possession of a prohibited species only to the following:

(a) a zoo or aquarium which is an accredited institutional member of the American Association of Zoological Parks and Aquariums;

(b) a roadside menagerie or zoo licensed by the department;

~~(b)~~(c) a business that displays, exhibits, or uses the species for exhibition or commercial photography or television and has a USDA Class C Exhibitor's license if the species:

(i) is accompanied by evidence of lawful possession;

(ii) is not in this state for more than 90 days or a time period authorized by the department;

(iii) is maintained under complete control and prohibited from coming into contact with members of the general public unless authorized for such contact by the department. If the person is displaying, exhibiting, or using animals for commercial purposes other than food or fiber, he/she must possess the appropriate license issued by the United States Department of Agriculture; and

(iv) is accompanied by an official certificate of veterinary inspection as defined in ARM 32.3.206 "Official Health Certificate" and an entry permit number issued by the Montana Department of Livestock within ten days of entry into Montana;

~~(c)~~(d) a college, university, or government agency, for scientific or public health research;

~~(d)~~(e) any other scientific institution, as determined by the department, for research or medical necessity;

~~(e)~~(f) a tax-exempt nonprofit organization licensed by the United States Department of Agriculture that exhibits wildlife solely for educational or scientific purposes; or

~~(f)~~(g) a person who, due to a medical necessity, has assistance requirements that may be provided by the prohibited species and that requirement is certified by a physician licensed in the state of Montana.

(2) and (3) remain as proposed.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA
IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

4. The commission received 11 comments supporting one or all of the new rules, 12 comments opposing one or all of the new rules, and two comments supporting the rule with editorial changes to rule language. A summary of the comments appears below with the commission's responses:

Comment 1: Eleven individuals supported the rules, stating that the rules were necessary to protect Montana's natural resources.

Response: The commission appreciates the support and noted the comments.

Comment 2: One individual agreed with the logic of the rules but requested clarification on how department regional offices would be impacted in regard to inspections, contact information, and correspondence with the proposed rules.

Response: The control measures will vary for each species and will be explained in department policy. In some cases, such as koi and goldfish, the management of the permits will be run through the department headquarters office to alleviate the workload for the regions. In other cases, headquarters will work as a support role, and the regions will coordinate and run the permitting, authorization, and inspections.

Comment 3: The Department of Livestock (DoL) generally supported the rule changes but recommended inserting the word "permanently" in New Rule II(1)(b) (ARM 12.6.2211) so that a person convicted of cruelty to animals would permanently be prohibited from obtaining a controlled species permit. DoL thought that a permanent prohibition was the intent of the Exotic Species Classification and Review Committee (committee). DoL also thought New Rule III (ARM 12.6.2203) should change the word "cover" to "shelter." Additionally, DoL recommended providing for different format of forms other than those issued by the department (with department approval) and adding the words "control the spread of disease" to clarify the bio-security plan required in ARM 12.6.2210.

Response: The commission agrees and made those changes to the rules.

Comment 4: DoL suggested that New Rule II(1)(a) (ARM 12.6.2211) should be amended to allow for persons under 18 years of age to apply for a controlled species permit if they received a signed sponsorship from an adult.

Response: The commission considered this suggestion but decided not to adopt it. The commission thought the rule was much clearer, and the ultimate responsibility was more clearly assigned by retaining the language as proposed. Allowing any adult to sponsor a minor in receiving a controlled species permit could result in the minor acquiring the species without a parent or guardian's knowledge or permission. If the department requires the parent or guardian to be the sponsor, then the parent or guardian might as well be the permit holder since the responsibility lies with that individual in any case. The department contacted a 4-H club that stated having ownership of an animal in a parent or guardian's name was not a problem for children participating in 4-H. Children may still possess animals for use in organizations such as 4-H if the animals are permitted in the name of their parent or guardian.

Comment 5: DoL suggested that language be inserted into New Rule I(1)(a) (ARM 12.6.2208), listing ten species of exotic waterfowl in the family Anatidae that are controlled.

Response: The commission thought this change was not necessary since the entire list of 150 controlled species of exotic waterfowl will be posted on the department web site.

Comment 6: DoL suggested that language from ARM 12.6.1302, pertaining to animal care requirements for roadside zoos, be incorporated into or referenced by New Rule III (ARM 12.6.2203).

Response: The committee plans on addressing care requirements more specifically in the future. Instead of adopting or referencing the language of the roadside zoo regulations, the committee prefers to develop language regarding animal care requirements but needs more time to develop this language. The committee also thought that this change was an important change and wanted to receive and evaluate public comment. The commission agreed with the committee's reasoning.

Comment 7: DoL thought a section should be added to ARM 12.6.2210 requiring that owners should have permanent identification such as a microchip or tattoo for each mammal.

Response: The committee thought that such an important change warranted more discussion by the committee and recommended not implementing this change at this time. If the committee decides to incorporate this change, it would like to present the change to the public for comment. The commission agrees and decided to accept the recommendation of the committee.

Comment 8: Nine individuals opposed the classification of short-tailed opossums (*Monodelphis domestica*) as prohibited. These individuals disagreed that the short-tailed opossum has the potential to become a significant agricultural pest and a household pest. The comments stated that opossums have difficulty breeding, will not travel far if they escape enclosure, will not chew wood or property, can be easily contained, will not survive the Montana climate, do not eat fruit or vegetables, need constant access to water, require high humidity, and would readily be eaten by snakes, cats, dogs, and birds of prey if they escape.

Response: The public comments received in opposition to classifying short-tailed opossums as prohibited are primarily based on the belief that these animals will not survive in the wild in Montana, will not breed in large numbers, and will not become an agricultural pest. The primary concern of the committee is that the short-tailed opossum could become an agricultural pest in Montana, and this opinion is strongly supported by the Department of Agriculture. Some evidence collected by the committee is somewhat contradictory and suggests that these animals would not be able to survive year round in Montana. However, there is also evidence which contends that they can survive and inhabit man-made structures and may be able to survive Montana winters in this way. There is also evidence that they do have a substantial reproductive ability and are used in research facilities because of their reproductive potential. After reviewing the data, the committee recommended that these animals be classified as prohibited, even though their survivability in the wild and their reproductive rate may be less than some predict. The commission decided to accept the committee's recommendation to classify these animals as prohibited.

Comment 9: One comment was received in opposition to classifying primates in the family Cebidae as prohibited. The comment was received from owners who challenged the concern that this family of animals is aggressive in nature and that there is a disease concern if raised by private pet owners.

Response: Although Cebidae monkeys could not survive if they escaped or were released in the Montana environment, the risks to public health and safety are many. The public comment on Cebidae compared these animals to domestic animals such as dogs. With the exception of one committee member, the committee contends that Cebidae are much less predictable than domestic animals and that the severity of risk is much greater in terms of physical injury and disease concerns. There are multiple reports of injuries caused by bites of species of monkeys, and zoonotic disease transmission is a strong potential. In addition, poor husbandry of Cebidae monkeys increases the potential for injury, and it is generally recommended to maintain multiple individuals in a colony so that social structure can be maintained and individual behavior improved. For these reasons the committee, with the exception of one dissenting opinion, stands by their recommendation to classify Cebidae as prohibited. The commission accepted the committee's recommendation.

Comment 10: The commission received a number of comments about mute swans. Ten of these comments were in support of listing mute swans as prohibited. Two comments were received in opposition to listing mute swans as prohibited. One

comment opposed prohibiting mute swans in existing programs with secure facilities. The other comment was opposed to classifying the mute swan as prohibited based on hybridization since hybrids are sterile, and they can be easily removed from the wild. Those opposed to classifying mute swans as prohibited stated that mute swans pose no threat to trumpeter swans if they are pinioned.

Response: At this time the commission agrees that evidence is not sufficient to classify mute swans as prohibited. If further information to support prohibiting mute swans becomes available, the commission will reconsider the decision. Currently the commission has decided to classify mute swans along with other exotic waterfowl as controlled.

Comment 11: One person requested timeliness for the exotic waterfowl classification.

Response: The process for the classification of exotic waterfowl should be complete shortly after the commission meeting on October 19, 2006. The committee appreciates the patience of all petitioners and importers as the committee processes all petitions of exotic wildlife.

Comment 12: One comment expressed concerns about pinioning certain exotic waterfowl species, particularly pygmy geese.

Response: It is our intention to fully consider characteristics of an individual species, as well as humane treatment standards, in formulation of conditions included in a permit for a controlled species (ARM 12.6.2210(2)). Based on the experience of the commenter with pygmy-geese, we concur that it would be much more appropriate to require that they be contained in an aviary, rather than require them to be surgically rendered permanently flightless.

It is anticipated that the department will require, as a permit condition, that controlled exotic waterfowl species (ducks, geese, and swans) imported and possessed in Montana be contained (under net or in an aviary) and if possible surgically rendered permanently flightless. The purpose of the requirements is to reduce the potential for exotic species to escape and establish feral populations.

Comment 13: One comment requested that a list of native birds to Montana be posted on the department web site.

Response: The suggestion to post a list of bird species native to Montana on the department web site is a good one that will be pursued. In the meantime, the field checklist of Montana birds, which lists exotic as well as native bird species that occur in the wild in Montana, may be helpful: http://fwp.mt.gov/fwppaperapps/wildthings/birdfieldchecklist.pdf.

