

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 10

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the amendment of)
ARM 12.6.2203, 12.6.2205, 12.6.2210,)
and 12.6.2215 pertaining to exotic)
species)
CORRECTED NOTICE OF PUBLIC
HEARING ON PROPOSED
AMENDMENT

TO: All Concerned Persons

1. On May 10, 2007, the Fish, Wildlife, and Parks Commission (commission) published MAR Notice No. 12-325 regarding a public hearing on the proposed amendment of the above-stated rules at page 560 of the 2007 Montana Administrative Register, Issue No. 9.

2. The above-referenced notice published the place and day but omitted the time of the hearing. The purpose of this notice is to correct the Register omission. At 7:00 p.m. on May 30, 2007, the commission will hold a public hearing at the Department of Fish, Wildlife, and Parks, 1420 East Sixth Avenue, Helena, Montana. The time of the hearing was published May 7, 2007, on the department's web site and in the department's press releases.

3. 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 Beth Giddings, P.O. Box 200701, Helena, Montana 59620-0701; or e-mailed to FWPExotics@mt.gov and must be received no later than June 7, 2007.

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

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

CERTIFIED TO THE SECRETARY OF STATE MAY 15, 2007

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of 24.29.4315, relating to insurer reporting) ON PROPOSED AMENDMENT
requirements)

TO: All Concerned Persons

1. On June 22, 2007, at 10:00 a.m., or as soon thereafter as is feasible, the Department of Labor and Industry (department) will hold a public hearing to be held in the first floor conference room (room 104), Walt Sullivan Building, 1327 Lockey Avenue, Helena, Montana to consider the proposed amendment of the above-stated rule.

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., on June 15, 2007, to advise us of the nature of the accommodation that you need. Please contact the Workers' Compensation Regulations Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Keith Messmer, P.O. Box 8011, Helena, MT 59624-8011; telephone (406) 444-6541; fax (406) 444-3465; TDD (406) 444-5549; or e-mail kmessmer@mt.gov.

3. On April 20, 2007, the department held a public hearing to consider the proposed adoption of the above-stated rule. Based on written comments received, the department decided to adopt the rule as proposed as soon as possible in order to promulgate the rule in a timely manner. The rule is adopted elsewhere in this issue of the Register. However, based upon the comments received, the department now proposes to amend the rule in order to clarify it.

4. The proposed amendment provides as follows, stricken matter interlined, new matter underlined:

24.29.4315 INSURER AND EMPLOYER REPORTING REQUIREMENTS -
COVERAGE AND CANCELLATION NOTIFICATION (1) An insurer's ~~Electronic~~ notice of insurance coverage or cancellation must contain the taxpayer identification number of the employer.

(2) An employer must provide its taxpayer identification number to its
workers' compensation insurer.

AUTH: 39-9-103, 39-71-203, 39-71-225, MCA
IMP: 39-9-201, 39-71-203, 39-71-225, 39-71-401, 39-71-504, 39-71-507, 39-71-2204, 39-71-2205, 39-71-2337, 39-71-2339, MCA

REASON: There is reasonable necessity to amend ARM 24.29.4315 in order to clarify that an employer must report its taxpayer identification number to its insurer so that the insurer's insurance policy coverage and cancellation reporting to the department comply with the department's requirements. The department is implementing the International Association of Industrial Accident Boards and Commissions ("IAIABC") Proof of Coverage release 2.1 (projected for August 1, 2007). The department uses the IAIABC's national standard reporting format for workers' compensation insurance coverage, which identifies employing entities by the entity's taxpayer identification number, in order to help track employer compliance with Montana's workers' compensation insurance coverage requirements. At least one insurer, the Montana State Fund (MSF), has advised the department that without an administrative rule requiring the collection of the taxpayer identification number from its insured employer, the insurer might not otherwise be able to obtain the information from the employer.

The department uses the coverage information to carry out some of its regulatory functions with regards to the Workers' Compensation Act. In addition to using the coverage information to correctly identify the insurer "on the risk" for a claim filed by an injured employee, the department uses the database information to enforce, via the Uninsured Employers' Fund, the coverage requirements imposed upon employers by the Workers' Compensation Act. The department also uses the information as part of the workers' compensation insurance verification process in the construction contractor registration program provided for in Title 39, chapter 9, MCA. The coverage information also helps the department provide management information related to the Montana workers' compensation system in fulfillment of the department's obligations pursuant to 39-71-225, MCA.

