

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 1

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 Services, at (406) 444-2055.

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BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
amendment of ARM 8.99.901,) ON PROPOSED AMENDMENT
8.99.904, 8.99.908, and 8.99.912)
pertaining to the award of grants and)
loans under the Big Sky Economic)
Development Program)

TO: All Concerned Persons

1. On February 20, 2007, at 1:30 p.m., the Department of Commerce will hold a public hearing in Room 228 of the Park Avenue Building, 301 South Park Avenue, at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. 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., February 13, 2007, to advise us of the nature of the accommodation that you need. Please contact Angela Nelson, Business Resources Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505; telephone (406) 841-2792; fax (406) 841-2731; or e-mail anelson@mt.gov.

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

8.99.901 DEFINITIONS (1) through (9) remain the same.

(10) "Eligible economic development organization" means an economic development organization that is located in a county that is not part of a certified regional development corporation region, and which meets the eligibility requirements established by the department and published by it in the Big Sky Economic Development Trust Fund Application Guidelines dated ~~2006~~ 2007.

(11) through (18) remain the same.

AUTH: 90-1-204, MCA

IMP: 90-1-204, MCA

8.99.904 INCORPORATION BY REFERENCE OF RULES GOVERNING SUBMISSION AND REVIEW OF APPLICATIONS (1) The department adopts and incorporates by reference the Big Sky Economic Development Trust Fund Application Guidelines dated ~~2006~~ 2007 as rules governing the submission and review of applications under the program. A copy of the guidelines may be obtained from the Department of Commerce, P.O. Box 200505, Helena, MT 59620-0505.

(2) remains the same.

AUTH: 90-1-204, MCA
IMP: 90-1-204, MCA

8.99.908 MAXIMUM AWARD AMOUNT (1) through (3) remain the same.

(4) Maximum award amounts to certified regional development corporations and other eligible economic development organizations shall be established and published by the department in the Big Sky Economic Development Trust Fund Application Guidelines dated ~~2006~~ 2007.

AUTH: 90-1-204, MCA
IMP: 90-1-204, MCA

8.99.912 ELIGIBLE BUSINESS (1) Basic sector businesses and other businesses identified by the department in the Big Sky Economic Development Trust Fund Application Guidelines dated ~~2006~~ 2007 are eligible for financial assistance from funds that are awarded to local governments under this program.

AUTH: 90-1-204, MCA
IMP: 90-1-204, MCA

REASON: 17-5-703 and 90-1-201, MCA, et seq. created the Big Sky Economic Development Fund and assigned the administration of the fund to the Department of Commerce. The department is proposing these amendments to reflect the updated 2007 Guidelines. The Big Sky Economic Fund program is an economic development program that aides in the development of good-paying jobs for Montana residents and promotes long-term, stable economic growth in Montana. Amendments are also reasonably necessary because the legislature mandated that the department adopt rules to implement the Big Sky Economic Development Program in 90-1-204, MCA.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Angela Nelson, Business Resources Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505, fax (406) 841-2731, or e-mail anelson@mt.gov, to be received no later than February 27, 2007.

5. Marty Tuttle, Department of Commerce, has been designated to preside over and conduct the hearing.

6. The department 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 for which program the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Commerce, 301 South Park Avenue, P.O. Box

200501, Helena, Montana 59620-0501, by fax to (406) 841-2701, by e-mail to lgregg@mt.gov, or by completing a request form at any rules hearing held by the department.

7. An electronic copy of this Notice of Proposed Amendment is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the 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 Secretary of State works 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.

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

/s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE
Rule Reviewer

/s/ ANTHONY J. PREITE
ANTHONY J. PREITE
DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State January 2, 2007.

BEFORE THE BOARD OF BARBERS AND COSMETOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.121.407 premises and general) ON PROPOSED AMENDMENT
requirements and 24.121.1505 restrooms)

TO: All Concerned Persons

1. On February 1, 2007, at 10:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment 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 Barbers and Cosmetologists (board) no later than 5:00 p.m., on January 26, 2007, to advise us of the nature of the accommodation that you need. Please contact Andy Verbanac, Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2335; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail dlibsdcos@mt.gov.

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

24.121.407 PREMISES AND GENERAL REQUIREMENTS (1) The premises of all salons, shops₁ and schools must be kept clean, sanitary₁ and in a safe condition at all times.

(2) No services connected with a salon, shop₁ or school can be conducted in any room used as living or sleeping quarters.

(3) No other business can be conducted in a salon, shop₁ or school, except those regulated by the board or related to the industries regulated by the board, unless separated by a full-length partition.

(4) If there is another salon, shop₁ and school connected to a salon, shop₁ or school, there must be a door between the establishments that must remain closed during business hours.

(5) Salons, shops₁ and schools must provide direct entry into the salon, shop₁ or school from a public access area.

(6) Furniture must be kept clean, sanitary₁ and in a safe condition at all times.

(7) remains the same.

(8) Food must not be prepared and sold or stored in a salon, shop, school₁ or booth. Beverages that are prepared beyond the addition of water are prohibited.

The following exceptions apply:

(a) remains the same.

(b) items dispensed from vending machines if the machines comply with federal, state, and local laws; or

(c) if the salon, shop, or school is licensed as a food purveyor in accordance and in compliance with all state and county regulations.

(9) Single service disposable drinking cups must be available for client use unless the salon, shop, or school is licensed as a food purveyor as above.

~~(10) Alcoholic beverages are prohibited in a salon, shop or school, except where permitted in accordance with the state regulations of the Department of Revenue.~~

~~(11)~~ (10) If a blood spill should occur, the licensee, student, or cadet instructor shall follow the blood spill procedure adopted by the National Interstate Council of State Boards of Cosmetology (NIC). The board adopts and incorporates by reference the blood spill procedure as adopted by NIC, August 1998. A copy of the blood spill procedure is available at the board offices, 301 South Park Avenue, P.O. Box 200513, Helena, MT 59620-0513.

~~(12)~~ (11) The NIC blood spill procedure must be posted in all salons, shops, and schools.

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-31-204, 37-31-311, MCA

REASON: The board finds it reasonably necessary to amend this rule and eliminate (10) as the regulation of the sale and service of alcohol falls under the jurisdiction of the Montana Department of Revenue. After discussion with department legal counsel, the board concluded that it is not necessary for the board to duplicate such regulation. In addition, punctuation is being amended throughout to comply with ARM formatting requirements.

24.121.1505 RESTROOMS (1) At least one restroom with a hand washing basin must be located on or near the premises of the salon or shop. ~~Every salon, shop and school must provide a restroom, including a hand washing basin.~~

~~(a) The restroom must be located within the new salon, shop or school. A restroom located in another part of the building that houses the salon, shop or school is not sufficient for the purpose of this rule.~~

~~(b) Following a change in ownership or location of an existing salon, shop or school, a restroom must be provided within the new salon, shop or school, or a variance requested from the board.~~

~~(c)~~ (a) In a residential salon or shop, clients shall not walk through any living area of the residence to access the restroom.

(2) Hand washing signage ~~instructions directing individuals to wash their hands before returning to work~~ must be posted in each restroom.

~~(3) A restroom must be completely enclosed by walls, door and ceilings.~~

~~(a)~~ (3) Restroom fixtures must be maintained in a clean, sanitary and safe condition at all times.

(4) remains the same.

~~(5) All restrooms must have mechanical ventilation.~~

~~(6)~~ (5) Single service sanitary towels or a workable hot an air dryer blower is required.

(7) and (8) remain the same but are renumbered (6) and (7).

AUTH: 37-1-131, 37-31-203, 37-31-204, MCA

IMP: 37-31-204, MCA

REASON: The board determined it is reasonably necessary to amend this rule to address issues continually coming before the board and to update the rule for current industry terminology and regulatory requirements. The board is eliminating the requirement for a restroom to be within the confines of a salon or shop and instead requires a restroom to be located near the salon or shop. Salon and shop owners continuously bring to the board requests for variances from the on premises restroom requirement. The board determined that requiring a restroom near the premises will adequately address public concerns. The board is deleting the school restroom requirement from this rule as it is addressed in ARM 24.121.803. The board is amending (2) after concluding that requiring hand washing signage to state that individuals must wash their hands is redundant and unnecessary. The board is proposing to delete (3) as the requirement for restroom walls and doors falls under the guidelines of the department's building standards program. The board is removing the restroom ventilation requirement in conjunction with the amendment of (1) since the restroom may not be owned or under direct control of the salon or shop owner. Terminology is being amended in (6) as single service towels are considered sanitary and all air dryers do not operate with heated air.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to dlibsdcos@mt.gov, and must be received no later than 5:00 p.m., February 9, 2007.

5. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.cosmetology.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.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name

and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Barbers and Cosmetologists administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Barbers and Cosmetologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2323, e-mailed to dlibsdcos@mt.gov, or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.
8. A department attorney will be assigned to preside over and conduct this hearing.

BOARD OF BARBERS AND
COSMETOLOGISTS
WENDELL PETERSEN, PRESIDING OFFICER

/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 January 2, 2007

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed repeal of	)	NOTICE OF PROPOSED REPEAL
ARM 24.156.901 fees, 24.156.902)	
applications, 24.156.903 approval of)	
schools, 24.156.904 reciprocity licenses,	)	NO PUBLIC HEARING
and 24.156.905 renewals pertaining to	)	CONTEMPLATED
osteopathic physicians)	

TO: All Concerned Persons

1. On February 16, 2007, the Board of Medical Examiners (board) proposes to repeal 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 the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., on February 2, 2007, to advise us of the nature of the accommodation that you need. Please contact Jeannie Worsech, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsmed@mt.gov.

3. The rules proposed to be repealed are as follows:

24.156.901 FEES found at ARM page 24-15171.

AUTH: 37-1-134, MCA
IMP: 37-5-302, 37-5-303, 37-5-307, MCA

24.156.902 APPLICATIONS found at ARM page 24-15171.

AUTH: 37-3-203, MCA
IMP: 37-5-301, MCA

24.156.903 APPROVAL OF SCHOOLS found at ARM page 24-15171.

AUTH: 37-3-203, MCA
IMP: 37-5-302, MCA

24.156.904 RECIPROCITY LICENSES found at ARM page 24-15171.

AUTH: 37-3-203, MCA
IMP: 37-5-303, MCA

24.156.905 RENEWALS found at ARM page 24-15172.

AUTH: 37-3-203, MCA

IMP: 37-5-307, MCA

REASON: The board determined there is reasonable necessity to repeal ARM 24.156.901 through 24.156.905 as section 32, chapter 224, L. 2003 (Senate Bill 109) repealed the remaining statutes regarding osteopathy. These rules are no longer necessary because osteopathic physicians are regulated under general medical licensing statutes found in Title 37, chapter 3, MCA, and the administrative rules implementing the statutes.

4. Concerned persons may submit their data, views, or arguments concerning the proposed rules in writing to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsmed@mt.gov, to be received no later than 5:00 p.m., February 9, 2007.

5. If persons who are directly affected by the proposed rules wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsmed@mt.gov. The comments must be received no later than February 9, 2007.

6. If the board receives requests for a public hearing on the proposed rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rules; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 0 persons based on there are no licensed osteopathic physicians in Montana.