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

By: /s/ Bill Schenk
Bill Schenk
Rule Reviewer

Certified to the Secretary of State October 30, 2006

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.17.127, pertaining to prevailing wage rates for public work projects - building construction services	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 18, 2006, the Department of Labor and Industry published MAR Notice No. 24-17-205 regarding the public hearing on the proposed amendment of ARM 24.17.127, pertaining to prevailing wage rates for public works projects for building construction services, at page 1217 of the 2006 Montana Administrative Register, issue no. 10.

2. On June 9, 2006, a public hearing was held at which time members of the public made oral and written comments and submitted documents. Additional written comments were received during the comment period.

3. The department has thoroughly considered the comments and testimony received from the public. The following is a summary of the public comments received and the department's response to those comments:

Comment 1: A commenter objected to certain rates set for sprinkler fitters as being two years out of date, and as a result, are lower than what is being paid on a majority of such work in Montana.

Response 1: The department is aware that there is an inherent delay caused by the survey process and the rate setting process that is established in Montana law. As required by section 18-2-401(13)(a)(ii), MCA, the survey asks that historical information be provided by employers to the department. Following the data collection period, the data is tabulated and processed to calculate the preliminary wage rates. After the preliminary wage rates have been calculated, the department then formally begins the administrative rulemaking process and seeks public comment. The department also recognizes that during the rate-setting process, employers, employees, and labor organizations may have renegotiated wage rates that reflect then-existing market factors. Accordingly, the department recognizes that during periods of increasing wages, the state prevailing wage rates for public works projects will typically be lower than the current market wage rates. Conversely, the department notes that during periods of decreasing wages, the prevailing wage rates will tend to be higher than the current market wage rates.

However, because the submitted data showed a greater than expected discrepancy, and respondents appeared confused by the survey instrument in regards to sprinkler fitters, the department conducted a supplemental survey. The data used from that supplemental survey has been used to set the final rates as noted below.

Comment 2: Another commenter questioned why prevailing wage rates sometimes go down despite a general increase in wages paid in a given occupation.

Response 2: Because the prevailing wage rates are calculated based upon survey results, the wage rates are dependent upon the quality of the survey responses. A lower response rate in a given year, in a specific occupation or region, can cause an apparent decrease in wages for that occupation or region. Likewise, to the extent that survey responses for a given occupation vary more widely, it is possible to end up with an accurately calculated rate that appears higher or lower than expected.

Comment 3: The commenter also questioned the basis for the selection of occupational titles or job categories.

Response 3: The department, in line with the changes being made nationally regarding the description of occupations tracked for occupational statistical purposes, has shifted from an occupational coding system with some 15,000 job titles to a system with only about 820 job titles. The new proposed job descriptions were presented at a public hearing in June 2002 and again in a public meeting on August 19, 2005. The department also had discussions regarding the new classifications with various interested persons during the recent survey cycle. The department notes that the standard job titles (and matching description of job duties) do not necessarily match up to regional customs or the job titles used in some industries or collective bargaining agreements. In addition, new technologies tend to create jobs that may not be captured by existing classification systems. The department invites interested individuals and groups to offer suggestions about how to improve the classification system and what occupational classifications should be surveyed.

Comment 4: A commenter stated that he represented a significant number of operating engineers, some of whom were not registered as construction contractors. The commenter stated that he and his members were not contacted for the survey, despite the fact that those members have a significant involvement in construction.

Response 4: Section 18-2-401(13)(a)(ii), MCA, specifically provides that the department must calculate wages based on survey data based on "work performed by electrical contactors who are licensed under Title 37, chapter 68 [MCA], master plumbers who are licensed under Title 37, chapter 69, part 3 [MCA], and Montana contractors who are registered under Title 39, chapter 9 [MCA], whose work is performed according to commercial building codes." The department does not have the authority to accept survey data by or on behalf of employers who do not meet the statutory criteria.

Comment 5: The same commenter objected to the revised occupational classifications with respect to operating engineers working in the building construction environment, stating that the revised classifications do not reflect the

work being performed. The commenter also presented statewide collective bargaining agreements applicable to the survey period.

Response 5: As a result of the comments and the documents received, the department has revised the occupational classification schedule for operating engineers to reflect the following classifications:

Construction equipment operator – group 2
Construction equipment operator – group 3 (including cranes less than 24 tons)
Construction equipment operator – group 4 (including cranes 25-44 tons)
Construction equipment operator – group 5 (including cranes 45-74 tons)
Construction equipment operator – group 6 (including cranes 75-149 tons)
Construction equipment operator – group 7 (including cranes 150+ tons)

In addition, certain rates for group 2 have been revised as described in paragraph 4 of this notice.

Comment 6: There were a number of comments regarding work performed in particular occupational classifications. Some of the questions related to why previously listed occupations were no longer listed, and other comments related to concerns that certain listed occupations were properly included within the classification of another listed occupation.

Response 6: The classification of "fence erectors" is a separate occupation under the Standard Occupational Classification (SOC) system and under the Dictionary of Occupational Titles (DOT) system. Fence erectors were moved under Laborers Group 2 in 2003; before 2003 this had been a separate occupation for prevailing wage rates. However, the department does not object to this occupation remaining under Laborers (Group 2). Fence erectors has been withdrawn as a separate occupation.

"Form setters" were moved under the Laborers Group 2 in the past because the federal heavy construction determinations listed them in Group 2; however, the department believes it is appropriate to review the corresponding federal building construction rates for the state building construction occupations. Under the federal Davis-Bacon Act determinations, the building construction occupation of "carpenter" lists "Carpenter: including form work" with an associated rate (MT20030006, MT20030007, MT20030008, MT20030034 determinations). The department has concluded that for building construction purposes, "form setter" is covered by the carpenter classification, and is consistent with collective bargaining agreements applicable to building construction services.

Asbestos removal workers are included under the hazardous materials workers classification as an SOC occupational category. However, the asbestos removal worker classification has also historically been part of the Laborers group 2 classification, and the department has no objection to it remaining so. Therefore, the hazardous materials worker classification and rates are withdrawn.

Earth Drillers is an occupation that is contained within the SOC system. A review of the tasks for this occupation shows that the tasks are contained in bargaining agreements in effect for several unions. Since the tasks covered by this occupation are already included under other occupations, this occupational category is withdrawn.

Although highway maintenance workers are included under "construction" in the SOC manual, the manual does not clearly differentiate between occupations associated with building construction, heavy construction, highway construction, and residential construction. As a result, the department has withdrawn this occupation from consideration under the building construction prevailing wages.

Pipelayers have historically been included in building construction prevailing wages under Laborers (Group 3). This follows the layout of occupations listed under the federal Davis-Bacon Act groupings for heavy construction and highway construction wage determinations. However, as noted above, the job groupings under federal heavy and highway construction may differ from those under the federal building construction groupings. In the absence of further information, pipelayers will remain under Laborers (Group 3), although the SOC does break out pipelayers as a separate occupation.

In order to remain consistent with the SOC manual, the occupational title for plumbers and pipefitters will be changed to read "plumbers, pipefitters, and steamfitters." The department notes that it is correcting a typographical error in one district's rates, as noted in paragraph 4.

Comment 7: Survey respondents complained that a couple of the survey categories for occupational classifications were especially confusing.

Response 7: The department acknowledges that there was a particular lack of clarity with the wage and benefit survey instrument with respect to the occupational title of "carpet, floor, and tile installers and finishers" and "insulation workers." In order to remedy the confusion, the department conducted a supplemental survey with a clearer definition of those occupations.

Insulation workers that install roll or batt style insulation are covered under the occupational classification of carpenters. The classification "insulation worker" has been renamed as "Insulation Worker – Mechanical (Heat and Frost)."

For the classification "tile finishers," the SOC system classifies certain of those duties as duties assigned to "Helper – Brickmasons, Blockmasons, Stonemasons, and Tile and Marble Setters." The department has historically not set wage rates for "helper" occupations. Wage rates for tile finishers were (historically) often drawn from a collective bargaining agreement covering the occupational title of "tile setter." Therefore, the department no longer sets a wage rate for "tile finishers." Questions concerning the correct rate of pay for persons performing work of a lesser nature

than tile setter may be directed to the prevailing wage compliance officer, Department of Labor and Industry, Employment Relations Division, Labor Standards Bureau, at (406) 444-5600.

Comment 8: A commenter questioned why some rates appeared to be set using updated collective bargaining agreements and other rates were not. The commenter posed a similar question with regards to base wage rates and fringe benefit rates.