The database software that supports IAIABC Proof of Coverage release 2.1 is designed to reject coverage information submitted without an employer's identification number (EIN), and returns an error message that the EIN is a required field. That circumstance will require the insurer to correct that error, which means getting a valid EIN and then resubmitting the policy information. Most, if not all insurers currently writing workers' compensation policies in Montana, provide coverage reporting using the National Council of Compensation Insurers ("NCCI") as the reporting agent for the insurer. Such reports are submitted electronically, using the IAIABC reporting format. The department believes that there is no feasible, reliable, and cost-effective alternative way of accurately identifying an insured employer other than by use of the employer's taxpayer identification number.

The proposed amendment requires that each insured employer disclose its taxpayer identification number to its insurer. For most employers, that will be a federal employer identification number (FEIN). If an individual policyholder does not have a FEIN, the individual's social security number is that employer's taxpayer identification number. Any employer who does not want to use his or her social security number as the employer identification number can obtain an FEIN. Obtaining an FEIN is simple and can be completed in less than 15 minutes. If an individual who is an employer nevertheless chooses to use the individual's social

security number as the employer identification number, the individual employer waives his or her right to privacy in that number to extent of its proper use for compliance with the Workers' Compensation Act.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Keith Messmer, Bureau Chief, Workers' Compensation Regulations Bureau, Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59624-8011; by facsimile to (406) 444-3465; or by e-mail to kmessmer@mt.gov, and must be received no later than 5:00 p.m., June 29, 2007.

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

7. 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 that the person wishes to receive notices regarding all Department of Labor and Industry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State May 14, 2007

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

In the matter of the proposed amendment)	NOTICE OF PUBLIC HEARING
of ARM 24.174.301 definitions, 24.174.303)	ON PROPOSED AMENDMENT,
internship, 24.174.401 and 24.174.402 fee)	ADOPTION, AND REPEAL
schedules, 24.174.501 examination,)	
24.174.502 transfer, 24.174.503 vaccines,)	
24.174.524 collaborative practice,)	
24.174.602 internship, 24.174.604)	
preceptor requirements, 24.174.801)	
general licensure, 24.174.804 ownership,)	
24.174.1122 ambulatory facilities,)	
24.174.1201 and 24.174.1202 wholesale)	
licensing, and the adoption of NEW RULE)	
I pharmacy closure, NEW RULE II change)	
in location, NEW RULE III change in)	
ownership, NEW RULE IV, NEW RULE V,)	
and NEW RULE VI medical gas, NEW)	
RULE VII change in location, NEW RULE)	
VIII ownership, NEW RULE IX foreign)	
interns, NEW RULE X technicians, and)	
NEW RULE XI centralized prescription)	
and drug orders, and repeal of 24.174.822)	
central filling by hub pharmacies)	

TO: All Concerned Persons

1. On June 14, 2007, at 9:30 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment, adoption, and repeal 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 Pharmacy (board) no later than 5:00 p.m., on June 8, 2007, to advise us of the nature of the accommodation that you need. Please contact Evie Martin, Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2355; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdp@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The board is proposing to amend and repeal existing rules and adopt new rules to clarify or add detail to unclear or vague rules, to substitute gender neutral for gender specific terms, and to update obsolete terminology for current usage. It is reasonably

necessary to amend the rules further to address contemporary issues in pharmacy practice not previously addressed in rule, and to correct unintentional omissions. Punctuation and grammar are being amended throughout to comply with ARM formatting requirements. Authority and implementation cites are also being amended throughout to accurately reflect all statutes implemented through the rules, to provide the complete sources of the board's rulemaking authority, and to delete references to repealed statutes. Accordingly, the board believes that there is reasonable necessity to generally amend certain existing rules, repeal one existing rule, and adopt new rules at this time. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.174.301 DEFINITIONS In addition to the terms defined in 37-7-101, MCA, the following definitions apply to the rules in this chapter.

(1) remains the same.

(2) "Biological safety cabinet" means a contained unit suitable for the preparation of low to moderate risk agents and where there is a need for protection of the product, personnel, and environment according to National Sanitation Foundation Standard 49.

(3) through (6) remain the same.

(7) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a drug or device from one person to another, whether or not for a consideration.

(8) through (17) remain the same.