7. An electronic copy of this Notice is available through the department and board's site on the World Wide Web at <http://www.medicalboard.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 Medical Examiners maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the Board of Medical Examiners. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Medical Examiners administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdmed@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.

BOARD OF MEDICAL EXAMINERS
MICHAEL D. LAPAN, DPM, PRESIDENT

/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 January 2, 2007

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
AND THE BOARD OF MEDICAL EXAMINERS
STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PROPOSED
of ARM 24.101.413 renewal dates and) AMENDMENT
requirements, and 24.156.615 renewals)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On February 16, 2007, the Department of Labor and Industry and the Board of Medical Examiners propose to amend 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 the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Medical Examiners (board) no later than 5:00 p.m., on February 2, 2007, to advise us of the nature of the accommodation that you need. Please contact Jeannie Worsech, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsmed@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The department and the board are proposing to amend rules pertaining to licensure renewal frequency within one notice to reduce costs associated with rulemaking and to ensure the changes are effective prior to the next renewal cycle for physicians. Consolidating the board and department rule changes into one notice will avoid a conflict between department and board rules on renewal frequency.

The department and board determined there is reasonable necessity to amend ARM 24.101.413 and 24.156.615 to allow more time to accommodate internal administrative and technical constraints regarding online renewal of physician licenses and to align board and department rules regarding renewal frequency. In addition, a gender specific reference is being replaced with a gender neutral term.

4. The department is proposing to amend the following rule. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(q) remain the same.

(r)		Acupuncturist	Biennially	October 31
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	Medical Examiners	Emergency Medical Technician	Biennially	March 31
		Nutritionist	Biennially	October 31
		Physician	Biennially <u>Annually</u>	March 31
		Physician Assistant	Biennially	October 31
		Podiatrist	Biennially	October 31
		Telemedicine Practitioners	Biennially	March 31

(s) through (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA

IMP: 37-1-101, 37-1-141, MCA

5. The board is proposing to amend the following rule. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.156.615 RENEWALS (1) remains the same.

(2) Beginning with the ~~2007~~ 2008 renewal cycle, one-half of the licensees will renew for a period of one year.

(a) through (4) remain the same.

(5) A physician with a permanent license not engaged in the practice of medicine and who has retired from practice may renew ~~his~~ this license as an inactive-retired licensee and pay the fee listed in ARM 24.156.601. A retired license may not be reactivated. The individual must reapply for a new original license.

(6) remains the same.

AUTH: 37-1-134, 37-1-141, 37-3-203, MCA

IMP: 37-1-134, 37-1-141, 37-3-313, MCA

6. Concerned persons may submit their data, views, or arguments concerning the proposed rules in writing to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsmed@mt.gov, to be received no later than 5:00 p.m., February 9, 2007.

7. If persons who are directly affected by the proposed amendments wish to express their data, views, and arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsmed@mt.gov. The comments must be received no later than February 9, 2007.

8. If the Board of Medical Examiners or the Department of Labor and Industry receives requests for a public hearing on the proposed amendments from either

10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 403 persons based on the number of physicians currently licensed in Montana.

9. An electronic copy of this Notice is available through the department and board's site on the World Wide Web at www.medicalboard.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.

10. The board and the department maintain a list of interested persons who wish to receive notices of rulemaking actions proposed by the board or the 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 that the person wishes to receive notices regarding all Board of Medical Examiners or department administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsmed@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

BOARD OF MEDICAL EXAMINERS
MICHAEL D. LAPAN, DPM, PRESIDENT

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

/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 January 2, 2007

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

In the matter of the amendment of ARM	)	NOTICE OF PROPOSED
37.108.507 pertaining to Components of	)	AMENDMENT
Quality Assessment Activities)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Interested Persons

1. On February 10, 2007, the Department of Public Health and Human Services proposes to amend the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on January 29, 2007, 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 rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.108.507 COMPONENTS OF QUALITY ASSESSMENT ACTIVITIES

(1) Annually, the health carrier shall evaluate its quality assessment activities by using the following HEDIS year ~~2006~~ 2007 measures:

(a) through (3) remain the same.

(4) The department adopts and incorporates by reference the HEDIS year ~~2006~~ 2007 measures for the categories listed in (1)(a) through (e). The HEDIS year ~~2006~~ 2007 measures are developed by the National Committee for Quality Assurance and provide a standardized mechanism for measuring and comparing the quality of services offered by managed care health plans. Copies of HEDIS ~~2006~~ 2007 measures are available from the National Committee for Quality Assurance, 2000 L Street NW, Suite 500, Washington, DC 20036 or on the internet at www.ncqa.org.

AUTH: 33-36-105, MCA

IMP: 33-36-105, 33-36-302, MCA

3. The Managed Care Plan Network Adequacy and Quality Assurance Act (Title 33, chapter 36, MCA) established standards for health carriers offering managed care plans and for the implementation of quality assurance standards in administrative rules. ARM 37.108.501 et seq. were adopted in 2001 to establish

mechanisms for the department to evaluate quality assurance activities of health carriers providing managed care plans in Montana.

ARM 37.108.507 requires health carriers to report their quality assessment activities to the department using Health Plan Employer Data and Information Set (HEDIS) measures, nationally-utilized measures that are updated annually. Since the HEDIS standards change somewhat every year, the rule must also be updated annually to reflect the current year's measures and ensure that national comparisons are possible, since the other states will also be using the same updated measures. The changes from adopted 2006 measures to the proposed 2007 measures are quoted below:

"Updated Random Number Table for Measures Using the Hybrid Method

Childhood Immunization Status

- Table CIS-A

In the Hepatitis B row, insert a comma between HCPCS Q3021 and Q3023.

Comprehensive Diabetes Care

- Table CDC-C

In the Outpatient row replace UB-92 Revenue code 052x with 0520-0523, 0526-0529.

In the Nonacute inpatient row add UB-92 Revenue codes 0524, 0525.

- Table CDC-F

Add:

°HCPCS SO620, SO621

°ICD-9-CM Diagnosis code V72.0

- Blood pressure level <130/80 mm Hg

Replace the existing paragraph with:

Using automated data, identify the most recent BP reading during the measurement year from an internal administrative database. If the most recent result is <130/80 mm Hg the member is numerator compliant. If the BP is ≥130/80 mm Hg or if there is no automated BP reading during the measurement year, the member is not compliant. If

there are multiple BPs on the same date of service, use the lowest systolic and lowest diastolic BP on that date as the representative BP.

- Blood pressure level <140/90 mm Hg

Replace the existing paragraph with:

Using automated data, identify the most recent BP reading during the measurement year.

If the MCO is using a combination of data from internal administrative databases and CPT Category II codes, it must search all sources and use the most recent result. An MCO that uses CPT Category II codes to identify numerator compliance for this indicator must search for all codes in Table CDC-L and use the most recent code to evaluate whether the member is numerator compliant.

If the most recent result is from an administrative database, the member is numerator compliant if the BP is <140/90 mm Hg. The member is not compliant if the BP is \geq 140/90 mm Hg or if there is no automated BP reading during the measurement year. If there are multiple BPs on the same date of service, use the lowest systolic and lowest diastolic BP on that date as the representative BP.

If the most recent result is from a CPT Category II code, use Table CDC-L to evaluate whether the member is numerator compliant.

- Numerator: *Medical Record*

Add a sentence to Step 2 that reads:

The systolic and diastolic results do not need to be from the same reading.

- Note

To the first bulleted note, add a sentence that reads:

The methodology for the blood pressure control indicators must be consistent as well.

- Note

Add the following bullet:

°Do not include home blood pressure monitoring results or blood

pressure readings that are self-reported by the member (e.g., home and health-fair BPs)."

The option of not updating the HEDIS measure was considered and rejected because these are national quality measures which allow comparison among health plans. If the measures are not kept current, this function is lost.

4. These rule changes will be applied retroactively to January 1, 2007. The rule changes are being applied retroactively because the HEDIS measures and the health carriers measure on a January through December calendar year. In addition, the 2007 HEDIS measures are already being used by the health carriers impacted by these amendments. As a result, there is no negative impact by these changes being applied retroactively to this date.

5. Interested persons may submit their data, views, or arguments concerning the proposed action in writing 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 February 8, 2007. 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. If a person who is directly affected by the proposed action wishes to express data, views, and arguments orally or in writing at a public hearing, that person must make a written request for a public hearing and submit such request, along with any written comments to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov no later than 5:00 p.m. on February 8, 2007.

7. If the Department of Public Health and Human Services receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of those who are directly affected by the proposed action, from the Administrative Rule Review Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who are directly affected, a hearing will be held at a later date and a notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be one based on the two health carriers affected by rules covering components of quality assessment activities.

/s/ Bernard Jacobs for
Rule Reviewer

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

Certified to the Secretary of State January 2, 2007.

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

In the matter of the amendment of ARM)
37.30.102 pertaining to vocational)
rehabilitation IPE care requirements) NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On January 31, 2007, at 10:30 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed amendment of the above-stated rule.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on January 22, 2007, 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 rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.30.102 VOCATIONAL REHABILITATION POLICY: INCORPORATION BY REFERENCE OF FEDERAL AND STATE AUTHORITY (1) The department, except as otherwise provided in this chapter, adopts and incorporates by reference, for purposes of administering the program of vocational rehabilitation services, the federal regulations specified in (2) as presented in the July 1, ~~2004~~ 2006 edition of the Code of Federal Regulations (CFR). These federal regulations, adopted by the United States Department of Education, govern the administration and delivery by the states of various aspects of vocational rehabilitation services.

(2) through (3) remain the same.

(4) The following Montana vocational rehabilitation policies govern the administration and delivery of vocational rehabilitation services as specified:

(a) through (f) remain the same.

(g) For purposes of developing the IPE: Montana Vocational Rehabilitation Policy W - "Core Requirements of IPE" dated ~~December 27, 2002~~ October 1, 2006.

(h) remains the same.

AUTH: 53-7-102, 53-7-206, 53-7-302, 53-7-315, MCA

IMP: 53-7-102, 53-7-103, 53-7-105, 53-7-106, 53-7-108, 53-7-203, 53-7-205, 53-7-302, 53-7-303, 53-7-306, 53-7-310, 53-7-314, MCA

3. The department is proposing through this notice to change the time period allowed for the development of an Individualized Plan For Employment (IPE) which is the planning process engaged in for the purpose of determining what particular services should be made available through the vocational rehabilitation program to a consumer of vocational rehabilitation services. It is also proposing to update the citation to the relevant federal vocational rehabilitation program provisions of the federal Code of Federal Regulations (CFR) incorporated by reference in the Montana vocational rehabilitation rule set, from the July 1, 2004 edition of the CFR to the July 1, 2006 edition.

The provision of ARM 37.30.102 proposed for amendment, incorporates by reference a certain specific policy, known as the Montana Vocational Rehabilitation Policy W – "Core Requirements of IPE or MVR Policy 3.6, that is published in the Montana Vocational Rehabilitation Policy Manual. The department is republishing that policy with a date of October 1, 2006 to include in the policy text a reduction in the time period for the IPE development after the date of eligibility from six months to 120 days.

The department is proposing the change based upon the direction of the Rehabilitation Services Administration (RSA), an administrative entity of the United States Department of Education's Office of Special Education and Rehabilitative Services. The department has determined that this requested change would be feasible and effective. The proposed change includes the opportunity upon mutual agreement of the counselor and the consumer for an extension of the time period by which to accommodate exigent circumstances.