Response 8: Using the examples mentioned by the commenter, the department notes that while laborers may have a specific collectively bargained travel rate applicable to highway construction, that travel rate is not applicable to building construction services. In addition, base wage rates and fringe benefit rates are calculated separately. Thus, in a particular district, it is possible that one rate is determined by the survey results, while another comes from a collectively bargained agreement. In an adjacent district, both the base wage rate and the fringe benefit rate may be based on a collective bargaining agreement (due to lack of survey data), while in another adjacent district, both rates may be established by survey data. For Laborers (Group 1) the union wage rate was the rate most commonly reported for districts with the exception of District 8; there the survey results prevailed. For Laborers (Group 2) there was sufficient survey response to set wage rates and fringe benefit rates for all districts. However, a typographical error was noted on District 5; the wage is changed from $13.27 to $13.72. For District 4 the proposed benefit rate is changed to $4.90. For Laborers (Group 3) a review of the survey responses shows that there was sufficient response to set a rate for fringe benefits in District 4. Those changes are also noted in paragraph 4. For Laborers (Group 4) survey response was sufficient to set rates in Districts 1, 3, 4, 5, 6, 9, and 10; thus there will be variations in both the wage rates and the fringe benefits rates.

With respect to the occupation of "stone mason," the department notes that it now has received a statewide collective bargaining agreement applicable to the classification, and that it has corrected certain rates as noted in paragraph 4.

Comment 9: A commenter questioned the classification of various occupations related to electrical equipment, including electronic equipment installer and fiber optics installer, and made suggestions as to the appropriate classification structure.

Response 9: The department has endeavored to not lose any occupations when converting from the DOT classification system to the SOC system; however, this was not the case with electricians. Due to research and comments received during an earlier public comment period (see Response 3 above), the department decided to reduce the number of electrical categories. Previously, the department listed the classifications of "electricians (wiremen)," "building automation controls electrician," "fiber optics electrician," and "communications technician." SOC code 47-2111 is assigned to electricians, as workers in this occupation "Install, maintain, and repair electrical wiring, equipment, and fixtures." Electricians also "install or service … electrical control systems." Because building automation controls electricians are a subset of electricians, the department believes it is appropriate that wages set for

electricians should be also used for building automation controls electricians. Therefore, the occupational category of "electricians" will be noted as including building automation control electricians.

Communications technicians are now coded as SOC 49-2022, "telecommunications equipment installers," consistent with Occupational Information Network (O*NET) code 49-2022.03 (communications equipment mechanics, installers, and repairers). After reviewing the "Sound and Communications Agreement" between the International Brotherhood of Electrical Workers (IBEW) local unions and NECA (National Electrical Contractors Association), and comparing it to the SOC system manual, the department has determined that the classification "telecommunication equipment installers" will be used to include the installation, service, and maintenance of voice, sound, vision, and data transmission. Thus the fiber optics electrician category will fall under the occupation designator of "telecommunications equipment installers," as will the former classification of communications technician. Installation work in the SOC manual and the "Sound and Communications Agreement" associated with this occupational category includes security and fire alarm systems. This is similar in nature to the [former] DOT classifications where fire and burglar alarms work was part of the "Installation of communication, detection, and signaling equipment" occupational group.

Comment 10: The same commenter and a subsequent commenter questioned the rates established in various districts for certain classifications of electricians.

Response 10: As a result of additional data submitted during the comment period, the comments and the department's responses to those comments, the department has revised a number of rates for electrical classifications. In those districts where two collective bargaining agreements appear to apply, the department believes it is required by the provisions of 18-2-402(3), MCA, to set rates so that they do not exceed the lower of the two collectively bargained rates. The revisions in rates for electrical classifications are shown in paragraph 4.

Comment 11: The first commenter also referred to a previous letter sent by the commenter to the department, requesting access to certain documents which the commenter believes constitutes public records, and renewed his request for those documents. Included in the request are all of the survey responses for four specific occupational classifications related to electrical work. Other commenters also mentioned the request, and expressed their opinion that survey responses ought to be open to public inspection.

Response 11: The department notes that pursuant to a previous agreement regarding the request for inspection of documents, the original requester agreed to wait for a response to his request until after the department had concluded this present rate-setting process. The department intends to respond to the commenter's request promptly after the rates being adopted by this rulemaking are published and available in final form on the department's internet web site. The

department will also make sure the other commenters are apprised of the department's response.

Comment 12: A commenter stated that the department ought to consider input from union and non-union craftworkers in determining the appropriate occupational classifications. The commenter cited the example that the constitution of an international ironworker's union referred to 2,128 ironworker categories, but noted that he had reduced that list to approximately ten major classifications. The commenter then stated that many of the rates established for ironworker classifications were too high.

Response 12: After reviewing the submitted collective bargaining agreements, and reviewing the data and resulting rates, the department noted that the wage rates for the three separate ironworker classifications listed are the same. Because there is no apparent appreciable difference in the rates set for the three separate classifications, the department has decided to return to a combined classification for all ironworkers. As part of the department's review, the department corrected certain rates, which are noted below in paragraph 4.

Comment 13: The same commenter also made a number of comments regarding suggestions for public contracting agencies regarding verification of a bidder's safety, performance, and business practices before the award of a contract.

Response 13: The department acknowledges the comments, but notes that because they are outside of the scope of the department's rate-setting authority, and outside the scope of the present rulemaking notice, the department believes that it cannot properly respond to the substance of the comments. The department notes that it does not have any regulatory authority over the procedures used by state and local government entities in evaluating the relative merits of the proposals of various bidders.

Comment 14: A commenter representing carpenters submitted collective bargaining agreements and made comments regarding certain rates for various districts that the commenter believed were incorrectly established. In addition to carpenters, the commenter commented on the rates for the associated classifications of millwrights and "piledrivers."

Response 14: As a result of the comments and data submitted, the department has revised certain rates as noted below in paragraph 4. With respect to the classification of "piledrivers" (referring to the person on the ground directing the insertion of the piling), the department has determined that the appropriate term is "pilebuck" and has amended the classifications accordingly. The department will continue in the future to use the term "pilebuck" to distinguish that classification from an operating engineer who controls the crane and weighted ram that forces the piling into the earth, and is commonly referred to as a "piledriver" or "piledriver operator."

Comment 15: The same commenter also made a comment that the setting of concrete forms has historically been within the jurisdiction of the carpenter's crafts.

Response 15: The department has deleted the separate classification of "forms setter," previously located in the "laborer" section of the publication, as noted in Response 6, above.

Comment 16: Various commenters mentioned the fact that the travel and per diem rates did not accurately reflect increased costs faced today by workers on construction projects.

Response 16: The department recognizes that the use of historical data to set wage and fringe benefit rates (including travel and per diem amounts) may result in rates that are not commensurate with the actual costs experienced. During periods when costs are increasing, the established rate is lower than actual current costs; during periods when costs are decreasing, the established rate is higher than actual current costs. The use of an annual historical survey to establish building construction prevailing rates is provided by statute, however.

Comment 17: Various individuals and entities submitted additional data or documents for inclusion in the rate setting process during the comment period.

Response 17: The department has reviewed the information submitted. The department has incorporated the data as appropriate and has revised certain rates in line with the rate-setting standards. Revised rates are identified below in paragraph 4.

Comment 18: During the public hearing, a commenter referred to an individual's paystub, and stated that in addition to being paid the wages listed, the individual was receiving other payments related to the individual's work, but not being shown as wages. The commenter questioned whether the individual's employer was properly reporting those payments for the purposes of unemployment insurance tax, workers' compensation insurance, and similar programs, and offered to provide that information to the appropriate regulatory authority.

Response 18: The subject of this particular comment does not relate to the subject of this rulemaking project. However, the Department of Labor and Industry notes that it performs various audit functions to determine whether employers are properly reporting wages for unemployment insurance purposes and for certain workers' compensation purposes. Audits are performed both on a random basis and as a result of a particular complaint or claim for benefits.

Comment 19: A commenter stated that the fringe benefit rates for carpenters, laborers group 2, and laborers group 3 should be set at 5% of base wage rate, plus the cost of health benefits, arguing that the cost of providing health care insurance does not vary with geographical location in the state. The commenter suggested that setting such a benefit rate would serve to benefit both the industry and the

workforce, and might lead to such benefits being paid on work that was not part of a public works project.

Response 19: The department does not choose wage or benefits rates based upon desired social or economic goals or outcomes. As provided by law (statutes and administrative rules), the department determines whether survey data identify a standard prevailing wage (or fringe benefit) rate for a given district. If there are insufficient data from the survey responses to identify the prevailing rate, the department follows an established methodology to calculate the prevailing rate. Pursuant to section 18-2-402(3), MCA, rates may not exceed the applicable collectively bargained rate.