(18) "Institutional pharmacy" means that physical portion of an institutional facility where drugs, devices, and other material used in the diagnosis and treatment of injury, illness, and disease are dispensed, compounded, and distributed to other health care professionals for administration to patients within or outside the facility, and pharmaceutical care is provided.

(19) "Labeling" means the process of preparing and affixing a label to any drug container exclusive, however, of the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and Montana law or rule.

(20) remains the same.

(21) "Medical gas" means any gaseous substance that meets medical purity standards and has application in a medical environment. Examples of medical gases include but are not limited to oxygen, carbon dioxide, nitrous oxide, cyclopropane, helium, nitrogen, and air.

(22) "Medical gas distributor" is a person engaged in the manufacture, processing, packaging, labeling, or distribution of a medical gas to a person other than a consumer or patient.

(23) "Medical gas supplier" is a person engaged in selling, transferring, or delivering to a patient or a patient's agent one or more doses of medical gas in the

manufacturer's or distributor's original container for subsequent use by the patient.
 (21) through (25) remain the same but are renumbered (24) through (28).
~~(26)~~ (29) "Qualified patients" mean patients who are uninsured, indigent, or have insufficient funds to obtain needed prescription drugs.
 (27) through (33) remain the same but are renumbered (30) through (36).

AUTH: 37-1-131, 37-7-201, 50-32-314, MCA

IMP: 37-7-102, 37-7-201, 37-7-301, 37-7-321, 37-7-406, 37-7-603, 37-7-604, 37-7-605, 50-32-314, MCA

REASON: It is reasonably necessary to define three new terms to comply with and clarify terminology used in proposed New Rules IV through VIII, addressing the regulation of distributors and suppliers of medical gases.

24.174.303 INTERNSHIP PROGRAM DEFINITIONS (1) through (3) remain the same.

(4) "Intern" means a qualified [under ARM 24.174.602~~(8)~~] pharmacy student, or a graduate from an accredited school of pharmacy, and registered in an approved program of supervised training.

(5) through (7) remain the same.

(8) "Reporting period" means at the completion of internship or ~~externship experience~~ introductory pharmacy practice experience in a given site or after 500 hours, whichever comes first, or at the completion of ~~the clerkship experience~~ advanced pharmacy practice experience.

(9) remains the same.

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

24.174.401 FEE SCHEDULE (1) through (7) remain the same.

(8) NAPLEX examination fee (paid directly to exam service)	465
<u>(8) Montana NAPLEX examination processing fee (a separate exam fee is paid directly to NABP)</u>	<u>35</u>
(9) NAPLEX examination processing fee (paid to board)	35
(10) Multistate pharmacy jurisprudence examination (MPJE) exam fee (NABP - \$185; board - \$25)	210
<u>(9) Montana multistate pharmacy jurisprudence examination (MPJE) exam fee (a separate exam fee is paid directly to NABP)</u>	<u>25</u>
(11) through (22) remain the same but are renumbered (10) through (21).	

AUTH: 37-1-134, 37-7-201, 50-32-314, MCA

IMP: 37-1-134, 37-7-201, 37-7-302, 37-7-321, 37-7-604, 37-7-605, 37-7-703, 50-32-314, MCA

REASON: It is reasonable and necessary to amend this rule to clarify the rule and lessen confusion among applicants regarding fees paid to the board and those paid directly to NABP. The fees paid to the board are not being changed, but the board

decided to restate these fees for the purpose of clarity. Additionally, the board is amending the rule to no longer list the NABP fee amounts because the board does not set these fees and to avoid having to amend this rule whenever the NABP changes its fees.

24.174.402 DANGEROUS DRUG FEE SCHEDULE (1) The fees to be assessed for registration to manufacture, distribute, dispense, conduct research, or analyze, a dangerous drug shall be assessed according to the following schedule:

<u>REGISTRATION</u>	<u>ANNUAL FEE</u>
(a) manufacture	\$150 <u>100</u>
(b) distribute	150 <u>100</u>
(c) dispense – pharmacies	75
<u>(i) pharmacies</u>	<u>75</u>
<u>(ii) ambulatory surgical facilities</u>	<u>75</u>
(d) conduct research or analyze	100

AUTH: 37-1-134, 37-7-201, 50-32-103, 50-32-314, MCA

IMP: 37-1-134, 37-7-201, 37-7-321, 50-32-103, 50-32-314, MCA

REASON: The board determined it is reasonably necessary to amend this rule to decrease the registration fee for the manufacturers and distributors of dangerous drugs to \$100. It was discovered through a legislative audit that the current fee exceeded the maximum allowed by statute at 50-32-103, MCA, and the board is amending the fee to comply with audit recommendations. The board estimates that the change will affect 263 licensees and will result in a decrease in annual revenue of approximately \$13,150.