The adoption of the proposed rule amendment would impact upon adoption those persons who are newly entering Montana vocational rehabilitation services who have yet to develop or are in the course of developing with their counselors an IPE. This rule change will not impact benefit level or service cost. Most IPEs are currently developed within 120 days of the determination of eligibility. Because of this and of opportunity for the consumer and counselor to extend the time period based on exigent circumstance, the proposed rule change is not expected to negatively impact consumers.

The department in considering the adoption of this differing time period determined that the only available recourse was to implement the change as directed by the federal Rehabilitation Services Administration. The vocational rehabilitation program is a collaborative federal and state program with governing direction as to administration and service delivery governed by federal statute, regulation, and policy. Federal direction is primarily in the form of the regulations and policy promulgated by RSA and compliance with that direction is necessary for the continued provision of those services to Montana citizens. Consequently, consideration of the retention of the status quo or of time periods other than that directed by RSA was not given consideration.

The proposed change as to the referenced edition of the CFR for purposes of rule

incorporation of the federal regulations is appropriate to maintain reference to the most current authority allowing persons to more readily access the relevant incorporated text. This incorporation does not involve substantive changes in service delivery to consumers since the regulations have remained unchanged from that earlier date.

4. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on February 9, 2007. 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/ Cary Lund for
Rule Reviewer

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

Certified to the Secretary of State January 2, 2007.

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

In the matter of the amendment of ARM)
37.82.101, 37.82.407, and 37.82.701)
pertaining to Medicaid assistance)
)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On February 5, 2007, 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 January 22, 2007, 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.

37.82.101 MEDICAL ASSISTANCE, PURPOSE, AND INCORPORATION OF POLICY MANUALS (1) Subject to applicable state and federal laws, regulations and rules, the Montana Medicaid program pays for covered medically necessary services for persons determined eligible by the department or its agents.

(2) The department adopts and incorporates by reference the state policy manuals, namely the Family Medicaid Manual and the ~~Aged/Blind~~ Aged Blind Disabled (ABD) Medicaid Manual ~~manuals~~ governing the administration of the Medicaid program dated ~~July 1, 2006~~ January 1, 2007. The Family Medicaid Manual, the ABD Medicaid Manual, and the proposed manual updates are available for public viewing at each local Office of Public Assistance or at the Department of Public Health and Human Services, Human and Community Services Division, 111 Jackson Street, Fifth Floor, P.O. Box 202925, Helena, MT 59601-2925. The proposed manual updates are also available on the department's web site at www.dphhs.mt.gov/legalresources/proposedmanualchange.shtml.

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

37.82.407 LIMITATION ON THE FINANCIAL RESPONSIBILITY OF

RELATIVES (1) ~~Except as provided in (2), only the income and resources of a spouse or, if the individual is an individual who is under age 21 or blind or disabled, of a natural or adoptive parent or, if specifically provided for in subchapters 7, 9, 11 and 13, of a stepparent will be considered available to an individual in determining his eligibility for medicaid. The income and resources of any other relative will not be considered available to the individual.~~

~~(2) In the case of an individual applying for or receiving AFDC-related medicaid in the FAIM project, the income and resources of every person included in the same assistance unit as the individual as required by ARM 46.18.113 are considered available to the individual, regardless of whether the income and resources are actually contributed to the individual. Persons whose income and resources are considered available to the individual include, but are not limited to:~~

~~(a) Stepparents of a dependent child as defined in ARM 46.18.103.~~

~~(b) Siblings, stepsiblings or half-siblings of a dependent child as defined in ARM 46.18.103.~~

~~(3) Reimbursement for amounts paid by the department for medical services provided to an individual will be collected only from a spouse or, if the individual is under age 21 or blind or disabled, from a natural or adoptive parent.~~

~~Reimbursement will not be obtained from any other relative.~~

(1) The income and resources of the following relatives are considered available to an individual in determining the individual's eligibility for Aged Blind Disabled (ABD) Medicaid:

(a) the spouse of the individual, except as provided in (3); and

(b) the biological or adoptive parent or parents or stepparent of the individual with whom the individual resides, if the individual is under the age of 18.

(2) The income and resources of the following relatives are considered available to an individual in determining the individual's eligibility for family Medicaid:

(a) the spouse of the individual, except as provided in (3);

(b) the biological or adoptive parent or parents or stepparent of the individual with whom the individual resides, if the individual is under the age of 19;

(c) for an individual applying for or receiving Medicaid under the child-under age six, child-age six to 19, child-medically needy or family-medically needy coverage groups only, the individual's siblings, half-siblings, or step siblings if the individual chooses to have such siblings included in the filing unit; and

(d) for an individual applying for or receiving Medicaid under any of the coverage groups described in 42 U.S.C. 1396r-6 and 42 U.S.C. 1396u-1, all siblings, half siblings, and step siblings of the individual with whom the individual resides, if the individual is under the age of 19. The individual does not have the option of excluding any such siblings from the filing unit.

(3) The following rules apply in the case of a married individual who is not living with his or her spouse:

(a) In determining the eligibility of an institutionalized spouse as defined in ARM 37.82.1330, resources of the institutionalized spouse's spouse, that is, of the community spouse as defined in ARM 37.82.1330, are considered available to the institutionalized spouse, and a resource assessment must be conducted as provided in ARM 37.82.1331, regardless of whether the institutionalized spouse and the community spouse live together or have ever lived together. In determining the

eligibility of an institutionalized spouse the income of the community spouse will be considered as provided in 42 U.S.C. 1396r-5 pertaining to the treatment of income and resources for institutionalized spouses which is adopted and incorporated by reference.

(b) In determining the eligibility of any individual who is not an institutionalized spouse as defined in ARM 37.82.1330, the income and resources of the individual's spouse are considered available to the individual as long as the spouses live together. If the individual and the individual's spouse cease living together, the income and resources of the individual's spouse are not considered available to the individual unless actually contributed to the individual beginning in the first month after the month in which the individual and the individual's spouse ceased living together. If the individual and individual's spouse never lived together, the spouse's income and resources are not considered available to the individual unless actually contributed to the individual.

(4) Except as provided in (1), (2), and (3), the department may not consider the income or resources of any relative to be available to an individual in determining the individual's eligibility for Medicaid unless:

(a) the income or resource are actually contributed to the individual; or

(b) a relative makes a vendor payment on behalf of the individual and the vendor payment would be countable income to the individual as provided in the ABD Medicaid Manual or Family Medicaid Manual that is incorporated by reference in ARM 37.82.101.

AUTH: 53-6-113, MCA

IMP: 53-6-113, 53-6-131, MCA

37.82.701 GROUPS COVERED, NONINSTITUTIONALIZED FAMILIES AND CHILDREN (1) Medicaid will be provided to:

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

(h) a child who has attained age six but has not yet reached age 19, whose family income does not exceed 100% of the federal poverty guidelines and whose countable resources do not exceed \$15,000. This coverage group is known as the "child-age six to 19 group";

(h)(i) through (3) remain the same.

AUTH: 53-4-212, 53-6-113, MCA

IMP: 53-4-231, 53-6-101, 53-6-131, 53-6-134, MCA

3. The Montana Medicaid program is a joint federal-state program that pays medical expenses for eligible low-income individuals. To qualify for the Montana Medicaid program, an individual must meet the eligibility requirements set forth in ARM Title 37, chapter 82. Additionally, the Family Medicaid Manual and the Aged Blind Disabled (ABD) Medicaid Manual set forth information about the eligibility requirements for Medicaid that is more detailed than that in administrative rules. These state policy manuals are published by the department to provide guidance to employees of the local offices of public assistance who determine eligibility for Medicaid.

ARM 37.82.101 adopts and incorporates by reference the Medicaid policy manuals. By incorporating these manuals into the administrative rules, the department gives interested parties and the public general notice and an opportunity to comment on policies governing Medicaid eligibility. Additionally, as a result of the incorporation of the manuals into the administrative rules, the policies contained in the Family Medicaid Manual and the ABD Medicaid Manual have the force of law in case of litigation between the department and a Medicaid applicant or recipient concerning the applicant or recipient's eligibility for Medicaid.

ARM 37.82.101 currently adopts and incorporates by reference the Medicaid policy manuals dated July 1, 2006. The department proposes to make some revisions to its Medicaid policy manuals that will take effect on January 1, 2007. The proposed amendment to ARM 37.82.101 is necessary in order to incorporate into the Administrative Rules of Montana the revised sections of the policy manuals and to permit all interested parties to comment on the department's policies and to offer suggested changes. It is estimated that changes to the Family Medicaid and ABD Medicaid Manuals could affect 82,147 Medicaid recipients. Manuals and draft manual material are available for review in each local Office of Public Assistance and on the department's web site at www.dphhs.mt.gov. Following is a brief overview of the changes being made to the Family Medicaid Manual and the ABD Medicaid Manual.

Family Medicaid Manual

No substantive changes are being made to the Family Medicaid Manual at this time. The only changes are minor policy clarifications and minor changes to procedures followed by the offices of public assistance. Thus, the revisions to the Family Medicaid Manual will have no fiscal impact.

Aged, Blind and Disabled (ABD) Medicaid Manual

MA 201-1 SSI Cash Recipients – Section 201-1 states that an individual who is eligible for Supplemental Security Income (SSI) cash assistance is entitled to receive Medicaid benefits by virtue of the individual's receipt of SSI benefits. The individual is automatically entitled to Medicaid coverage beginning in the month prior to the month in which the individual first starts to receive SSI benefits. The individual may also receive retroactive Medicaid benefits for up to three months prior to the month in which the application for SSI benefits was filed but will receive retroactive coverage for a month only if the individual has unpaid medical bills for that month as well as meeting all SSI eligibility criteria for that month.

Section 201-1 further provides that retroactive Medicaid coverage is provided only if it is requested by the individual or the individual's representative or by a real party in interest, such as a medical provider who furnished services to the individual during the months for which Medicaid coverage is potentially available. Section 201-1 currently does not specify any time limit for requesting retroactive Medicaid coverage

based on approval of an SSI application. The department is now proposing to revise Section 201-1 to state that a request for retroactive coverage must be made no later than 90 days from the date on which the individual is notified that Medicaid coverage has been approved.

It is necessary to impose a time limit on requests for retroactive coverage because the lack of time limits has caused billing problems for providers and difficulties for processing by the department. All other Medicaid coverage groups have time limitations for requesting retroactive coverage. The department proposes a 90 day limit in order to allow adequate time for communication between the recipient and providers after Medicaid coverage is approved so that it can be determined whether unpaid medical bills exist for the three months prior to the month of SSI application. Fiscal impact of this change is expected to be a reduction of less than \$10,000 in General Fund spending and a total reduction of \$37,037 in total Medicaid expenditures.

MA 402-1 Countable & Excluded Resources – When a Medicaid applicant or recipient is selling property under a contract-for-deed, the contract-for-deed is not counted as a resource in determining the applicant or recipient's eligibility if the terms of the contract require the purchaser to make annual payments to the applicant or recipient and the terms of the contract are being complied with. This section has been updated to add an additional requirement that to be excluded as a resource a contract-for-deed must provide that upon the death of the applicant or recipient the remaining payments will be made to the State of Montana. This change is required because the estates of Medicaid recipients often are not probated, and the department therefore cannot recover Medicaid payments it has made on the recipient's behalf from the recipient's estate. By requiring that contracts-for-deed contain this provision in order to be excluded, the department will be able to recover at least part of the amount Medicaid has paid for the recipient after the recipient's death. Fiscal impact is expected to be recovery of approximately \$5000 per year of Medicaid expenditures, \$1500 of which is General Fund.