4. The rule has been amended exactly as proposed. The publication incorporated by reference in the rule has been amended as follows, stricken matter interlined, new matter underlined:

Carpenters:

	Wage		Benefits	
District 1	~~$16.70~~	$15.30	~~$5.94~~	$5.92
District 2	~~$16.70~~	$15.30	~~$8.80~~	$7.55
District 3	$16.70		~~$9.90~~	$7.90
District 4	~~$16.70~~	$15.30	~~$7.93~~	$6.95
District 5	$15.30		~~$6.64~~	$5.39
District 6	~~$16.70~~	$15.30	~~$5.66~~	$3.66
District 7	$15.33		~~$7.74~~	$7.80
District 8	~~$16.70~~	$15.30	~~$5.64~~	$4.85
District 9	~~$16.70~~	$16.79	~~$5.43~~	$4.20
District 10	~~$16.70~~	$15.30	~~$4.10~~	$3.65

Travel

~~All districts~~ District 3	0-30 miles	free
	31-50 miles	$18.00/day
	over 50 miles	$25.00/day
Districts 1, 2, 4, 5, 6, 8, and 10	0-30 miles	free
	31-50 miles	$1.00/hr
	over 50 miles	$1.50/hr
Districts 7 and 9	0-30 miles	free
	31-60 miles	$3.00/hr
	over 60 miles	$5.00/hr

Construction laborers, group 2:

	Wage		Benefits	
District 4	$13.92		~~$6.01~~	$4.90
District 5	~~$13.27~~	$13.72	$4.90	

Construction equipment operators, group 2:

	Wage		Benefits	

District 1	~~$17.88~~	$21.09	~~$5.19~~	$7.50
District 2	~~$17.64~~	$21.09	~~$6.00~~	$7.50
District 3	~~$17.88~~	$21.09	~~$6.00~~	$7.50
District 4	~~$15.64~~	$21.09	~~$5.25~~	$7.50
District 5	~~$17.22~~	$21.09	~~$4.61~~	$7.50
District 6	~~$17.88~~	$21.09	~~$4.87~~	$7.50
District 7	~~$17.88~~	$21.09	~~$5.54~~	$7.50
District 8	~~$17.88~~	$21.09	~~$5.32~~	$7.50
District 9	~~$17.88~~	$21.09	~~$5.50~~	$7.50
District 10	~~$17.88~~	$21.09	~~$5.50~~	$7.50

Construction equipment operators, group 3:

	Wage		Benefits
District 1	~~$21.09~~	$21.49	$7.50
District 2	~~$21.09~~	$21.49	$7.50
District 3	~~$21.09~~	$21.49	$7.50
District 4	~~$21.09~~	$21.49	$7.50
District 5	~~$21.09~~	$21.49	$7.50
District 6	~~$21.09~~	$21.49	$7.50
District 7	~~$21.09~~	$21.49	$7.50
District 8	~~$21.09~~	$21.49	$7.50
District 9	~~$21.09~~	$21.49	$7.50
District 10	~~$21.09~~	$21.49	$7.50

Construction equipment operators, group 4:

	Wage		Benefits	
District 1	~~$28.00~~	$22.15	~~$5.50~~	$7.50
District 2	~~$28.00~~	$22.15	~~$5.50~~	$7.50
District 3	~~$28.00~~	$22.15	~~$5.50~~	$7.50
District 4	~~$23.70~~	$22.15	~~$5.50~~	$7.50
District 5	~~$22.07~~	$22.15	~~$5.50~~	$7.50
District 6	~~$23.31~~	$22.15	~~$4.17~~	$7.50
District 7	~~$21.88~~	$22.15	~~$5.25~~	$7.50
District 8	~~$24.86~~	$22.15	~~$5.50~~	$7.50
District 9	~~$24.46~~	$22.15	~~$5.50~~	$7.50
District 10	~~$24.41~~	$22.15	~~$5.50~~	$7.50

~~Earth drillers, except oil and gas:~~

	~~Wage~~	~~Benefit~~
~~District 1~~	~~$14.70~~	~~NO RATE SET~~
~~District 2~~	~~$14.70~~	~~NO RATE SET~~
~~District 3~~	~~$14.70~~	~~NO RATE SET~~
~~District 4~~	~~$14.70~~	~~NO RATE SET~~
~~District 5~~	~~$14.70~~	~~NO RATE SET~~
~~District 6~~	~~$14.70~~	~~NO RATE SET~~
~~District 7~~	~~$14.70~~	~~NO RATE SET~~
~~District 8~~	~~$14.70~~	~~NO RATE SET~~

~~District 9 $14.70 NO RATE SET~~
~~District 10 $14.70 NO RATE SET~~

~~Travel~~
~~All Districts 0-30 mi. base pay~~
~~30-60 mi. base pay +$2.95/hr.~~
~~over 60 mi. base pay +$4.70/hr~~

Electricians:

	Wage		Benefits	
District 1	~~$23.85~~	$25.20	$9.16	
District 2	~~$23.85~~	$25.20	$9.16	
District 3	$23.85		~~$9.83~~	$9.42
District 4	$23.85		~~$9.83~~	$9.27
District 5	$23.85		~~$9.83~~	$9.27
District 6	~~$23.85~~	$23.44	~~$5.60~~	$5.97
District 7	~~$23.85~~	$23.96	~~$9.83~~	$9.27
District 8	~~$23.44~~	$24.88	$8.10	
District 9	$23.39		$8.10	
District 10	$23.44		~~$8.10~~	$9.02

Travel

~~All districts~~	~~0-8 miles~~	~~free~~
	~~8-50 miles~~	~~federal government reimbursement rate~~
	~~50 miles and over~~	~~$46.50/day~~
Districts 1 & 2	0-10 miles	free
	11-45 miles	$0.45/mile
	over 45 miles	$45/day subsistence
District 3	0-10 miles	free
	11-55 miles	$0.35/mile
	over 55 miles	$40/day subsistence in lieu of travel allowance
Districts 4, 5, 7, 9	0-8 miles	free
	9-50 miles	federal government mileage rate
	over 50 miles	$46.50/day subsistence in lieu of travel allowance
District 6	0-17 miles	free
	18-60 miles	$0.405/mile
	over 60 miles	$50/day in lieu of any other travel time or travel allowance
Districts 8, 10	0-17 miles	free
	18-60 miles	$0.42/mile
	over 60 miles	$42/day in lieu of any other travel time or travel allowance

~~Electrical~~ Telecommunication equipment installers

	Wage		Benefits	
District 1	$19.52		~~$5.19~~	$6.49
District 2	~~$15.20~~	$19.52	~~$9.93~~	$6.49

District 3	$19.52		~~$9.83~~	$6.49
District 4	$19.52		~~$9.83~~	$6.49
District 5	$19.52		~~$9.83~~	$6.49
District 6	~~$18.84~~	$19.52	~~$6.00~~	$6.49
District 7	$19.52		~~$9.83~~	$6.49
District 8	~~$18.20~~	$19.52	~~$4.26~~	$6.49
District 9	$19.52		~~$9.83~~	$6.49
District 10	~~$18.20~~	$19.52	~~$4.26~~	$6.49

Travel

All Districts ~~If requested to use own vehicle, federal rate per mile~~
~~For travel away from home where board and lodging is required, the employee travels on company time and $60/day limit on food and lodging.~~
Federal mileage reimbursement rate each way
Per diem for overnight stay only, reimbursement not to exceed $65/day

~~Fence erectors:~~

	~~Wage~~	~~Benefit~~
~~District 1~~	~~$11.95~~	~~$5.50~~
~~District 2~~	~~$11.95~~	~~$5.50~~
~~District 3~~	~~$12.60~~	~~$5.50~~
~~District 4~~	~~$12.45~~	~~$5.50~~
~~District 5~~	~~$12.86~~	~~$5.50~~
~~District 6~~	~~$11.74~~	~~$5.50~~
~~District 7~~	~~$11.33~~	~~$5.50~~
~~District 8~~	~~$10.44~~	~~$5.50~~
~~District 9~~	~~$10.61~~	~~$5.50~~
~~District 10~~	~~$10.25~~	~~$5.50~~

~~Travel~~

~~All Districts~~	~~Per Diem~~
~~0 - 10 mi. free zone~~	~~$32/day~~
~~Over 10 mi. $.20/mi.~~	

~~Hazardous material worker:~~

	~~Wage~~	~~Benefits~~
~~District 1~~	~~$19.65~~	~~$1.89~~
~~District 2~~	~~$19.65~~	~~$1.89~~
~~District 3~~	~~$19.65~~	~~$1.89~~
~~District 4~~	~~$19.65~~	~~$1.89~~
~~District 5~~	~~$19.65~~	~~$1.89~~
~~District 6~~	~~$19.65~~	~~$1.89~~
~~District 7~~	~~$19.65~~	~~$1.89~~
~~District 8~~	~~$19.65~~	~~$1.89~~
~~District 9~~	~~$19.65~~	~~$1.89~~

~~District 10 $19.65 $1.89~~

~~Travel~~

~~All Districts~~	~~0-30 mi.~~	~~free zone~~
	~~30-60 mi.~~	~~$1.00/hr.~~
	~~over 60 mi.~~	~~$1.50/hr.~~

~~Highway maintenance worker:~~

	~~Wage~~	~~Benefit~~
~~District 1~~	~~NO RATE SET~~	~~NO RATE SET~~
~~District 2~~	~~NO RATE SET~~	~~NO RATE SET~~
~~District 3~~	~~NO RATE SET~~	~~NO RATE SET~~
~~District 4~~	~~NO RATE SET~~	~~NO RATE SET~~
~~District 5~~	~~NO RATE SET~~	~~NO RATE SET~~
~~District 6~~	~~NO RATE SET~~	~~NO RATE SET~~
~~District 7~~	~~NO RATE SET~~	~~NO RATE SET~~
~~District 8~~	~~NO RATE SET~~	~~NO RATE SET~~
~~District 9~~	~~NO RATE SET~~	~~NO RATE SET~~
~~District 10~~	~~NO RATE SET~~	~~NO RATE SET~~