The board is also adding a fee for registration of ambulatory surgical facilities. Ambulatory surgical facilities must register with the board as a dangerous drug dispenser and with the Drug Enforcement Administration (DEA) to assure accountability for the security of controlled substances stored and administered within the facility. The board estimates that this change will affect 15 of these facilities and will result in an estimated annual increase in revenue of \$1,125.

24.174.501 EXAMINATION FOR LICENSURE AS A REGISTERED PHARMACIST (1) and (2) remain the same.

~~(3) A successful interview before the Board of Pharmacy or its designee, the test of English as a foreign language, test of spoken English and the foreign pharmacy graduate equivalency exam provided by the National Association of Boards of Pharmacy will be required for pharmacy graduates from outside the 50 states, the District of Columbia, or Puerto Rico, who seek certification of educational equivalency in order to sit for the North American pharmacist licensure examination. must complete the following: A scaled score of 75 or greater will be the passing score for this examination. A candidate who does not attain this score may retake the examination after a 91-day waiting period.~~

- (a) a successful interview before the Board of Pharmacy or its designee;
- (b) the Foreign Pharmacy Graduate Equivalency Examination (FPGEE);

- (c) 1500 hours of internship in the United States;
- (d) the Test of Spoken English (TSE); and one of the following:
 - (i) the computer-based Test of English as a Foreign Language (TOEFL);
 - (ii) the paper-based TOEFL;
 - (iii) the internet-based TOEFL.
- (4) NABP minimum passing scores must be achieved on all tests and examinations.

AUTH: 37-1-131, 37-7-201, MCA

IMP: 37-1-131, 37-7-201, 37-7-302, MCA

REASON: It is reasonable and necessary to amend this rule to require that foreign pharmacy graduates complete 1500 hours of internship in the United States to sit for the licensure examination. The practice of pharmacy in a foreign country may vary significantly from the practice of pharmacy in the United States and therefore in the interest of public and patient safety, the board concluded that a foreign pharmacist should receive supervised internship training prior to being licensed and practicing independently in Montana.

The board is also amending this rule to reflect the currently available testing methods for the Test of English as a Foreign Language (TOEFL) to an internet-based examination with four scored components including writing, speaking, listening, and reading.

24.174.502 TRANSFER OF LICENSE FROM ANOTHER STATE

(1) Applicants seeking a license on the basis of having been examined taken the NAPLEX examination and then issued a license by another state shall submit the following information to the board:

- (a) remains the same.
- (b) proof of passing examination score on the ~~NABP~~ NAPLEX examination;
- (c) and (d) remain the same.

(2) An applicant who has been registered as a pharmacist by examination in another state but who has not taken the NAPLEX examination shall appear before the board for consideration of transfer of licensure and submit the following information to the board:

- (a) transfer of licensure application;
- (b) proof of passing examination score;
- (c) verification of current licensure in good standing from all other states where licensed; and
- (d) appropriate fees.

(2)(3) In addition to the above requirements in (1) and (2), the applicant will be required to pass the MPJE, to measure the competence of the applicant regarding the statutes and rules governing the practice of pharmacy. A score of not less than 75 shall be a passing score for this examination.

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

AUTH: 37-7-201, MCA

IMP: 37-1-304, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clearly delineate the requirements for applicants regarding the transfer of licensure from states that do not, or previously did not utilize the NAPLEX examination. The amended rule will also address potential applicants who took their licensure examination prior to creation of the NAPLEX examination.

24.174.503 ADMINISTRATION OF VACCINES BY PHARMACISTS (1) A pharmacist must have a collaborative practice agreement with a practitioner authorized to prescribe drugs in order to administer and/or prescribe vaccinations.

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

(a) through (c) remain the same.

(d) the pharmacist has a current copy of or on-site access to the Centers for Disease Control and Prevention reference "Epidemiology and Prevention of Vaccine-Preventable Diseases."