MA 404-2 Penalty Periods for Asset Transfers – The average cost of nursing home care in Montana is used to calculate penalty periods for uncompensated asset transfers made by nursing home and Home and Community Based Services waiver recipients. The use of this average cost is mandated by 42 USC 1396p. This average cost is recalculated annually. The average is now being changed to reflect the results of the most recent survey of private nursing home rates in Montana, as conducted by the department's Senior and Long Term Care Division. The updated average is \$4512 per month, increased from \$4292 in 2006. The increase in the amount of the fiscal impact of this change is expected to increase costs by approximately \$56,000 annually in total Medicaid expenditures, of which approximately \$16,800 is General Fund.

MA 702-2 Cash Option Refund – When a Medicaid recipient has chosen the cash option method of meeting his or her medically needy incurment, but later believes that the cost of medical services used during the month of coverage was less than

the cash option payment made, he or she may request a refund of the cash option payment. This section has been changed to add a limit to the time period for requesting a cash option payment. Cash option payments based on a recipient's request will be limited to the 36 months immediately preceding the month of the request for refund. This change is required to attach reasonable limits on the length of time for cash option refunds and will prevent refunds from reaching across many fiscal years. Fiscal impact of this change is anticipated to be a reduction in costs of less than \$15,000 annually in total Medicaid funds, and \$4500 in General Fund.

MA 703-1 Medical Expense Option – Medicaid applicants and recipients who have income over the categorically needy income standard must meet an incurment, which is similar to a health insurance deductible, in order to qualify for Medicaid coverage. This section explains the limitations on medical bills that can be used to satisfy the incurment. The section is being changed to allow only incurred bills payable to the provider and not to a third party, such as a credit card or other financing company. Once a bill has been paid in full to the provider, it has changed form and is no longer an outstanding medical bill, but rather a bill owed to a financing company or financial institution. Interest charged on an unpaid medical expense cannot be used to satisfy an incurment. Fiscal impact of this change is anticipated to be a reduction in Medicaid costs of less than \$3000 in total Medicaid fund annually, of which \$900 is General Fund.

MA 904-2 Post-Eligibility Treatment of Income for Institutionalized Spouses – This section discusses the deductions that are allowed from the income of a married institutionalized Medicaid recipient in calculating the recipient's contribution to the cost of the recipient's institutional care. The section provides that certain family members who reside with the institutionalized Medicaid recipient's spouse (known as the community spouse) and who can be claimed as the spouse's dependent for tax purposes may be entitled to an income maintenance allowance. The purpose of the income maintenance allowance is to ensure that the institutionalized recipient's family members have enough income and resources to meet their basic needs for shelter, food, and so forth.

This section has been amended to specify that this allowance is available only to family members who are not institutionalized themselves or enrolled in the Medicaid Home and Community Based Services Waiver program. These individuals are usually Medicaid recipients themselves, and the receipt of a family income maintenance allowance by these individuals only serves to increase their own Medicaid incurments. The elimination of the family income maintenance allowance for these individuals therefore makes sense because it does not benefit the individuals it is intended to help. Fiscal impact of this change is anticipated to be zero, as the agency is not aware of any situations where family income maintenance is currently being allowed for a dependent in either of these situations, nor of any past situations where the income maintenance allowance has been allowed to a dependent in either of these situations.

This section also provides that incurred medical expenses that meet certain criteria

can be deducted from a married institutionalized recipient's income in calculating the recipient's contribution to the cost of the recipient's care. This section has been amended to clarify that incurred medical expenses must be reported to the department within ten days of knowing of the expense being incurred. This is not a change in policy, because Medicaid policy already requires changes to be reported within ten days, but the manual has been revised to clarify that the time limits for change reporting apply to reporting of incurred medical expenses for nursing home residents. Fiscal impact of this change is anticipated to be zero, as this policy has been applied in the past in accordance with Medicaid change reporting policy.

MA 904-3 Post-Eligibility Treatment of Income for Institutionalized Individuals – This section discusses the deductions that are allowed from the income of an institutionalized Medicaid recipient who is not married in calculating the recipient's contribution to the cost of the recipient's institutional care. It provides that incurred medical expenses that meet certain criteria can be deducted from an institutionalized recipient's income in calculating the recipient's contribution to the cost of the recipient's care.

This section has been clarified to explain that incurred medical expenses must be reported to the department within ten days of knowing of the expense being incurred. This is not a change in policy, because Medicaid policy already requires change to be reported within ten days, but the manual has been revised to clarify that the time limits for change reporting apply to reporting of incurred medical expenses for nursing home residents. Fiscal impact of this change is anticipated to be zero, as this policy has been appropriately applied in the past.

ARM 37.82.407 specifies in what cases the income and resources of an applicant's relative will be considered in determining the applicant's eligibility for Medicaid. The rule provides that the only relatives whose income and resources can be counted are spouses, parents, and in some cases siblings. This rule was adopted in 1982 and has been amended only once, in 1996, to make minor changes in terminology. It is now necessary to amend ARM 37.82.407 to reflect changes which have occurred over the years in the policies governing treatment of relatives' income and resources. Additionally, it is necessary to amend ARM 37.82.407 to revise obsolete terminology, clarify certain ambiguities, and reorganize the rule to make it more readable.

Section (1) of the rule currently states that only the income and resources of a spouse, or, if an individual is under the age of 21 or is blind or disabled, of a natural or adoptive parent and in some instances a stepparent will be considered in determining the individual's eligibility. It is no longer accurate to state that parental income is counted until a child reaches the age of 21, however. In regard to Family Medicaid, formerly known as AFDC-related Medicaid, the states have the option of covering children through the age of 18, 19, 20, or 21. Apparently in the past the State of Montana covered children receiving this type of Medicaid until they reached the age of 21 years. Since the income and resources of parents with whom the child resides are counted for Family Medicaid, and "children" under 21 were potentially

eligible, it was necessary to provide that the income and resources of an applicant's parents was considered if the child was under the age of 21. Montana now provides Family Medicaid coverage only until children reach the age of 19, however. It is therefore necessary to amend the rule to provide that parental income and resources are counted for a child under age 19, since that is the oldest a child can be and still receive Family Medicaid.

In regard to Aged Blind Disabled (ABD) Medicaid, formerly known as Supplemental Security Income (SSI) Medicaid, parental income and resources are counted only until a person reaches the age of 18, in accordance with the rules of the SSI Cash Assistance program. Individuals who are 18 or above may be eligible for SSI Medicaid, but the income and resources of the individual's parents will not be considered in determining the individual's eligibility. It is therefore necessary to amend the rule to provide that for purposes of ABD Medicaid parental income and resources are counted for a child under age 18.

Section (1) as currently written does not accurately state the policy with regard to the counting of parental income and resources because it fails to specify that only the income and resources of a parent with whom the child resides are considered available to the child. The policy has always been to count only the income and resources of a parent with whom the child resides unless the income or resources of a noncustodial parent are actually contributed to the child. For example, if a child resides with the child's mother and the father lives elsewhere, the mother's income and resources are counted, but the father's income and resources are not counted in determining the child's eligibility unless the father pays child support or otherwise contributes some income or resources to the household in which the child resides. The rule is therefore being amended to clarify that only income and resources of a parent with whom the child resides are considered available to the child.

Additionally, section (1) as currently written does not clearly state the policy with regard to counting spousal income and resources. The rule does not specify that the income and resources of an applicant's spouse are counted only if the spouses live together, although that is the policy generally applied and has been for many years. Additionally, the rule is ambiguous and could be construed to mean that the income and resources of an applicant's spouse are not counted if the applicant is under the age of 21 or is blind or a person with a disability, although in fact it is the department's policy to count the income and resources of an applicant's spouse if they are living together, regardless of the age of the applicant or whether the applicant has a disability or is blind. The rule is therefore being amended to clarify that spousal income and resources are counted without regard to age or disability. It is also being amended to state the general rule that spousal income and resources are counted only if the spouses live together, provide an exception to the general rule, and specify when income and resources first will be counted after spouses who have been living together cease to do so.

Although the rule is being amended to clarify that, in general, spousal income and resources are counted only if the spouses live together, the rule also is being

amended to specify that income and resources of a spouse must be counted regardless of whether they are living together in the case of an institutionalized spouse who is applying for Medicaid. This provision is necessary to comply with federal "Spousal Impoverishment" provisions in 42 U.S.C. 1396r-5. In 1988 Congress enacted the Medicare Catastrophic Coverage Act of 1988 (the MCCA), which was codified in 42 U.S.C. 1396r-5. The MCCA changed the way Medicaid eligibility was determined for married persons seeking Medicaid to pay for nursing home or other institutional care.

Prior to 1988 a married couple had to spend all their resources except \$3,000 before the institutionalized spouse could qualify for Medicaid. As a result, the spouse who was not institutionalized but continued to live in the community, known as the "community spouse", had virtually no resources left to meet the community spouse's own needs. Congress therefore amended the Medicaid statute to allow the community spouse to keep more than \$3,000 in resources, in order to prevent the community spouse from being impoverished. Similarly, the MCCA contains provisions to allow the community spouse to keep enough income to provide for the community spouse's own needs.

As part of the process of determining what amount of resources the community is entitled to keep, Section 42 U.S.C. 1396r-5(c) requires that the state Medicaid agency conduct a resource assessment listing all nonexcluded resources owned by the institutionalized spouse, the community spouse, or both of them jointly. The statute requires that a resource assessment be conducted for every married applicant for Medicaid institutional coverage. It makes no exception in the case of an applicant who was living separately from the applicant's spouse prior to entering the nursing home or other institution. The department has complied with the provisions of the MCCA since the federal law took effect but has never amended ARM 37.82.407 to incorporate its requirements. Therefore, ARM 37.82.407 must now be amended to provide that the resources of an institutionalized spouse's husband or wife are always considered available to the institutionalized spouse and must always be counted in determining Medicaid eligibility and to provide that the income of the community spouse will be considered as provided in 42 U.S.C. 1396r-5.

ARM 37.82.407(2) currently makes reference to "an individual applying for or receiving AFDC-related Medicaid in the FAIM project". Family Medicaid was formerly known as AFDC-related Medicaid because families eligible for Aid to Families with Dependent Children (AFDC) Cash Assistance were automatically eligible for AFDC-related Medicaid as well. In 1996 the Temporary Assistance for Needy Families (TANF) program replaced the AFDC Cash Assistance program as a result of the passage of the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA). At that time cash assistance and Medicaid coverage were "de-linked", meaning that persons receiving TANF cash assistance are not necessarily eligible for Medicaid by virtue of receiving TANF Assistance. Since TANF Cash Assistance and Medicaid are no longer linked as they formerly were, this program has been renamed Family Medicaid instead of changing the name from AFDC-

related Medicaid to TANF-related Medicaid. The FAIM project was a demonstration project implemented before the passage of PRWORA changed the rules for cash assistance to families. The reference to the FAIM project has been deleted because the project no longer exists.