~~Travel~~
~~All Districts~~

Insulation worker - mechanical (heat and frost):

	Wage		Benefits	
District 1	~~$13.88~~	$20.96	~~$ 4.38~~	$10.03
District 2	~~$19.61~~	$22.20	~~$ 5.25~~	$10.72
District 3	~~$21.94~~	$22.43	~~$13.55~~	$10.72
District 4	~~$21.94~~	$22.43	~~$13.55~~	$10.72
District 5	~~$21.94~~	$22.43	~~$13.55~~	$10.72
District 6	~~$21.94~~	$22.43	~~$13.55~~	$10.72
District 7	~~$21.94~~	$22.43	~~$13.55~~	$10.72
District 8	~~$21.94~~	$22.43	~~$13.55~~	$10.72
District 9	~~$21.94~~	$22.43	~~$ 5.95~~	$10.72
District 10	~~$21.94~~	$22.43	~~$ 5.95~~	$10.72

Travel

All Districts	0-~~15~~ 30 miles	free
	~~15-30 miles~~	~~$0.65/hr~~
	~~30-50 miles~~	~~$0.85/hr~~
	31-40 miles	$11.50/day
	41-50 miles	$16/day
	51-60 miles	$21.50/day
	over ~~50~~ 60 miles	~~$1.25/hr~~ $32.50/day
	per diem	$54/day

Ironworker - structural steel and reinforcing steel:

	Wage	Benefits
District 1	$22.37	$13.33
District 2	$22.37	$13.33
District 3	$20.45	~~$13.21~~ $12.76
District 4	$20.45	~~$13.21~~ $12.76
District 5	$20.45	~~$13.21~~ $12.76
District 6	$20.45	~~$13.33~~ $12.76
District 7	$20.45	~~$13.33~~ $12.76
District 8	$20.45	~~$13.33~~ $12.76
District 9	$20.45	~~$13.33~~ $12.76
District 10	$20.45	~~$13.33~~ $12.76

Travel

Districts 1 & 2	0-45 miles	free
	~~45~~ 46-60 miles	$18/day
	61-100 miles	40/day
	over ~~60~~ 100 miles	~~$35/day~~ $50/day
	per diem	$35/day
Districts 3 - 10	~~over 60 miles~~	~~$30/day~~
	over 50 miles	$50/day
	per diem	$30/day

~~Ironworker - reinforcing steel:~~

	~~Wage~~	~~Benefits~~
~~District 1~~	~~$22.37~~	~~$13.33~~
~~District 2~~	~~$22.37~~	~~$13.33~~
~~District 3~~	~~$22.37~~	~~$13.33~~
~~District 4~~	~~$22.37~~	~~$13.33~~
~~District 5~~	~~$22.37~~	~~$13.33~~
~~District 6~~	~~$22.37~~	~~$13.33~~
~~District 7~~	~~$22.37~~	~~$13.33~~
~~District 8~~	~~$22.37~~	~~$13.33~~
~~District 9~~	~~$22.37~~	~~$13.33~~
~~District 10~~	~~$22.37~~	~~$13.33~~

~~Travel~~ ~~Travel~~
~~Districts 1 & 2~~ ~~Districts 3-10~~
~~0-45 mi. free zone~~ ~~Over 60 mi. $30/day~~
~~45-60 mi. $18/day~~
~~Over 60 mi. $35/day~~

~~Per Diem~~ ~~Per Diem~~
~~$35/day~~ ~~$30/day~~

Millwrights:

	Wage		Benefit	
District 1	~~$19.25~~	$18.79	~~$7.85~~	$8.80
District 2	~~$19.20~~	$18.79	~~$5.85~~	$8.80
District 3	~~$19.25~~	$18.79	~~$4.28~~	$8.80
District 4	~~$19.25~~	$18.79	~~$7.55~~	$8.80
District 5	~~$19.25~~	$18.79	~~$7.85~~	$8.80
District 6	~~$19.25~~	$18.79	~~$7.85~~	$8.80
District 7	~~$19.25~~	$18.79	~~$7.85~~	$8.80
District 8	~~$19.25~~	$18.79	~~$7.85~~	$8.80
District 9	~~$19.25~~	$18.79	~~$7.55~~	$8.80
District 10	~~$19.25~~	$18.79	~~$7.55~~	$8.80

Travel

All districts	0-30 miles	free
	~~30-50~~	~~$18.00 day~~
	31-60 miles	$3.00/hr
	~~over 50~~	~~$25.00 free day~~
	over 60 miles	$4.80/hr

Pilebuck:

	Wage	Benefits
District 1	$17.04	$8.80
District 2	$17.04	$8.80
District 3	$17.04	$8.80
District 4	$17.04	$8.80
District 5	$17.04	$8.80
District 6	$17.04	$8.80
District 7	$17.04	$8.80
District 8	$17.04	$8.80
District 9	$17.04	$8.80
District 10	$17.04	$8.80

Travel

All districts	0-30 miles	free
	31-60 miles	$3.00/hr
	over 61 miles	$4.80/hr

Plumbers, ~~and~~ pipefitters, and steamfitters:

	Wage		Benefits
District 2	~~$23.41~~	$24.31	$9.43

Sprinklerfitters:

	Wage		Benefits	
District 1	~~$23.25~~	$25.15	~~$10.95~~	$11.00
District 2	~~$23.25~~	$25.15	~~$10.95~~	$11.00
District 3	~~$23.25~~	$25.15	~~$10.95~~	$11.00
District 4	~~$23.25~~	$25.15	~~$10.95~~	$11.00

District 5	~~$23.25~~	$25.15	~~$ 3.57~~	$11.00
District 6	~~$23.25~~	$25.15	~~$ 3.57~~	$11.00
District 7	~~$23.25~~	$25.15	~~$ 2.07~~	$11.00
District 8	~~$23.25~~	$25.15	~~$ 3.99~~	$11.00
District 9	~~$23.10~~	$25.15	~~$ 2.11~~	$11.00
District 10	~~$22.90~~	$25.15	~~$ 2.11~~	$11.00

Stone masons:

	Wage		Benefits	
District 1	~~$23.88~~	$23.28	$8.55	
District 2	~~$23.88~~	$23.28	$8.55	
District 3	$18.00		$1.25	
District 4	$18.00		$1.25	
District 5	~~$18.00~~	$21.80	~~$1.25~~	$8.30
District 6	$18.00		$1.25	
District 7	~~$23.88~~	$21.23	~~$8.55~~	$7.65
District 8	~~$23.88~~	$21.23	~~$8.55~~	$7.65
District 9	~~$23.88~~	$21.23	~~$8.55~~	$7.65
District 10	~~$23.88~~	$21.23	~~$8.55~~	$7.65

Teamsters, group 2:

	Wage	Benefits	
District 1	$16.35	$3.90	
District 2	$16.37	~~$6.22~~	$5.50
District 3	$19.55	$5.50	
District 4	$17.09	$5.50	
District 5	$18.48	$5.50	
District 6	$17.41	$5.50	
District 7	$19.55	$5.50	
District 8	$16.78	~~$7.08~~	$5.50
District 9	$19.55	$5.50	
District 10	$19.55	$5.50	

Tile setters:

	Wage	Benefits
District 1	$20.00	$3.20
District 2	$20.00	$3.20
District 3	$17.00	$8.75
District 4	$17.00	$8.75
District 5	$20.00	$3.20
District 6	$17.00	$8.75
District 7	$17.00	$8.75
District 8	$17.00	$8.75
District 9	$17.00	$8.75
District 10	$17.00	$8.75

Travel

All Districts	0-40 miles	free
	over 40 miles	$60/day

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ DORE SCHWINDEN
Dore Schwinden, Deputy Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified by the Secretary of State October 30, 2006

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

In the matter of the amendment of ARM 37.86.2803, 37.86.2904, 37.86.2907, 37.86.2912, 37.86.2914, 37.86.2916, 37.86.2918, 37.86.3007, 37.86.3020, and 37.86.3105 pertaining to Medicaid reimbursement for inpatient and outpatient hospital services	)	NOTICE OF AMENDMENT

TO: All Interested Persons

1. On August 24, 2006, the Department of Public Health and Human Services published MAR Notice No. 37-391 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 2024 of the 2006 Montana Administrative Register, issue number 16.

2. The department has amended ARM 37.86.2803, 37.86.2904, 37.86.2907, 37.86.2912, 37.86.2914, 37.86.2916, 37.86.2918, 37.86.3007, 37.86.3020, and 37.86.3105 as proposed.

3. The department has thoroughly considered all commentary received. The comments received and the department's response to each follows:

COMMENT #1: Outliers are intended to acknowledge the extraordinary expenses incurred during catastrophic care hospital stays. Additional reimbursement is in no way intended, nor does it cover the cost of this care. It seems punitive to reduce payments to the small number of Montana hospitals who are able to provide this level of care. The department should not alter the outlier payment methodology to save money.

RESPONSE: The department has not altered the outlier payment methodology. Prior to 2002, the department traditionally had a goal of 7% for outlier payments. In August 2002, catastrophic case payments were eliminated. The goal for cost outlier payments was increased to 10% to compensate. Currently, cost outlier thresholds are set for each Diagnosis Related Group (DRG) so that outlier payments will not exceed an average of 10% of the payments. The cost outlier amounts paid have been creeping up to over 18%. The department has been over-reimbursing outlier payments. Medicare aims for a range between 5% and 8%. Medicaid has a target of 10% to add an extra measure of protection.