(2) through (5) remain the same but are renumbered (3) through (6).

(a) the name, address, allergies, and date of birth of the patient;

(b) remains the same.

(c) the name, manufacturer, dose, lot number, and expiration date of the vaccine;

(d) through (i) remain the same.

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

~~(7)~~(8) The pharmacist must provide a certified true copy of the immunization certificate and CPR certification to the board for initial endorsement on their pharmacy license.

(9) In order to maintain the immunization endorsement on their pharmacy license, an immunization certified pharmacist must:

(a) maintain current CPR certification;

(b) participate in two hours of ACPE or CME accredited continuing education on immunizations every year; and

(c) maintain competency in vaccine administration technique by:

(i) professionally administering vaccinations to humans in the previous 12 months; or

(ii) have a Montana licensed health care provider authorized to prescribe or administer vaccines or have an immunization-certified pharmacist witness and validate the pharmacist's vaccine administration technique every year.

(10) The board shall randomly select renewal notice forms of immunization-certified pharmacists for audit and verification of the requirements listed in this rule.

AUTH: 37-7-101, 37-7-201, MCA

IMP: 37-7-101, 37-7-201, MCA

REASON: It is reasonable and necessary to amend this rule to clarify that a collaborative practice agreement is needed to administer and/or prescribe vaccinations under the delegated prescriptive authority of a licensed prescriber.

Licensed pharmacists expressed confusion regarding this requirement and the board is amending the rule to address and alleviate the uncertainty.

It is necessary to amend the rule to require that immunization-certified pharmacists obtain continuing education and ongoing competency in vaccine administration in the interest of public health and safety. Currently the board does not require the reassessment of immunization certified pharmacists' skills in vaccine administration after initial certification, nor are they required to submit evidence of continuing professional development in the area of vaccine administration and epidemiology. Since vaccine administration requires hands-on patient care that is currently not in the usual course of practice for a pharmacist, and since the board is providing a special endorsement on the license, it is reasonable for the board to require continuing professional development and competency in support of this specialty practice.

24.174.524 COLLABORATIVE PRACTICE AGREEMENT REQUIREMENTS

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

(i) the practitioner must be licensed in good standing in Montana; and

(ii) the practitioner must be in active practice in the community in which the collaborating pharmacist practices.

(b) through (i) remain the same.

(j) the annual date by which review, renewal, and revision, if necessary, will be accomplished;

(k) and (l) remain the same.

(3) Patient records shall be maintained by the pharmacist for a minimum of seven years and may be maintained in an automated system pursuant to ARM ~~24.174.818(3)~~ 24.174.817.

(4) remains the same.

AUTH: 37-7-201, MCA

IMP: 37-7-101, 37-7-201, MCA

REASON: It is reasonable and necessary to amend this rule to require that the sponsoring physician be licensed in good standing in Montana and actively practicing in the same community as the collaborating pharmacist. The rules for collaborative practice require periodic physician oversight and communication which are optimally completed when the physician and the pharmacist have an established professional relationship and both professionals practice in the same community.

24.174.602 INTERNSHIP REQUIREMENTS (1) The experience required ~~for to obtain licensure as a pharmacist~~ shall be that instruction period composed of computed time obtained under the supervision of the preceptor in an approved site. An intern may not work alone and assume the responsibility of a registered pharmacist.

(2) through (4) remain the same.

(5) The intern is responsible for the knowledge and observation of the extent of ~~his~~ the intern's legal liability and legal restrictions applicable under the federal, state, and municipal laws and rules.

(6) and (7) remain the same.

(8) Employment and the intern training periods are not to be interpreted as being the same. An intern may work in excess of his the computed time.

(9) remains the same.

(10) The intern shall notify the board of any change of address, employment, or preceptor within ten days.

(11) remains the same.

(12) An intern will be allowed six months after taking the NAPLEX examination to complete requirements for licensure. The ~~above~~ time may be extended, subject to the approval of the board, if extenuating circumstances prohibit completion in the ~~above~~ prescribed time.

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: It is necessary to amend this rule to address confusion by clarifying that the internship experience is a requirement for licensure as a pharmacist, not licensure as an intern.

24.174.604 PRECEPTOR REQUIREMENTS (1) Each pharmacist preceptor shall:

(a) through (e) remain the same.