In addition, ARM 37.82.407(2) currently provides that the income and resources of an applicant's siblings are considered available to the applicant in determining the applicant's eligibility for AFDC-related (now Family) Medicaid. This is no longer correct for all Family Medicaid coverage groups. It is true for Medicaid coverage groups that are comparable to the old AFDC-related Medicaid, namely Medicaid for individuals under age 19 who reside with a caretaker relative and transitional Medicaid for families who become ineligible for cash assistance because of income from employment. Sibling income and resources must be counted for these coverage groups because 42 U.S.C. 1396u-1, which was enacted as part of PRWORA, provides that eligibility for Medicaid coverage groups that are comparable to the old AFDC-related Medicaid will be determined using the income and resource methodologies used in the AFDC cash assistance program as of July 16, 1996. Thus, since sibling income and resources were counted in determining eligibility for AFDC cash assistance on July 16, 1996, they must be counted in determining eligibility for transitional Medicaid as described in 42 U.S.C. 1396r-6 and Medicaid for individuals under age 19 who reside with a caretaker relative as described in 42 U.S.C. 1396u-1.

However, the department is not required to apply the income and resource methodologies used in the old AFDC cash assistance program for the other Family Medicaid coverage groups, namely the child-under age six, child-age six to 19, child-medically needy and family-medically needy coverage groups. For these groups the department follows the more liberal policy of counting sibling income and resources only if the applicant chooses to include any or all siblings in the Medicaid filing unit. This benefits the applicant by allowing the applicant to include or exclude siblings, and hence the sibling's income and resources, depending on what is most advantageous for the applicant. If an applicant has a sibling who has little or no income and resources, it will benefit the applicant to have the sibling included in the filing unit for Medicaid because a higher income standard is used when another person is included in the filing unit. On the other hand, if a sibling has income or resources which will result in the filing unit being ineligible due to excess income or resources, the applicant may choose to exclude the sibling from the filing unit.

The amendment of ARM 37.82.407 is therefore necessary to provide that for certain Family Medicaid coverage groups the income and resources of siblings must be considered available to the applicant but for other Family Medicaid coverage groups the income and resources of siblings will be considered available only if the applicant chooses to have the sibling included in the filing unit.

Finally, ARM 37.82.407 has been reorganized to set forth the policies for ABD Medicaid and for Family Medicaid separately, since the policies are not always the same. This will make the rule easier to read and understand.

There will be no significant fiscal impact as a result of the amendment of ARM 37.82.407. Virtually all of the amendments merely reflect policy changes which are already in effect or are nonsubstantive changes to clarify policy or revise terminology. There is, however, one case where the department has been prohibited from counting the income of an ABD Medicaid recipient's spouse because of a decision by the Board of Public Assistance that ARM 37.82.407 as currently written does not permit the department to count the income of a disabled individual's spouse. When the rule is revised to clarify that spousal income is always counted if the spouses live together, regardless of the age or disability of the applicant, the spousal income of this recipient will be counted. As a result the recipient will have an incurment of approximately \$16,000 yearly, resulting in a Medicaid savings of \$16,000 per year. The savings to the General Fund will be \$4,800 per year. The amendment of the rule also will result in this recipient being ineligible for Qualified Medicare Beneficiary (QMB) and Specified Low Income Medicare Beneficiary (SLMB) coverage, resulting in additional savings of approximately \$2,200 per year. QMB and SLMB are 100% federally funded, so there is no savings to the General Fund.

The amendment of ARM 37.82.701 is necessary to correct an error that occurred when the rule was amended in September 2006. ARM 37.82.701 describes the Family Medicaid coverage groups. Subsection (1)(h) of the rule provided that Medicaid will be provided to "a child who has attained age six but has not yet reached age 19" if certain conditions are met. When the rule was amended the word "child" was inadvertently left out, however, so subsection (1)(h) currently states that Medicaid will be provided to "a who has attained age six but has not yet reached age 19..." It is necessary to re-insert the word "child" for grammatical purposes and clarity. There is no fiscal impact to this change.

4. The department intends that the amendments to ARM 37.82.101 be applied retroactively to January 1, 2007. The department was unable to file this rule at an earlier date due to the pressing nature of other business in the Office of Legal Affairs. No detrimental effects are anticipated as a result.

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 February 9, 2007. 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/ Barbara Hoffmann for
Rule Reviewer

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

Certified to the Secretary of State January 2, 2007.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	CORRECTED NOTICE OF
Rules I & II, the amendment of ARM	)	AMENDMENT
2.21.3702, 2.21.3703, 2.21.3704,)	
2.21.3708, 2.21.3709, 2.21.3715,)	
2.21.3719, 2.21.3721, 2.21.3723,)	
2.21.3724, 2.21.3726, and 2.21.3728, the)	
amendment and transfer of ARM)	
2.21.3712, and the repeal of ARM)	
2.21.3718 and 2.21.3727 pertaining to)	
the Recruitment and Selection Policy)	

TO: All Concerned Persons

1. On June 22, 2006, the Department of Administration published MAR Notice No. 2-2-372 regarding a public hearing on the proposed adoption, amendment, transfer, and repeal of the above-stated rules at page 1482 of the 2006 Montana Administrative Register, Issue No. 12. On November 11, 2006, the department published the adoption notice at page 2901 of the 2006 Montana Administrative Register, Issue No. 22.

This corrected notice of amendment is to resolve an oversight in the notice of amendment for ARM 2.21.3703. The full text of (12)(b) should have been shown as follows:

2.21.3703 DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) through (11) remain as amended.

(12) "Reasonable accommodation" means:

(a) a change in the work environment or in the way work is accomplished that enables an individual with a disability to enjoy equal employment opportunities; or

(b) adjustments to work schedules to accommodate an individual's religious beliefs or practices. (Types of reasonable accommodations and the criteria for evaluating undue hardship can be found in the reasonable accommodation guide and the Nondiscrimination-Equal Employment Opportunity Guide available from the State Personnel Division, Department of Administration web site:

<http://hr.mt.gov/HRServices/policiesguides.asp>.)

2. The replacement page for this corrected notice was submitted to the Secretary of State on December 28, 2006.

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

BY: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State January 2, 2007.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	CORRECTED NOTICE OF
17.85.101, 17.85.103, 17.85.105,)	AMENDMENT AND ADOPTION
17.85.107, 17.85.110, 17.85.111,)	
17.85.114, and the adoption of New Rule)	(ALTERNATIVE ENERGY)
I pertaining to the Alternative Energy)	
Revolving Loan Program)	

TO: All Concerned Persons

1. On July 6, 2006, the Department of Environmental Quality published MAR Notice No. 17-249 regarding a notice of proposed amendment and adoption of the above-stated rules at page 1678, 2006 Montana Administrative Register, issue number 13. On December 21, 2006, the department published the notice of amendment and adoption at page 3075, 2006 Montana Administrative Register, issue number 24. The rules were amended and adopted exactly as proposed.

2. This corrected notice of adoption is being published to correct an error in the earmarking of ARM 17.85.103. The proposed notice numbered the current (3) (defining "Customer-generator") as (5) and stated that the current (4) and (5) remained the same, but would be renumbered (5) and (6). The correct earmarking is shown below:

17.85.103 DEFINITIONS Unless the context requires otherwise, as used in this subchapter:

(1) through (5) remain as amended.

(5) and (6) (as renumbered in the proposal notice) remain as amended, but are renumbered (6) and (7).

(7) through (12) remain as amended, but are renumbered (8) through (13).

3. Also New Rule I(1)(b) (adopted as ARM 17.85.104(1)(b)) was proposed as "executive loan agreements" and should have read "execute loan agreements" as follows, stricken matter interlined, new matter underlined:

17.85.104 PROGRAM ADMINISTRATION (1) The department may enter into a contract with, and compensate, a third party to perform any of the duties necessary to fulfill the purposes of this subchapter including, but not limited to:

(a) remains as adopted.

(b) ~~executive~~ execute loan agreements;

(c) through (2)(d) remain as adopted.

4. Replacement pages for this corrected notice were submitted to the Secretary of State on December 29, 2006.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ James M. Madden
JAMES M. MADDEN
Rule Reviewer

By: /s/ Richard H. Opper
RICHARD H. OPPER
Director

Certified to the Secretary of State, January 2, 2007.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the adoption of new rules) NOTICE OF ADOPTION
I through XIX pertaining to regional)
correctional facilities)

TO: All Concerned Persons

1. On November 22, 2006 the Department of Administration published MAR Notice No. 20-7-35 regarding the proposed adoption of new rules I through XIX at page 2872 of the 2006 Montana Administrative Register, Issue No. 22.

2. The department has adopted new rules I (20.28.101), II (20.28.104), III (20.28.107), IV (20.28.110), V (20.28.113), VI (20.28.116), VII (20.28.119), VIII (20.28.122), X (20.28.128), XI (20.28.131), XII (20.28.134), XIII (20.28.137), XIV (20.28.140), XVI (20.28.146), XVII (20.28.149), XVIII (20.28.152), and XIX (20.28.155) as proposed.

3. The department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

NEW RULE IX (20.28.125) COMPLETING THE PER DIEM WORKSHEET DATA SUMMARY (1) remains as proposed.

(2) Section II-Financial ~~Date~~ Data Summary: on Line A enter the most recently concluded fiscal year that corresponds to the accounting period of the cost submission.

(a) through (6) remain as proposed.

AUTH: 53-30-507, MCA

IMP: 53-30-507, MCA

NEW RULE XV (20.28.143) COMPLETING SCHEDULE F-EQUIPMENT COST (1) through (5)(a) remain as proposed.

(b) the cost of equipment received from the state government through the state surplus property program or similar programs or purchased with funds received from the state government specifically for the purchase of the identified piece of equipment;

(c) through (g) remain as proposed.

AUTH: 53-30-507, MCA

IMP: 53-30-507, MCA

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

Comment #1: The department received two written comments and one person who did not submit written comments testified at the public hearing. Dawson County Regional Prison Warden Steve Ray submitted written comments that indicated Dawson County is well pleased with the process the department used to promulgate the rules. He said, "the process was fair" and "a method of determining per diem that was fair to our county has been reached." Missoula County Sheriff Mike McMeekin in oral testimony at the public hearing echoed Dawson County's sentiment that Missoula County considered the process fair and that Missoula County is pleased with the rules.

Response #1: The department acknowledges the comments.

Comment #2: Cascade County Commissioners submitted comments regarding New Rule I, DEFINITIONS, "Chart of Accounts." Cascade County requests the department remove "chart of accounts" from the definitions due to a general concern of being required to adopt a specific form.

Response #2: The definition does not mandate any particular chart of accounts and is broad enough to encompass any chart of accounts that the county chooses to use. The department, therefore, declines to remove "chart of accounts" from the definitions.

Comment #3: Cascade County Commissioners submitted comments regarding New Rule I, DEFINITIONS, "Operating Cost." The definition states that operating cost means "expenditures excluding personal services that relate to the operation of the facility and directly benefit state inmates." Cascade County Commissioners commented that it "could have an indirect benefit to a State inmate. Directly benefiting leaves major room for interpretation."

Response #3: The department disagrees that there is room for interpretation of what directly benefits state inmates.