COMMENT #2: A task team should be authorized to investigate what mechanisms could be designed for those patients who have catastrophic care needs and are in a payor gap of extended inpatient stays while awaiting disability determination or

Medicaid eligibility.

RESPONSE: The department recognizes that this type of patient has needs that are difficult to meet for hospitals, Medicare, Medicaid, and all payors. The department's new RN Hospital Case Manager position will be working with hospital case managers to assure appropriate placement of patients. The department has limited ability to do this until the patient actually becomes Medicaid eligible unless we are authorized to do so by the client. We are willing to work with hospitals who obtain the necessary authorizations. The department is also agreeable to convene a group of interested providers and department personnel to explore further solutions.

COMMENT #3: We support the proposed changes to the rules to coordinate Medicare and Medicaid cost reports and maintenance.

RESPONSE: The department appreciates the support.

COMMENT #4: We do not oppose the routine update and maintenance of the DRG system. However, this is not a budget neutral adjustment. Please specify the amount appropriated for inpatient and outpatient hospital services for fiscal years 2005, 2006, and 2007 and identify any internal allocations or other adjustments that create an internal spending target.

RESPONSE: Out of the Health Resources Division line item appropriation, the department allocated $101,200,000 in SFY 2005, $107,468,000 in SFY 2006, and $109,700,000 in SFY 2007 for all hospital inpatient and outpatient services not including mental health claims. Actual expenditures for SFY 2005 were $103,934,000 and $117,979,000 for SFY 2006. The proposed reduction in overpayment of outliers to DRG facilities of $1.56 million will not bring the entire hospital budget back within the appropriations, but by bringing outliers back to neutral it will assist us, along with other planned changes, in our goal of not overspending our allocation.

COMMENT #5: The department disclosed to hospitals that hospital care exceeds the budget due to out-of-state hospital expenditure increases, increases in provider-based services and implementation of new technology to pay claims. The Montana Hospital Association (MHA) and member hospitals have been working with the department over the past several months to identify areas of spending concern and services with the potential to reduce cost growth spending.

RESPONSE: The department thanks MHA and the member hospitals for the efforts they have made to help the department identify issues and solutions. Out-of-state expenditures, provider-based services, and new technology in claim payment were only some of the issues identified by the department. The increased percentage of outlier payments from an original goal of 10% to the actual payment of 18% is also an issue that needed to be addressed. The department has taken conversations and information on the other issues identified into consideration and is addressing out-of-state reimbursement and other issues in upcoming rule changes.

COMMENT #6: We are concerned about the department's action to reduce outlier payments from 18% of payments to 10% of payments. Outlier funds are created by reducing the base payment amount paid for all DRG cases. We recommend that the department increase the base price amount and reduce the outlier payment to not change the current payment amounts. In addition, the department made other reductions in recent years to eliminate payments for catastrophic cases, stating that those cases were funded from money set aside from the base price but are now gone. The base price has shrunk making it appear that more cases have higher than normal charges.

RESPONSE: There is not a separate fund for outlier payments created by base price. Outliers are a percentage of hospital payments based on charges submitted by the hospitals to the department. The base price has not shrunk. However, the department acknowledges that the percentage of costs paid through the hospital payment system has decreased. This is somewhat mitigated by additional payments made as a result of the hospital utilization fee. The department raised the base price from $1980 to $2037 in January 2006, to $2118 in July 2006, and is leaving it at $2118 in October 2006.

The previous outlier payments of 18% to facilities were an overpayment by the department not in keeping with our goal of 10%. There are more cases with higher charges. Based on 2005 data because of increased charges by hospitals, the payment amount for outliers has increased to 18%. As noted in response to comment #4 above, the department overspent its allocation for hospitals in SFY 2005. In order to meet budget goals, the department cannot sustain an 8% increase in payments from the expenditure goals. The department has drafted a proposed rule change to out-of-state hospital reimbursement for January 1, 2007 that will add additional savings to the anticipated over-expenditure of the budget.

The department has never had reserve funding for catastrophic cases. Prior to 1997, the department had a separate cap on spending for catastrophic cases, but did not have a separate pool of funding for these cases.

COMMENT #7: The department is creating a considerable disincentive for hospitals to accept patients with special treatment needs that cannot be discharged to lower care settings. The department needs to address the problem of high cost patients by better case management and placing patients in the correct treatment setting.

RESPONSE: The department has hired an RN Hospital Case Manager for the hospital program to address these issues.

COMMENT #8: A commentor states Medicaid costs covered by DRG payments has eroded from full costs paid in the 1980s to about 72% of costs this year.

RESPONSE: The department acknowledges that DRG payments cover only 72% of costs. Through the enactment of the hospital utilization fee in 2004, hospitals

receive in aggregate the full cost of treating Medicaid clients.

/s/ John Koch for
Rule Reviewer

/s/ John Chappuis for
Director, Public Health and Human Services

Certified to the Secretary of State October 30, 2006.

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 or Register) 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

2. Go to cross reference table at end of each Number and title which lists MCA section numbers and Department 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 March 31, 2006. This table includes those rules adopted during the period April 1 through June 30, 2006 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 or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2006, 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 2006 Montana Administrative Register.

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

ADMINISTRATION, Department of, Title 2

I	Retention of Credit Union Records, p. 1759
I-VIII	Montana Land Information Act, p. 950, 1864
I-X	Definitions - Licensing and Application Requirements - Ownership Change - Examination of Title Lenders - Duration of Loans - Extensions - Reports - Schedule of Charges - Employees' Character and Fitness - Procedural Rules for Hearing and Discovery Proposed for Adoption under the Montana Title Loan Act, p. 1125, 1334, 1839, 883
2.21.3702	and other rules - Recruitment and Selection Policy, p. 1482
2.21.6505	and other rules - Discipline Handling, p. 1923, 2565
2.55.320	and other rule - Classifications of Employments - Individual Loss Sensitive Dividend Plans, p. 2440
2.59.111	Retention of Bank Records, p. 1762
2.59.307	Dollar Amounts to Which Consumer Loan Rates are to be Applied, p. 373, 1138
2.59.801	and other rules - Foreign Capital Depositories, p. 2130, 205
2.59.1409	Duration of Loans - Interest - Extensions, p. 1099, 1866
2.59.1501	and other rules - Definitions - Application Procedure Required to Engage in Deposit Lending - Reports - Schedule of Charges - Employees' Character and Fitness - Electronic Deductions - Income Verification, p. 375, 614, 1373
2.59.1705	and other rule - Licensing Examination and Continuing Education Provider Requirements - Records to be Maintained, p. 1498, 2104

(State Lottery Commission)

2.63.201 and other rules - State Lottery's Procedures - Retailers, Licensing, Scratch Tickets and Prizes, p. 1, 526, 1040

(Office of the State Public Defender)

I-VI Office of the State Public Defender, p. 2068, 2572

AGRICULTURE, Department of, Title 4

I-IV Montana Pulse Crop Research and Market Development Program, p. 1977, 2403

4.5.313 and other rule - Noxious Weed Seed Free Forage, p. 812, 1246

4.6.202 Potato Assessment Fees, p. 380, 889

4.11.1201 and other rule - Specific Agricultural Ground Water Management Plan, p. 1765, 2109

4.12.3009 and other rule - Seed Laboratory Fees, p. 1929, 2129

4.13.1001A State Grain Laboratory Fees, p. 1193, 1731

STATE AUDITOR, Title 6

6.6.3504 Contents of Annual Audited Financial Report, p. 273

6.6.5203 Small Business Health Insurance Purchasing Pool - Premium Assistance and Premium Incentive Payments - Tax Credits, p. 1502, 1954

6.6.6811 and other rules - Captive Insurance Companies, p. 861, 2448, 321

6.6.8301 Updating References to the NCCI Basic Manual for New Classifications Affecting the Aviation Industry, p. 1334

COMMERCE, Department of, Title 8

I Administration of the 2006-2007 Federal Community Development Block Grant (CDBG) Program, p. 2133, 890

(Montana Coal Board)

8.101.101 and other rules - Community Development Division - Administration of Coal Board Grants, p. 816, 1378

(Board of Housing)

8.111.409 Cash Advances Made to Borrowers or Third Parties, p. 1102, 1732

EDUCATION, Title 10

(Board of Public Education)

10.54.5010 and other rules - Science Content Standards - Performance Descriptors, p. 2175

10.55.603 and other rule - Assessment, p. 113

10.55.701 and other rules - Accreditation Standards, p. 2488, 755
10.58.102 and other rules - Educator Preparation Programs, p. 2198
10.65.101 Pupil Instruction-related Days, p. 1769, 2404

(Montana State Library)
10.102.1151 and other rules - Public Library Standards, p. 2491, 1571
10.102.4001 Reimbursement to Libraries for Interlibrary Loans, p. 1197, 2405