(f) have current knowledge of developments in the profession by exhibiting such attendances, readings, and actions, which conform to the best traditions of pharmacy;

(g) through (i) remain the same.

(2) The repackaging, labeling, and dispensing of drugs for distribution shall be under the supervision of a registered pharmacist or pharmacist preceptor.

~~(3) A preceptor may supervise one intern or one extern and one pharmacy technician at any time. A pharmacist preceptor may, however, supervise two students at a time if the students are completing a clerkship experience through an approved school of pharmacy. A pharmacist preceptor may only supervise one student in internship or one student in introductory pharmacy practice experience (IPPE) at any time.~~

(4) A pharmacist preceptor may supervise no more than three persons at one time (including technicians and students) unless an exception is specifically granted by the board.

(5) A pharmacist preceptor may supervise two students at a time if the students are completing an advanced pharmacy practice experience (APPE) through an approved school of pharmacy.

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: It is reasonably necessary to amend this rule to specify that the preceptor requirements apply only to pharmacist preceptors. The board recognizes that there are elective advanced pharmacy practice experience sites where the preceptor is

not a pharmacist and the board and the school of pharmacy agree that it is not feasible or necessary to have these nonpharmacist preceptors register with the board. It is also necessary to update the rule to reflect the changes in the technician ratio and in the terminology used by schools of pharmacy for the experiential portion of the pharmacy curriculum. Externship is now called introductory pharmacy practice experience (IPPE) and clerkship is now called advanced pharmacy practice experience (APPE).

24.174.801 GENERAL LICENSE REQUIREMENTS (1) and (2) remain the same.

(3) To operate, maintain, open, or establish more than one pharmacy, separate applications shall be made and separate licenses issued for each.

~~(4) Upon closure of a certified pharmacy, the original license becomes void and must be surrendered to the board within ten days.~~

AUTH: 37-7-201, MCA

IMP: 37-7-201, 37-7-321, MCA

REASON: It is reasonably necessary to delete (4) and include the provision in New Rule I that is proposed to expand upon and clarify procedures for pharmacy closure.

24.174.804 CHANGE IN OWNERSHIP (1) When a pharmacy changes ownership, the original license becomes void and must be surrendered to the board, and a new license obtained by the new owner or owners. The owner shall submit a new license application at least 30 days prior to the change in ownership. The application must be reviewed by the board or its designee before the license may be issued.

(2) A change in ownership for the purposes of this rule shall be deemed to occur when more than 50 percent of the equitable ownership of a business is transferred in a single transaction or in a related series of transactions to one or more persons or any other legal entity.

AUTH: 37-7-201, MCA

IMP: 37-7-201, 37-7-321, MCA

REASON: It is necessary to amend this rule to specifically define the meaning of "change of ownership." The board has received numerous inquiries regarding co-owner family members taking over pharmacy management due to a pharmacist's death or illness, and whether this rule applied. The board is amending this rule to address those questions and clarify the board's intent behind a change in ownership.

24.174.1122 AMBULATORY SURGICAL FACILITIES (1) through (3) remain the same.

(4) Ambulatory surgical centers that store and/or administer controlled substances shall register with the board and with the DEA, and shall comply with all applicable state, local, and DEA regulations.

AUTH: 50-32-314, MCA

IMP: 50-32-314, MCA

REASON: It is necessary to amend this rule to clarify that ambulatory surgical facilities must register as dangerous drug dispensers with the board and with the DEA to assure the security of controlled substances stored and administered within the facilities.

24.174.1201 WHOLESALE DRUG DISTRIBUTOR LICENSING (1) Every person engaged in manufacturing, wholesale distribution, or selling of drugs, medicines, chemicals, or poisons for medicinal purposes, medical gases, or legend devices other than to the consuming public or patient, in the state of Montana, shall be licensed annually by the board. Each applicant shall:

(a) be a legal entity registered and in good standing with the Montana Secretary of State;

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

(b)(c) pay the appropriate licensing and registration fees; and

(c) remains the same but is renumbered (d).

(2) through (5) remain the same.

(6) Manufacturers, distributors, and suppliers of medical gases shall operate in compliance with applicable federal, state, and local laws and regulations. Manufacturers, distributors, and suppliers of medical gases shall register with the board to obtain the appropriate endorsement on their wholesale drug distributor license.