Comment #4: Cascade County Commissioners submitted comments regarding New Rule I, DEFINITIONS, "Per Diem Worksheet." Cascade County commented that all three existing regional prisons agreed to use the form from the U.S. Marshals Service as a model, and that the three regional prisons did not agree on the changes the department made to the form without specific objection to the form or suggested changes.

Response #4: The department acknowledges the comment.

Comment #5: Cascade County Commissioners submitted comments regarding New Rule IV, "CONSTRUCTION REQUIREMENTS FOR A REGIONAL CORRECTIONAL FACILITY." Cascade County asked, "Does the State maintain accreditation by both the ACA and the NCCHC? If not, how can you hold someone else to those standards?"

Response #5: Part (6) of New Rule IV states that the rule “applies only to facilities constructed after the effective date of these rules.” Therefore, Cascade County’s current facility is not impacted by the accreditation requirement. The department believes the rule is necessary because Montana private prisons are held to this standard and the standard should also apply to regional correctional facilities.

Comment #6: Cascade County Commissioners submitted five comments regarding New Rule VII, “CALCULATION OF A PER DIEM RATE-GENERAL PRINCIPLES.” The first comment about NEW RULE VII asks, “If the per diem rate is based on historical numbers how can it reflect actual costs?”

Response #6: The per diem rate is calculated based on the actual costs the facility incurred during the previous fiscal year and is then adjusted for any expected contingencies during the upcoming year. The rate is not based on “historical numbers,” but actual costs in the previous fiscal year.

Comment #7: Cascade County Commissioners next commented regarding New Rule VII, “The State needs to share in costs that a jail would have rather [sic] or not the regional is there.”

Response #7: The department disagrees with this comment. The intent of the legislation that mandated these rules and the intent of the rest of these rules are well reflected in this rule: that the State pays the county only the actual cost the county incurred to operate the regional prison. No other comments were received.

Comment #8: Cascade County Commissioners next commented regarding New Rule VII, “What is the required format, and does DOC understand that any costs getting the information into the format will be done so as a regional prison direct cost?”

Response #8: The required format is any format in which the department can differentiate between general costs and the specific costs that must be reported on the Per Diem Calculation Worksheet. The department understands that if Cascade County incurs a cost for something that the county does not use with anything except the regional prison that it is a direct cost to the regional prison.

Comment #9: Cascade County commented, “Why require a CAFR? MCA requires us to have an audit performed. A CAFR is more detailed in areas that would not benefit DOC in evaluating our financial condition.” Audited financial statements and CAFRs report financial information the same. CAFR historically has cost more to create and audit, therefore, being required will be a direct cost of the regional prison.

Response #9: Cascade County’s comment seems to suggest that the county does not do a CAFR, yet the county’s CAFR is on the county’s web site. The rule requires the information and documents provided for the per diem calculation to tie back to

the county's CAFR. The rule does not require the county to incur any additional expense.

Comment #10: Cascade County Commissioners commented regarding New Rule VII(4) that the section "can create a Catch 22." The commissioners further elaborated about a potential conflict with the department about how to come into compliance with department mandates.

Response #10: The department disagrees with the comment. The department does not believe the rule creates a potential conflict.

Comment #11: Cascade County Commissioners commented about New Rule VIII, GENERAL COST PRINCIPLES USED FOR CALCULATING PER DIEM, specifically (3), "who determines if it benefits state inmates?"

Response #11: As stated in Response #3 above, the department does not believe there is any room for interpretation about whether something benefits state inmates, but if there is a question, the regional correctional facility and department will discuss and hopefully mutually agree whether it benefits state inmates. These rules contain a dispute resolution provision, and if the parties cannot agree, either of the parties may utilize the dispute resolution procedure.

Comment #12: Cascade County Commissioners had three comments about New Rule IX, COMPLETING THE PER DIEM WORKSHEET DATA SUMMARY. First, the commissioners asked if New Rule IX(2) was correct when it stated "Financial Date."

Response #12: The department has amended proposed New Rule IX accordingly to reflect the correct word.

Comment #13: Cascade County asks "Do you want the total costs of running our detention center of just the Regional Prison?"

Response #13: The form is self-explanatory and requests numbers of inmates, not costs. The first part asks for the "inmate capacity of regional correctional facility" and further requests numbers of inmate capacity for federal, state, and local inmates for the time period in question. The second part asks for number of actual inmate days in the different categories, and the third part asks for average daily population of the three inmate categories, federal, state, and local.

Comment #14: Cascade County Commissioners commented about New Rule IX(4), "Why do you need to know what our federal per diem rate is?"

Response #14: The country's federal per diem rate is public information. The department seeks the information as a system of checks and balances because the federal per diem rate should be based on much of the same information as the regional prison calculation.

Comment #15: Cascade County Commissioners had two comments about New Rule XIII, COMPLETING SCHEDULE D-OTHER DIRECT OPERATING COSTS. First, the commissioners commented that “Certain of the other direct costs we are required to supply more than we are required to supply on the jail side. The bed ratio would under pay, and I am not sure it would be cost effective to do actual cost. Examples are linens, and toiletries.”

Response #15: For most of the items in New Rule XIII(1)(a) through (s) the department, after consultation with the existing regional prisons, allows the facility a choice about how to calculate the expense. In the example given, it was Cascade County that requested it be allowed to report the actual cost of such items. The department and the other two regional prisons believe the bed ratio accurately reflects these costs, but if the county wants to keep track of and report its actual cost, it can do that as an alternative.

Comment #16: Cascade County Commissioners commented about New Rule XIII(1)(r) that, “interest being earned on debt service reserves would be earned on monies paid by the Counties [sic] taxpayers. The interest charged on the per diem rate would be its portion for the year of the amount owed. Therefore, it would be paid out to the bonding agent when earned and not held to make interest. This would be the same if we debt financed other items in the prison.”

Response #16: The concept underlying New Rule XIII(1)(r), like the concept which underlies the rest of the per diem calculation rules is that the county must submit its actual costs. If the county pays interest as an actual expense for the regional prison, then it can submit that interest in the calculation. Similarly, if the county earns money on the reserves before it pays it out as interest, the amount of money it earns must be deducted from the interest it pays. This is the only way it will reflect the actual cost to the county.

Comment #17: Cascade County Commissioners commented about New Rule XIV, COMPLETING SCHEDULE E-COST ALLOCATION PLANS/INDIRECT COST PROPOSALS. Cascade County contends in this comment that it is too much work to calculate and submit an indirect cost proposal, but rejects the alternative 8% of direct operating costs as too low.

Response #17: The indirect cost rate of 8% is the rate the regional prisons negotiated with the department. The regional prisons have a choice with this rule. The prison may calculate an indirect cost proposal, or if, as Cascade County states, that entails too much work, the allowable rate for indirect costs is 8%.

Comment #18: Cascade County Commissioners commented about New Rule XV, COMPLETING SCHEDULE F-EQUIPMENT COST. The commissioners wanted clarification about section (5)(b). Section (5)(b) states that the regional facility may not submit as a cost, the cost of items purchased with funds received from the state government. The county states, “All costs of the regional prison are paid for by state

funds. Therefore, the way this section currently reads that we could not recuperate costs on any replacement items.”

Response #18: The rule intends to prohibit write-off of any item for which the state specifically gives the county the money to purchase. The department has amended proposed New Rule XV accordingly.

Comment #19: Cascade County Commissioners commented about New Rule XVI, COMPLETING SCHEDULE G-BUILDING DEPRECIATION. The comment has to do with the fact the rule prohibits the county from claiming depreciation on the amount of the construction cost that the state contributed in the form of grants. The comment reads, “Did any of the contribution that the State made towards construction of the facility require match? If so did the State provide such match? If not was the County informed at time of construction of the match requirement? If not how can you make us responsible now?”

Response #19: The intent of this rule is to accurately reflect the actual cost to the governing body of running the state portion of the regional facility. If the governing body received grant money from the state, then the governing body does not incur a depreciation expense on that part of the building the money purchased. Whether or not the state required matching funds from the governing body does not change the expense the governing body incurs. The rule does not make the governing body “responsible” for anything.

Comment #20: Cascade County Commissioners commented about New Rule XVII, REVIEW AND REVISION OF PER DIEM RATE. The county commented, “Should section 5 read date to interested persons or data to interested persons?”

Response #20: “Data” is the correct term.

/s/ Mike Ferriter
MIKE FERRITER
Director of Corrections

/s/ Colleen A. White
COLLEEN A WHITE
Rule Reviewer

Certified to the Secretary of State January 2, 2007.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 23.16.1901 concerning video)
gambling machine specifications)

TO: All Concerned Persons

1. On November 22, 2006, the Department of Justice published MAR Notice No. 23-16-183 regarding the public hearing on the proposed amendment of the above-stated rule at page 2890, 2006 Montana Administrative Register, Issue Number 22.

2. The Department of Justice amends the rule with the following changes, stricken matter interlined, new matter underlined:

23.16.1901 GENERAL SPECIFICATIONS OF VIDEO GAMBLING MACHINES (1) through (1)(d)(xi)(C) remain as proposed.

(D) the video gambling machine identification number (VGMID) assigned to the machine:

(D) through (G) remain as proposed but are renumbered (E) through (H).
(xii) through (3) remain as proposed.

3. A public hearing was held on December 13, 2006. No adverse comments were offered at the public hearing. However, Richard Ask, the division's Operations Bureau Chief, noted that the same language as originally proposed in the amendment should also be added to another section of this same rule, section (1)(d)(xi), and he recommended adding the language at this time. Section (1)(d)(xi) outlines information that must be on all accounting tickets. The rationale for adding the language is the same as originally stated.

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

/s/ Jon Ellingson
JON ELLINGSON
Rule Reviewer

Certified to the Secretary of State January 2, 2007.

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

In the matter of the amendment of ARM) NOTICE OF AMENDMENT,
24.138.301 definitions, 24.138.402, 24.138.403,) ADOPTION, AND REPEAL
and 24.138.406 general provisions, 24.138.502,)
24.138.503, 24.138.506 through 24.138.512,)
24.138.514, 24.138.515, 24.138.519, and)
24.138.530 licensing, 24.138.2101 and)
24.138.2105 renewals and continuing education,)
24.138.2302 unprofessional conduct,)
24.138.2402 screening panel, 24.138.3202)
and 24.138.3206 anesthesia rules, adoption)
of NEW RULES I - IX professional assistance)
program, NEW RULE X reactivation of a lapsed)
license, NEW RULE XI reactivation of an expired)
license, NEW RULE XII definition of nonroutine)
application, NEW RULE XIII fee abatement, and)
repeal of 24.138.516 reinstatement of license)
for nonpayment of renewal fee, 24.138.517)
denturist license reinstatement, and 24.138.2401)
complaint procedure)

TO: All Concerned Persons

1. On July 27, 2006, the Board of Dentistry (board) published MAR Notice No. 24-138-62 regarding the proposed amendment, adoption, and repeal of the above-stated rules, at page 1795 of the 2006 Montana Administrative Register, issue no. 14.

2. On August 17, 2006, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Several comments were received by the August 25, 2006, deadline.

3. After publication of the proposal notice, two nonsubstantive errors were discovered. In ARM 24.138.301(6), the comma following "reasonable" was inadvertently not underlined. This comma was shown, but not designated as being new language. ARM 24.138.515 contained a typographical error in the designation of information that was to remain the same. The board intended the text of the rule to remain the same and the proposal should have read (1) through (2)(f) remain the same instead of (1) through (1)(f) remain the same.