FISH, WILDLIFE, AND PARKS, Department of, Title 12

(Fish, Wildlife, and Parks Commission)
I Annual Lottery of Hunting Licenses, p. 2503, 669
12.6.2205 and other rules - Exotic Species, p. 1771, 1935
12.8.211 and other rules - Commercial Use of Lands under the Control of the Department, p. 1779
12.9.802 and other rules - Game Damage Hunts - Management Seasons - Game Damage Response and Assistance, p. 1105, 1201, 1867
12.11.501 List of Water Bodies (Index Rule), p. 2285, 675

ENVIRONMENTAL QUALITY, Department of, Title 17

I-XVIII Methamphetamine Cleanup Program - Decontamination of Inhabitable Property Contaminated by Clandestine Manufacture of Methamphetamine, p. 142, 1042
17.50.201 and other rule - Motor Vehicle Recycling and Disposal- Motor Vehicle Wrecking Facility License, p. 2506, 758
17.50.213 Motor Vehicle Recycling and Disposal - Reimbursement Payments for Abandoned Vehicle Removal, p. 2444
17.53.105 Hazardous Waste - Incorporation by Reference of Current Federal Regulations into the Hazardous Waste Program, p. 2288
17.56.101 and other rules - Underground Storage Tanks, p. 115, 913
17.74.343 and other rules - Asbestos Control - Asbestos Control Program, p. 125, 1574, 1876
17.74.350 and other rules - Asbestos Control - Incorporation by Reference of Current Federal Regulations into the Asbestos Control Program - Definitions - Asbestos Project Control Measures, and Clearing Asbestos Projects, p. 2291
17.74.502 and other rules - Methamphetamine Cleanup Program - Incorporation by Reference of Current Federal Regulations into the Methamphetamine Cleanup Rules and Clearance Sampling, p. 2285
17.85.101 and other rules - Alternative Energy Revolving Loan Program, p. 1678

(Board of Environmental Review)
I Solid Waste - State Solid Waste Management and Resource Recovery Plan, p. 2016, 909
17.8.101 and other rules - Incorporation by Reference of Current Federal Regulations and Other Materials into Air Quality Rules, p. 823, 1956

17.8.501 and other rules - Air Quality - Definitions - Air Quality Operation Fees - Open Burning Fees, p. 1504, 2410
17.8.504 and other rules - Air Quality - Establishing a Registration System for Certain Facilities That Presently Require an Air Quality Permit, p. 2513, 893
17.8.740 and other rules - Air Quality - Definitions - Incorporation by Reference - Mercury Emission Standards - Mercury Emission Credit Allocations, p. 1112, 2575
17.24.116 Application Requirements for Operating Permit, p. 1649, 2544, 154
17.30.617 and other rule - Water Quality - Outstanding Resource Water Designation for the Gallatin River, p. 2294
17.30.630 Water Quality - Temporary Water Quality Standards, p. 1981
17.30.670 and other rules - Water Quality - Nondegradation Requirements for Electrical Conductivity (EC) and Sodium Adsorption Ratio (SAR) - Definitions for Technology-based Effluent Limitations - Minimum Technology-based Controls - Treatment Requirements for the Coal Bed Methane Industry, p. 1844, 2288, 1247, 1733
17.30.1303 and other rules - Water Quality - Concentrated Animal Feeding Operations (CAFOs) - Adoption of Department Circular DEQ 9 (Montana Technical Standards for CAFOs), p. 2962, 864, 1995, 532

(Board of Environmental Review and the Department of Environmental Quality)
17.24.132 and other rules - Air Quality - Asbestos - Hazardous Waste - Junk Vehicles - Major Facility Siting - Metal Mine Reclamation - Opencut Mining - Public Water Supply - Septic Pumpers - Solid Waste - Strip And Underground Mine Reclamation - Subdivisions - Underground Storage Tanks - Water Quality - Revising Enforcement Procedures Under the Montana Strip and Underground Mine Reclamation Act, Metal Mine Reclamation Laws, and Opencut Mining Act - Providing Uniform Factors for Determining Penalties, p. 2523, 1139, 1379, 1874
17.30.502 and other rules - Water Quality - Subdivisions - CECRA - Underground Storage Tanks - Department Circular WQB-7 - Outstanding Resource Waters, p. 1957, 528
17.36.345 and other rules - Public Water and Sewage System Requirements and Subdivisions - Adoption by Reference, Plans for Public Water Supply or Wastewater System - Fees - Treatment Requirements - Disinfection, p. 2002, 540

(Petroleum Tank Release Compensation Board)
17.58.326 and other rule - Applicable Rules Governing the Operation and Management of Petroleum Storage Tanks and Review of Claims, p. 1202, 1734

TRANSPORTATION, Department of, Title 18

18.6.202 and other rules - Transportation Commission - Outdoor Advertising, p. 276, 1878

18.8.101 and other rules - Motor Carrier Services Regulations for Over Dimensional and Overweight Vehicles and Loads, p. 2142, 206
18.8.1501 and other rules - Incorporation of Amendments to Federal Regulations Pertaining to Motor Vehicle Standards - General Revisions to Clarify Scope of Rules, p. 617, 1160
18.9.704 Definitions for Motor Fuels, p. 14, 676

CORRECTIONS, Department of, Title 20

20.9.101 and other rules - Youth Placement Committees - Juvenile Detention Intervention Program (JDIP), p. 831
20.9.601 and other rules - Licensure of Youth Detention Facilities, p. 1722, 2665, 677

JUSTICE, Department of, Title 23

I-V Credit Counseling Services, p. 2373, 207
2.61.101 and other rules - Consumer Protection Office - Transfer from the Department of Administration, p. 322
23.12.103 and other rules - Responsibility for Costs - Criminal History Records Program, p. 2477
23.16.101 and other rules - Accounting System Vendor License Fee - General Specifications of Approved Automated Accounting and Reporting Systems - Modification of Approved Automated Accounting and Reporting Systems - System May Not be Utilized for Player Tracking - Testing of Automated Accounting and Reporting Systems - Application to Utilize an Approved System - Continuation of Use of System When Vendor License Lapses - Definitions for Vendors and System Licensing of System Vendors - Information to be Provided to Department - Testing Fees, p. 1206, 1735
23.16.1802 and other rules - Frequency of Reporting by Approved Accounting Systems - Definitions - Letters of Withdrawal - Record Keeping Requirements, p. 2297
23.16.1802 and other rules - Identification Decal for Video Gambling Machines - Define System Availability - Definitions - Online Permitting for Video Gambling Machines - Issuance of Updated Gambling Operator Licenses After Permitting - Renewal of Gambling Operator Licenses - Quarterly Reporting Requirements - Accounting System Vendor License Fee - Requirement for Parties to Multi-game Agreements to Connect to an Approved System, p. 1936, 2131
23.17.101 and other rules - MLEA Attendance - MLEA Performance Criteria, p. 2302
23.17.101 and other rules - MLEA Attendance - MLEA Performance Criteria - Rules, Regulations, Policies, and Procedures - Waiver of Rules, p. 1690

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

(Board of Architects)

24.114.301 and other rules - Definitions - General Provisions - Licensing - Renewals - Unprofessional Conduct - Screening Panel - Complaint Procedure, p. 620, 1381

(Board of Athletics)

24.117.301 and other rules - Definitions - General Provisions - Contest Regulations - Boxing Regulations - Ring Regulations - Boxing Officials - Club Boxing - Promoter - Bout Approval - Referee - Fee Abatement - Suspension and Revocation - Mixed Martial Arts, p. 157, 1161

(Board of Barbers and Cosmetologists)

24.121.301 and other rules - Definitions - Fees - Variances - Applications for Licensure - Out-of-State Applicants - School Requirements - School Operating Standards - Student Withdrawal, Transfer, or Graduating - Teacher-Training Curriculum - Continuing Education-Instructors/Inactive Instructors - Unprofessional Conduct - Fee Abatement - Continuing Education-Licensees/Inactive Licensees - Field Trips, p. 629, 1383

(Board of Chiropractors)

24.126.301 and other rules - Definitions - Fee Schedule - Licensing and Scope of Practice - Licensing and Board Specific Rules - Impairment Evaluators - Renewals-Continuing Education Requirements - Unprofessional Conduct - Fee Abatement - Participation in Disaster and Emergency Care-Liability of Chiropractor, p. 845, 1609

(Crane and Hoisting Operating Engineers Program)

I Incorporation by Reference of ANSI B30.5, p. 1509, 2042

24.135.501 and other rules - Hoisting Operators License Requirements - Crane Hoisting Operators License Requirements - Mine Hoisting Operators License Requirements - Fee Schedule - Renewals - National Commission Certification - Failed Examinations - Applications - Citations and Fines, p. 1871, 219

(Board of Dentistry)

24.138.301 and other rules - General Provisions - Licensing - Renewals and Continuing Education - Unprofessional Conduct - Screening Panel - Anesthesia - Professional Assistance Program - Reactivation of a Lapsed License - Reactivation of an Expired License - Definition of Nonroutine Application - Fee Abatement - Reinstatement of License for Nonpayment of Renewal Fee - Denturist License Reinstatement - Complaint Procedure, p. 1795

(State Electrical Board)

24.141.405 and other rules - Fee Schedule - Continuing Education - Licensee Responsibilities - Fee Abatement, p. 17, 1278, 1612