AUTH: 37-7-201, 37-7-610, MCA

IMP: 37-7-603, 37-7-604, 37-7-605, 37-7-606, MCA

REASON: It is reasonable and necessary to amend the rule for licensing wholesale drug distributors to include distributors of legend devices and medical gases. Devices, as defined in 37-2-101, MCA, are included in the definition of the "practice of pharmacy" in 37-7-101, MCA, and a medical gas is a drug as defined in 37-7-101, MCA. An endorsement on a license as a distributor or supplier of medical gases is necessary so that the board can readily identify those wholesalers engaged in the distribution or supply of medical gases.

It is also necessary to amend the rule to clarify that wholesale drug distributors doing business in Montana must register with the Secretary of State's office because any entity doing business in Montana must be registered with the Secretary of State's office.

24.174.1202 MINIMUM INFORMATION REQUIRED FOR LICENSURE

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

(c) addresses, telephone numbers, and the name, address, telephone number, and title of the designated person in charge of the facility of contact persons for all facilities used by the licensee for the storage, handling, and distribution of drugs;

(d) whether the ownership or operation is a partnership, corporation, or sole proprietorship, and;

~~(e) the name, address, and telephone number of the owner and operator of the licensee, including:~~

~~(i) if an individual, the name, address, and telephone number of the individual;~~

~~(ii) if a partnership, the name, address, telephone number, and ownership percentage of each partner, and the name of the partnership;~~

~~(iii) if a corporation, the name, address, telephone number, and ownership percentage and title of each corporate officer and director, the corporate names, and the name of the state of incorporation; and~~

~~(iv) if a sole proprietorship, the full name, address, and telephone number of the sole proprietor, and the name of the business entity;~~

~~(f) the name and address of the five highest-ranking employees responsible for daily operations;~~

~~(g) the name and address of the five largest shareholders owning at least 5 percent of the total shares;~~

(e) proof of registration with the Montana Secretary of State;

(h) through (j) remain the same but are renumbered (f) through (h).

(2) Any changes in information contained in ~~items (1)(a) through (e)(f) above~~ shall be submitted to the board within 30 days of the change. Any changes in location or ownership require that a new license application be filed with the board.

AUTH: 37-7-201, 37-7-610, MCA

IMP: 37-7-604, 37-7-605, MCA

REASON: It is reasonable and necessary to amend this rule to comply with proposed New Rules VII and VIII that will require a separate license for each location where drugs are stored or distributed and any changes in location or ownership would necessitate a new license.

The board currently lacks a mechanism to collect and store information about the corporate structure of a wholesale drug distributor business even though board rule requires the information be provided. It is reasonable to delete these requirements from this rule as this information will be readily available and more accessible when the business is required to register with the Secretary of State.

5. The new rules proposed to be adopted provide as follows:

NEW RULE I CLOSURE OF A PHARMACY (1) Upon permanent closure of a pharmacy, the original license becomes void and must be surrendered to the board within ten days.

(2) Whenever a pharmacy permanently closes, the owner shall notify the board of the closing no later than 15 days prior to the anticipated date of closing. The notice shall be submitted in writing and shall include the following information:

(a) the date the pharmacy will close;

(b) the names and addresses of the persons who will have custody of the closing pharmacy's:

- (i) prescription files;
 - (ii) bulk compounding records;
 - (iii) repackaging records; and
 - (iv) controlled substance inventory records.
- (c) the names and addresses of any persons who will acquire any legend drugs from the closing pharmacy, if known at the time the notice is filed.
- (3) No later than 15 days after the pharmacy has closed, the owner shall submit to the board written confirmation that:
- (a) all legend drugs have been either:
 - (i) destroyed; or
 - (ii) transferred to an authorized person(s), including the names and addresses of the person(s) to whom the legend drugs were transferred.
 - (b) controlled substances were transferred, including:
 - (i) names and addresses of the person(s) to whom the substances were transferred;
 - (ii) the substances transferred;
 - (iii) the amount of each substance transferred; and
 - (iv) the date on which the transfer took place.
 - (c) the DEA registration and all unused DEA 222 forms (order forms) were returned to the DEA;
 - (d) all pharmacy labels and blank prescriptions which were in the possession of the pharmacy were destroyed; and
 - (e) all signs and symbols indicating the presence of the pharmacy have been removed.