4. The board has thoroughly considered the comments and testimony received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: A commenter stated that the amendment to ARM 24.138.406(8)(d) deletes all references to didactic training by the supervising dentist. The commenter urged that (8)(d)(iii) and (iv) not be stricken to specify that both clinical and didactic training are required of auxiliaries.

RESPONSE 1: The board acknowledges that training is necessary in order for the dental auxiliary to pass the required written exam. However, the board concluded that it is not necessary to dictate by rule who does the training or how in fact the training is conducted, as long as the auxiliary ultimately passes the exam. The board is amending the rule exactly as proposed.

COMMENT 2: A commenter supported the amendment to ARM 24.138.509, adding three identified settings at which services may be provided under a Limited Access Permit to address access to care issues.

RESPONSE 2: The board acknowledges the comment and is amending the rule exactly as proposed.

COMMENT 3: A commenter stated (2)(b), (c), and (d) should not be included in NEW RULE XII (24.138.304). The commenter stated that applications where a dental hygienist applicant does not satisfy the required practice hours or has graduated from a nonaccredited school should be considered routine and evaluated by department personnel and that allowing the board to subsequently define other criteria as nonroutine is inappropriate.

RESPONSE 3: The board concluded that these enumerated nonroutine instances are few enough in number and are unusual circumstances that require the review and expertise of the full board in order to grant or deny licensure. The board is adopting the rule exactly as proposed.

5. The board has amended ARM 24.138.301, 24.138.402, 24.138.403, 24.138.406, 24.138.502, 24.138.503, 24.138.506, 24.138.507, 24.138.508, 24.138.509, 24.138.510, 24.138.511, 24.138.512, 24.138.514, 24.138.515, 24.138.519, 24.138.530, 24.138.2101, 24.138.2105, 24.138.2402, 24.138.3202, and 24.138.3206 exactly as proposed.

6. The board is not amending ARM 24.138.2302 at this time. The board received numerous comments in opposition to the proposed amendment to this rule. Following review and consideration of all comments received and due to concerns raised by the comments and by the board itself, the board has decided to not amend the rule as proposed at this time. The board anticipates conducting additional research and having subsequent discussions to address the issues raised by the comments.

7. The board has adopted NEW RULE I (24.138.2701), NEW RULE II (24.138.2703), NEW RULE III (24.138.2705), NEW RULE IV (24.138.2707), NEW RULE V (24.138.2710), NEW RULE VI (24.138.2712), NEW RULE VII

(24.138.2714), NEW RULE VIII (24.138.2716), NEW RULE IX (24.138.2719), NEW RULE X (24.138.524), NEW RULE XI (24.138.525), NEW RULE XII (24.138.304), and NEW RULE XIII (24.138.430) exactly as proposed.

8. The board has repealed ARM 24.138.516, 24.138.517, and 24.138.2401 exactly as proposed.

BOARD OF DENTISTRY
PAUL SIMS, D.D.S., PRESIDENT

/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 January 2, 2007

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 24.210.602 examination)

TO: All Concerned Persons

1. On July 27, 2006, the Board of Realty Regulation (board) published MAR Notice No. 24-210-28 regarding the proposed amendment of the above-stated rule, at page 1824 of the 2006 Montana Administrative Register, issue no. 14.

2. No comments or testimony were received.

3. The board has amended ARM 24.210.602 exactly as proposed.

BOARD OF REALTY REGULATION
TEDDYE BEEBE, 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 January 2, 2007

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

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT
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))	

TO: All Interested Persons

1. On November 9, 2006, the Department of Public Health and Human Services published MAR Notice No. 37-394 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 2784 of the 2006 Montana Administrative Register, issue number 21.

2. The department has amended 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 as proposed.

3. No comments or testimony were received.

/s/ Frank Clinch for
Rule Reviewer

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

Certified to the Secretary of State January 2, 2007.

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

In the matter of the adoption of New)
Rules I through V, and amendment of)
ARM 37.5.125 pertaining to Older Blind)
Program)

NOTICE OF ADOPTION AND
AMENDMENT

TO: All Interested Persons

1. On August 24, 2006, the Department of Public Health and Human Services published MAR Notice No. 37-389 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules, at page 1987 of the 2006 Montana Administrative Register, issue number 16.

2. The department has adopted New Rule V (ARM 37.18.110) as proposed.

3. The department has amended ARM 37.5.125 as proposed.

4. The department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE I (ARM 37.18.101) OLDER BLIND PROGRAM: DEFINITIONS

Definitions for purposes of this subchapter:

(1) through (3) remain as proposed.

~~(4) "Division" means the Disability Services Division of the department.~~

"Department" means the Department of Public Health and Human Services.

(5) through (7) remain as proposed.

(8) "Independent living skills training" means training in compensatory skills, including use of adaptive equipment that allows ~~an individual~~ a consumer with visual impairments to cope with vision loss, perform daily living activities, and participate more independently in the community.

(9) and (10) remain as proposed.

~~(11) "Legally blind" means a visual disability in which:~~

~~(a) and (b) remain as proposed.~~

(12) "Low vision" means a person has significant visual impairment that even with correction makes performance of daily tasks difficult.

(13) and (14) remain as proposed.

~~(15) "Older blind person" means a person age 55 or older whose blindness or low vision makes competitive employment extremely difficult to attain or who does not want to pursue employment but for whom independent living goals are feasible.~~

(16) and (17) remain as proposed but are renumbered (15) and (16).

~~(18)~~ (17) "Program" means the Blind and Low Vision Services Program administered by the ~~division~~ department.

(19) through (22) remain as proposed but are renumbered (18) through (21).

~~(23)~~ (22) "Significant visual impairment" means a person has vision loss of acuity or field that even with correction limits a person's activities or ability to function in a normal manner.

(24) remains as proposed but is renumbered (23).

(24) "Totally blind" means a person has only light perception remaining or has no light perception.

(25) "Visual disability" means a person has been determined diagnostically to be totally blind, to be legally blind, to have low vision, or to have significant visual impairment.

AUTH: 53-2-201, 53-7-102, 53-7-302, 53-7-315, MCA

IMP: 53-7-301, 53-7-302, 53-7-303, 53-7-306, MCA

RULE II (ARM 37.18.102) OLDER BLIND PROGRAM: ELIGIBILITY (1) A person may receive older blind services if the program determines that the person:

(a) and (b) remain as proposed.

~~(c) is legally blind, has low vision, or a significant visual impairment~~ has a visual disability;

~~(d) due to the visual disability, will either have extreme difficulty in obtaining competitive employment or in the absence of an employment goal has feasible independent living goals;~~

~~(d)~~ (e) requires services available through the program that will contribute to the person's maintenance or increased independence; and

~~(e)~~ (f) meets the other requirements of this subchapter applicable to consumers program eligibility.

(2) ~~The presence of a visual impairment or impediment~~ disability and the need for program services may be determined by qualified staff based upon a functional assessment of the person's vision.

(3) through (4) remain as proposed.

AUTH: 53-2-201, 53-7-102, 53-7-302, 53-7-315, MCA

IMP: 53-7-301, 53-7-302, 53-7-303, 53-7-306, MCA

RULE III (ARM 37.18.103) OLDER BLIND PROGRAM: REDUCTION OF SERVICE POPULATION (1) ~~The division~~ department, in accordance with state and federal law, administers the program to assure the fiscal integrity of the program. If the division determines that there are insufficient fiscal or personnel resources to appropriately serve consumers, ~~the administrator of the division in consultation with the Montana Vocational Rehabilitation Council~~ department will limit service delivery based upon the criteria in (2) through (5).

(2) For the purposes of limiting service delivery in order to meet fiscal and personnel resources exigencies, the following categories are applicable:

(a) Category 1, for consumers already accepted into the Older Blind Program.

(b) Category 2, for consumers who are totally blind.

~~(b)~~ (c) Category 2 3, for consumers who are legally blind and at risk of moving into a less independent environment due to vision loss.

(~~e~~) (d) Category ~~3~~ 4, for consumers with low vision (best acuity with correction of 20/80 or less in the better eye) or significant visual impairment that affects four or more areas of functioning, and consumers who are legally blind but not at risk of moving into a less independent environment.

(~~d~~) (e) Category ~~4~~ 5, for all other consumers with a significant visual impairment ~~who meet the eligibility criteria for the Older Blind Program.~~

(3) For purposes of implementing service delivery limitations due to insufficient fiscal or personnel resources, the division will close, as appropriate to meet the fiscal and personnel resources exigencies, one or more categories of service delivery beginning with level 4. For each service delivery category closed, the ~~division~~ department will initially close that category to further consumers. Consumers in that category already in receipt of services will continue to receive services unless it is necessary due to the exigencies to initiate closure of services to all persons in that category.

(4) If the ~~division~~ department determines that there are fiscal or personnel resources available to serve some, but not all, of the consumers in a particular service delivery category, the ~~division~~ department will continue to serve that number of consumers in that category for which it has adequate fiscal or personnel resources. Consumers to be served will be selected based upon the consumers' dates of application for the program beginning with the earliest date of application.

(5) If the ~~division~~ department determines that there are fiscal or personnel resources available by which to begin to open a previously closed service delivery category but not serve all possibly eligible persons in that category, the ~~division~~ department will serve that number of consumers for which it has adequate fiscal or personnel resources based upon the consumers' dates of application for the program beginning with the earliest date.

AUTH: 53-2-201, 53-7-102, 53-7-302, 53-7-315, MCA

IMP: 53-7-301, 53-7-302, 53-7-303, 53-7-306, MCA

RULE IV (ARM 37.18.106) OLDER BLIND PROGRAM: SCOPE OF SERVICES (1) Older blind services are services determined ~~necessary~~ by qualified staff to be necessary to assist a consumer with maintaining or increasing independence consistent with a consumer's priorities, concerns, abilities, interests, and choice.

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

(3) Services may be made available in the discretion of the program to enhance a consumer's independence, productivity, and to further the quality of life, and independence of consumers as a group. Those services include, but are not limited to:

(a) through (4) remain as proposed.

AUTH: 53-2-201, 53-7-102, 53-7-302, 53-7-315, MCA

IMP: 53-7-301, 53-7-302, 53-7-303, 53-7-306, MCA

5. The department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: Most consumers who are given notice that they will lose eligibility for the program due to limited use of services are not aware of the types of services available through the program. If they were aware, they could request and benefit from those services while remaining eligible for the program. The program should take the initiative to instruct consumers and potential consumers about the services that may be available.

RESPONSE: The department acknowledges that it is important to apprise consumers and potential consumers of the types of services that may be offered through the program. The department will instruct staff to better inform consumers and applicants about the services that may be made available through the program. This does not involve any changes in the rules as proposed.

COMMENT #2: Proposed Rule I(19) (ARM 37.18.101) defining "qualified blind and low vision staff" should be changed to require certification of program staff. The proposed rules speak of qualified staff but fail to specify what types of qualifications are needed.