(Board of Funeral Service)

24.147.302 and other rules - Definitions - Substantive Rules - Licensing - Mortuary Requirements - Crematory Rules - Cemetery Regulation Rules - Branch Facilities - Prearranged Funeral Agreements - Continuing Education - Complaint Filing - Fee Abatement - Renewal of Cemetery Licenses - Cemetery Authority Rules, p. 642, 1169

(Board of Medical Examiners)

I & II Medical Assistants - Fee Abatement, p. 1882, 2676, 759

I-IX Professional Assistance Program, p. 1015, 1957

24.156.1601 and other rules - Physician Assistant Licensure, p. 483, 1958

(Board of Nursing)

8.32.301 and other rules - Nursing, p. 956, 2035

(Board of Occupational Therapy Practice)

24.165.401 and other rule - Fees - Fee Abatement, p. 495, 1049

24.165.404 and other rules - Application for Licensure - Examinations - Continuing Education, p. 710, 1614

(Board of Optometry)

24.168.301 and other rules - Definitions - General Provisions - Diagnostic Permissible Drugs - Therapeutic Pharmaceutical Agents - Continuing Education - Screening Panel - Fee Abatement - Examinations - Approved Courses and Examinations - New Licensees - Applicants for Licensure - Therapeutic Pharmaceutical Agents-Complaint Procedure, p. 2450

(Board of Outfitters)

8.39.501 and other rules - Outfitter Licensing and Operations - Transfer from the Department of Commerce, p. 1549, 324

(Board of Pharmacy)

24.174.301 and other rules - Definitions - General Provisions - Licensing - Internship Regulations - Pharmacy Technicians - Certified Pharmacies - Mail Service Pharmacies - Institutional Pharmacies - Wholesale Drug Distributors Licensing - Dangerous Drugs - Renewals and Continuing Education - Screening Panel - Inactive License - Telepharmacy Operations - Remote Telepharmacy Dispensing Machine Sites - Central Filling by Hub Pharmacies - Ambulatory Surgical Facilities - Fee Abatement, p. 23, 1615

24.174.401 and other rule - Fees - Dangerous Drug Fee Schedule, p. 1814, 2134

(Board of Physical Therapy Examiners)

24.177.401 Fees, p. 2376, 225

(Board of Plumbers)

24.180.607 and other rule - Temporary Practice Permits - Continuing Education Requirements, p. 893, 2460, 764

(Board of Private Security Patrol Officers and Investigators)

8.50.423 and other rules - Private Security Patrol Officers and Investigators - Fee Schedule - Firearms Training Course Curriculum and Standards, p. 605, 1926

24.182.401 and other rules - Fee Schedule - Licensure Requirements - Type of Firearm - Requirements for Firearms Instructor Licensure - Armed Requalification Required Annually - Company Licensure and Branch Offices - Rules for Branch Office, p. 1710

(Board of Professional Engineers and Professional Land Surveyors)

24.183.404 and other rules - Fee Schedule - License Seal - Classification of Experience for Engineering Applicants - Continuing Education - Safety, Health, and Welfare of the Public - Classification of Experience - Branch Offices - Fee Abatement, p. 303, 1630

24.183.2101 and other rule - Expiration of License - Renewal - Expired Certificate - Renewal Grace Period, p. 713, 1633

(Board of Psychologists)

24.189.301 and other rules - Definitions - Fee Schedule - Use of Title - Required Supervised Experience, p. 2461

(Board of Radiologic Technologists)

24.204.208 and other rules - Applications - Limited Permit Applications - Types - Permits - Practice Limitations - Permit Examinations - Renewal - Proof of Good Standing, p. 1819, 2659

24.204.401 and other rules - Fee Schedule - Limited Permit Holder Fees - Continuing Education - Unprofessional Conduct, p. 2314

(Board of Real Estate Appraisers)

24.207.401 and other rules - Fees - Licensing - Continuing Education - Renewals, p. 52, 765, 919

24.207.505 and other rules - Qualifying Education Requirements for Licensed Real Estate Appraisers - Qualifying Education Requirements for Residential Certification - Qualifying Education Requirements for General Certification - Trainee Requirements, p. 716, 1634

(Board of Realty Regulation)

24.210.602 Examination, p. 1824

24.210.667 and other rule - Continuing Real Estate Education - New Licensee Mandatory Continuing Education for Salespersons, p. 2546, 1171

(Board of Respiratory Care Practitioners)

24.213.402 and other rule - Application for Licensure - Examination, p. 1716, 2660

(Board of Sanitarians)
24.216.402 Fee Schedule, p. 61, 1051

(Board of Speech-Language Pathologists and Audiologists)
24.222.301 and other rules - Definitions - Fees - Licensing and Scope of Practice - Speech Pathology and Audiology Aides - Continuing Education - Unprofessional Conduct - Fee Abatement - Licensure of Speech-Language Pathologists and Audiologists, p. 1337, 2413

(Board of Veterinary Medicine)
24.225.301 and other rule - Definitions - Out-of-State Licensure Endorsement - Occasional Case Exemption - Fee Abatement, p. 64, 766

LIEUTENANT GOVERNOR, Office of the, Title 30

30.2.201 and other rules - Centennial Grants - Centennial Sanctioning, p. 1358, 226

LIVESTOCK, Department of, Title 32

32.2.401 and other rules - License Fees - Permit Fees - Miscellaneous Fees, p. 853, 1282
32.2.403 Diagnostic Laboratory Fees, p. 1359, 1882
32.6.701 and other rules - Animal Feeding, Slaughter, and Disposal, p. 657, 1021, 1283

(Board of Milk Control)
32.24.513 Computation of Price for Quota Milk and Excess Milk, p. 2551, 330

(Board of Horse Racing)
32.28.501 and other rule - Horse Racing, p. 194, 680
32.28.505 Purse Disbursement, p. 860, 1284

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

I Specifying Deadline for Water Rights Adjudication Fee Appeals under Adjudication Fee, p. 197, 767
36.11.304 and other rules - Equipment Operation in the SMZ - Retention of Trees and Clearcutting in the SMZ - Site-specific Alternative Practices - Definitions - Penalties for Violation of the Streamside Management Zone Law, p. 499, 1883
36.12.101 Municipal Use of Water, p. 2316, 199, 1387
36.21.415 Fee Schedule for Water Well Contractors, p. 720, 1177

(Board of Oil and Gas Conservation)
36.22.1242 Privilege and License Tax Rates on Oil and Gas, p. 1827, 2110

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37.104.101 and other rules - Emergency Medical Services, p. 1238, 2681, 229
37.106.1946 and other rules - Outpatient Crisis Response Facilities, p. 2428, 1023, 1285
37.108.507 Components of Quality Assessment Activities, p. 520, 1642
37.111.825 School Health Supervision and Maintenance, p. 2555, 667, 1296
37.112.101 and other rules - Tattooing and Body Piercing, p. 2339
37.114.101 and other rules - Control of Communicable Diseases, p. 1512, 2112

PUBLIC SERVICE REGULATION, Department of, Title 38

38.5.2001 and other rules - Energy Standards for Public Utilities, p. 878, 1461
38.5.2202 and other rules - Pipeline Safety - National Electrical Safety Code, p. 2372
38.5.2202 and other rule - Pipeline Safety, p. 2323, 231
38.5.3301 and other rules - Telecommunications Service Standards, p. 1844
38.5.4111 InterLATA and IntraLATA PIC Change Charges, p. 2440, 232

REVENUE, Department of, Title 42

I & II Hospital Utilization Fee for Inpatient Bed Days, p. 2562
I & II Gains Calculations - Voluntary Disclosure, p. 314, 921
I-VI Movie and Television Industries and Related Media - Tax Credit, p. 1564, 1960
I-VI Issuance of Administrative Summons by the Department, p. 2635, 312, 681
42.2.304 Montana Source Income - Economic Impact Statement, p. 2443, 340
42.4.201 and other rules - Alternative and Wind Energy Credits, p. 2641, 357
42.18.107 and other rules - General Provisions and Certification Requirements for Appraising Property, p. 2520
42.19.401 and other rules - Low Income Property - Disabled Veterans Tax Exemptions - Energy Related Tax Incentives - New Industrial Property, p. 2555
42.20.100 and other rules - Valuation of Real Property - Classification of Nonproductive Patented Mining Claims, Agricultural Land, and Forest Land, p. 2533
42.20.106 and other rule - Manufactured and Mobile Homes, p. 1238, 1961
42.21.113 and other rules - Personal, Industrial, and Centrally Assessed Property Taxes, p. 2375
42.21.116 and other rules - Personal Property, p. 2529
42.21.158 Property Reporting Requirements, p. 1235, 1962
42.31.102 and other rules - Tobacco Products and Cigarettes, p. 1943

SECRETARY OF STATE, Title 44

44.2.203 Priority Handling of Documents, p. 1569, 2138
44.3.101 and other rules - Elections, p. 2077, 2671
44.3.2203 Absentee and Mail Ballot Voting, p. 1242, 1741

(Commissioner of Political Practices)
44.12.204 Payment Threshold--Inflation Adjustment for Lobbyists, p. 2400