RESPONSE: The department acknowledges that maintaining staff with qualifications that meet the highest standards in blindness rehabilitation is imperative to providing appropriate services for clients. The department requires that vision rehabilitation therapists (rehabilitation teachers) and Orientation and Mobility Specialists meet the standards for certification through the Academy of Certification for Vision Rehabilitation and Education Professionals (ACVREP). Although certification has merit, with the recruitment difficulties Montana experiences when competing nationally, the department would find filling positions even more difficult. Also, by not strictly defining "qualified staff", the department has the flexibility to hire trainees or interns into positions and require trainees to become fully qualified when the department is unable to recruit qualified staff in a reasonable timeframe. The department uses the personnel department, through position descriptions to define qualified staff. Training is available for staff to maintain and improve professional competencies.

COMMENT #3: Peer counseling is a great idea but does not appear to be used. Peer counseling needs to be implemented. The local Montana Association for the Blind chapters would be willing to help in this.

RESPONSE: The department acknowledges that peer counseling can be a very useful tool in assisting consumers. The department is supporting and developing local support groups. When appropriate or upon the client's request referrals are made to the Independent Living Centers, Montana Association for the Blind or Low Vision Montana, all of which have established peer counseling services. Rather than duplicate services, the department prefers to use existing services and focus our services toward services not available elsewhere.

COMMENT #4: Proposed Rule II(3)(a) (ARM 37.18.102), providing for termination

of a consumer upon realizing the goals of the consumer's independent living plan, should be changed to allow for continued eligibility through modifications to the goals in the consumer's plan.

RESPONSE: It is important to assure that the goals incorporated into a consumer's independent living plan are appropriate. Consequently, the goals of a plan may be subject at times to appropriate modifications if agreed to by the consumer and the program. The program, however, has limited funding and expenditures must be carefully monitored and controlled to stay within available appropriated funding. A further important consideration is that termination from the program upon realization of the consumer's goals serves to assure proper management of the program. Maintaining case management for inactive or limited services cases would limit the time that staff could apply to managing service planning and delivery for active cases. In addition, federal reporting requirements are being changed to emphasize an accounting of active cases only.

COMMENT #5: A consumer who is to be terminated from the program should not need to seek the review and hearing process provided for in the rule but rather allowed to refuse termination.

RESPONSE: The program has a very limited budget and as a result cannot allow for a consumer's continued eligibility after the appropriate set of independent living goals have been accomplished or otherwise resolved. The budget for the program, derived as federal funding under the federal act, is \$250,000. The Legislature has chosen not to make additional monies available for the program and no increase in the federal funding is expected. The department does not have discretionary funding to divert to this program.

COMMENT #6: Delays in delivery of services should be implemented in lieu of implementation of order of selection with the resulting terminations of consumers from the program.

RESPONSE: The federal authorities have repeatedly emphasized that Montana in relation to vocational rehabilitation services must proceed with implementation of the order of selection process for accommodating limited funding. The federal authorities are adverse to the use of service reductions or delays to address budget shortfalls when the order of selection could be implemented to limit enrollment to those with the greatest needs.

COMMENT #7: The order of selection should be modified so that when funding available is not adequate, those consumers who are financially able to purchase their own services are eliminated first.

RESPONSE: The department wishes to implement the order of selection in a way that does not unfairly disadvantage some classes of consumers or potential consumers. The comment presents an important factor not currently incorporated into the eligibility criteria. Eligibility for the program does not currently give

consideration to the individual incomes and resources of applicants. While the department is not modifying the order of selection for this purpose at this time, it is committed to reviewing eligibility criteria to determine the appropriateness of inclusion of consideration of income and resources criteria. However, it needs to be kept in mind that older blind persons have an unique financial situation which militates against the use of financial eligibility criteria for the program. Many older blind persons live on minimal fixed incomes yet have savings and assets set aside by which to meet the exigencies of medical, real property, and care costs. Due to these financial assets most persons currently within the potential service population would not be able to access older blind services if subject to the financial criteria established for the vocational rehabilitation program. Furthermore, the federal guidance for the program indicates that the intent is to provide services regardless of the financial status.

COMMENT #8: The implementation of program reduction, inclusive of order of selection, should not be precipitated by lack of appropriate personnel for the program. The lack of appropriate personnel is a problem that can be addressed through the provision of better compensation for the professionals necessary to the delivery of blind and low vision services.

RESPONSE: The department recognizes the merit of maintaining the professional staff necessary for the delivery of blind and low vision services. The department has pursued pay exceptions and other measures by which to foster the recruitment of qualified persons into those professional positions. Recruitment has proven to be more complicated than just a matter of higher salaries. The department will continue to maintain an appropriate professional staff and welcomes ideas about measures that will assist in that effort. While the department does not intend to limit eligibility in the program for categories of persons solely upon the availability of adequate professional staffing, it believes it is necessary to preserve its discretion to control for the number of eligible persons based upon critical factors inclusive of available funding and the ability to deliver services in a professionally appropriate manner.

COMMENT #9: The local chapters of the Montana Association for the Blind should be notified when a consumer is terminated from the program. The association has members who are financially able and willing to assist consumers.

RESPONSE: The department cannot as a matter of course share confidential information with the association or its members. If a peer counseling program, as suggested in another comment, or a transition assistance program, as suggested in this comment, were developed, appropriate procedures would be needed to assure that the consumers involved in such efforts were providing proper authorizations for the sharing of confidential information.

COMMENT #10: The department when implementation of the order of selection becomes necessary should terminate first those persons who otherwise have access to services through other programs.

RESPONSE: The comment presents an important factor not currently incorporated into the eligibility criteria. Eligibility for the program does not currently give consideration to the services applicants may have through other programs. While the department is not modifying the order of selection for this purpose at this time, it is committed to reviewing eligibility criteria to determine the appropriateness of inclusion of consideration of the availability of services through other programs.

COMMENT #11: The proposed rules provide that the Vocational Rehabilitation Council will serve as an advisory body in the exercise of implementation of an order of selection should it be necessary to limit the availability of the program. This is not the most appropriate advisory body for implementation of order of selection for the purposes of the Older Blind program. Advice should be received from a new council for the Older Blind program or from the State Independent Living Council.

RESPONSE: The department has removed the reference to the Vocational Rehabilitation Council. For purposes of implementation of the order of selection for the older blind services the department agrees it should not depend solely upon advice from the Vocational Rehabilitation Council. The department, however, would not establish a new advisory council. The executive branch of government, of which the department is a part, is currently seeking, as a matter of governmental efficiency, to consolidate the number of advisory bodies and therefore the department could not entertain at this time the establishment of any further advisory bodies.

COMMENT #12: References in the proposed rules to division should be to the Division of Visual Services established at 2-15-2205, MCA. The department should comply with 2-15-2205, MCA. Currently, that division is administered in conjunction with the Disability Services Division and the Division of Visual Services is not even acknowledged in organizational charts.

RESPONSE: The rules have been modified to remove direct references to "division" and the definition of "division" as meaning the "Division of Disability Services" has also been removed. The department's organizational rule at ARM 37.1.101 does include recognition of a "blind and low vision services division". The rule further provides that "The disability services and blind and low visions (sic) divisions are administered by a single division administrator." This consolidation of administration was established initially and continues to be in place as a measure of efficiency. An executive determination was made that the scope of blind and low vision services with the very small service population does not merit an entirely separate administrative structure that would divert the limited funding available for the services to the maintenance of unnecessary administrative personnel and systems.

COMMENT #13: Eligibility in Proposed Rule II(1)(c) (ARM 37.18.102), should include the category of "totally blind". This would be in parallel to the disability categories appearing on the Rehabilitation Services Administration Form 70B used for purposes of federal reporting on older blind services.

RESPONSE: The department agrees with the comment and has modified the rules

to provide for the inclusion of this category of eligibility. The term "totally blind" does appropriately define a definitive segment of the service population. A definition of "totally blind" has been included in the definitions of proposed Rule I (ARM 37.18.101). The inclusion of this category accented the need to reconfigure the language in section (1) of proposed Rule II (ARM 37.18.102), Eligibility, to better state the eligibility criteria. This resulted in the use of the term "visual disability" in the language. In turn "visual disability" was inserted into the definitions and defined to be inclusive of "total disability", "legally blind", "significant visual impairment", and "low vision". Also the term "older blind person" as defined in proposed Rule I (ARM 37.18.101), was removed and the substantive language in the definition of that term moved to where it rightfully needed to appear in the eligibility provision of proposed Rule II(1) (ARM 37.18.102).

COMMENT #14: The blind and low vision services, in light of the requirement for a Division of Blind and Low Vision Services, should have its own budget, inclusive of federal Title I match funding. This would be an assurance of the integrity of blind and low vision services.

RESPONSE: The rule set does not include any matters pertaining to state budgeting practices. Generally, programmatic rules adopted by state agencies cannot govern state budgeting practices which are governed by particular statutes. The department could explore with the Governor's Budget Office the possibility of budgeting processes of presenting a line item in the departmental budgets for blind and low vision services in the future.

/s/ Cary Lund for
Rule Reviewer

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

Certified to the Secretary of State January 2, 2007.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	CORRECTED NOTICE OF
Rule I (42.20.606), and amendment of	)	ADOPTION AND AMENDMENT
ARM 42.20.101, 42.20.102, 42.20.106,)	
42.20.107, 42.20.204, 42.20.301,)	
42.20.302, 42.20.303, 42.20.304,)	
42.20.305, 42.20.307, 42.20.501,)	
42.20.503, 42.20.505, 42.20.515,)	
42.20.517, 42.20.601, 42.20.605,)	
42.20.615, 42.20.620, 42.20.625,)	
42.20.640, 42.20.645, 42.20.650,)	
42.20.655, 42.20.660, 42.20.665,)	
42.20.670, 42.20.675, 42.20.680, and)	
42.20.701 relating to valuation of real)	
property, classification of nonproductive)	
patented mining claims, agricultural)	
land, and forest land)	

TO: All Concerned Persons

1. On October 26, 2006, the department published MAR Notice No. 42-2-766 regarding a public hearing on the proposed adoption and amendment of the above-stated rules at page 2533 of the 2006 Montana Administrative Register, Issue No. 20. On December 22, 2006, the department published the notice of adoption and amendment at page 3103 of the 2006 Montana Administrative Register, Issue No. 24.

2. The reason for the correction is the implementing statute shown on the proposal notice for ARM 42.20.307 is incorrect. The implementing statute shown on the notice is 15-6-133, MCA. That statute has never been an implementing statute for this rule. The correct implementing statutes for ARM 42.20.307 are 15-6-101, 15-6-148, 15-6-153, and 15-8-111, MCA. The department intended to correct those statutes to strike 15-6-148 and 15-6-153, MCA, as had been done for several other rules in this notice because those statutes have been repealed. The amendment reads as follows:

42.20.307 VALUATION OF ELIGIBLE MINING CLAIM LAND (1) remains as amended.

AUTH: 15-1-201, MCA

IMP: ~~15-6-133~~ 15-6-101, ~~15-6-148~~, ~~15-6-153~~, 15-8-111, MCA

3. Replacement pages for the corrected notice of adoption and amendment have been submitted to the Secretary of State on December 29, 2006.

4. An electronic copy of this Corrected Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under the Notice of Rulemaking section. The department strives to make the electronic copy of this Corrected 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State January 2, 2007

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 June 30, 2006. This table includes those rules adopted during the period July 1 through September 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 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 June 30, 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 and 2007 Montana Administrative Register.

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