AUTH: 37-7-201, MCA

IMP: 37-7-201, 37-7-321, MCA

REASON: It is reasonable and necessary to adopt this rule to expand upon and clarify procedures for pharmacy closure. The board notes that pharmacies have closed with no advance notice to the general public, creating patient safety issues when prescription refills cannot be obtained and the timing of previous refills is not readily available to the patient's physician or other provider. Under law, pharmacies are required to maintain prescription and patient refill history for a minimum amount of time, and prescription information must be available to authorized board inspectors even though a pharmacy may have recently closed. The board acknowledges that a closed pharmacy's stock of prescription medications, including controlled substances and the related orders forms, could pose a significant risk of public harm if diverted. The board determined that adopting a new rule to clearly delineate the required pharmacy closure procedures would further the goal of ensuring patient and public health and safety.

NEW RULE II CHANGE IN LOCATION (1) Whenever a mail service pharmacy changes its physical location outside of its then existing business location, its original license becomes void and must be surrendered. The mail service pharmacy shall submit a new license application for the new location at least 30 days before such change occurs.

AUTH: 37-7-201, 37-7-712, MCA

IMP: 37-7-701, 37-7-702, 37-7-703, 37-7-704, 37-7-706, MCA

REASON: It is reasonable and necessary to adopt New Rules II and III to clarify that a change in location or ownership of a mail service pharmacy requires that a new application for licensure be submitted to the board. The new rules will also achieve consistency among the change of location or ownership requirements for general pharmacies, mail order pharmacies, and wholesale drug distributors.

NEW RULE III CHANGE IN OWNERSHIP (1) When a mail service pharmacy changes ownership, the original license becomes void and must be surrendered to the board, and a new license obtained by the new owner. The owner shall submit a new license application at least 30 days prior to the change in ownership.

(2) A change in ownership for the purposes of this rule shall be deemed to occur when more than 50 percent of the equitable ownership of a business is transferred in a single transaction or in a related series of transactions to one or more persons or any other legal entity.

AUTH: 37-7-201, 37-7-712, MCA

IMP: 37-7-701, 37-7-702, 37-7-703, 37-7-704, 37-7-706, MCA

NEW RULE IV MEDICAL GAS DISTRIBUTOR (1) Every person engaged in the manufacture or distribution of medical gases other than to the consuming public or a patient, in the state of Montana, shall register annually with the board. Each applicant shall:

- (a) provide proof of registration with the Food and Drug Administration (FDA) as a medical gas manufacturer and comply with all FDA requirements;
- (b) register with the board as a wholesale drug distributor;
- (c) file an application to register as a medical gas distributor on a form prescribed by the board; and
- (d) pay the appropriate registration fee.

(2) The wholesale drug distributor license with the medical gas distributor endorsement shall be posted in a conspicuous place in the wholesaler's place of business for which it is issued.

(3) A medical gas distributor shall establish and implement written procedures for maintaining records pertaining to medical gas production, processing, labeling, packaging, quality control, distribution, complaints, and any information required by federal or state law.

(a) Records shall be retained for at least two years after distribution or one year after the expiration date of the medical gas, whichever is longer.

(b) Records shall be readily available for review by the board, its inspector, or the FDA.

AUTH: 37-1-134, 37-7-201, 37-7-610, MCA

IMP: 37-7-604, 37-7-605, MCA

REASON: It is reasonably necessary to adopt New Rules IV, V, and VI to set forth the registration requirements for medical gas distributors and suppliers in the interest of patient and public safety. Although an exact number is not available, information provided by the National Association of Boards of Pharmacy indicates that because medical gases are considered to be prescription drugs, most states and boards of pharmacy license these entities as wholesale distributors. A medical gas is a drug as defined in 37-7-101, MCA, but current board rules do not clearly define how distributors and suppliers of medical gases are regulated. These proposed new rules will help to ensure the safe manufacture, distribution, and supply of medical gases to Montana patients. The board estimates that this change will affect 15 licensees and will result in an estimated annual increase in revenue of \$1,125.

NEW RULE V MEDICAL GAS SUPPLIER (1) Every person engaged in supplying medical gases to the consuming public, or to a patient or a patient's agent, in the state of Montana that is not a licensed pharmacy shall register annually with the board. Each applicant shall:

- (a) register with the board as a wholesale drug distributor;
 - (b) file an application to register as a medical gas supplier on a form prescribed by the board; and
 - (c) pay the appropriate registration fee.
- (2) The wholesale drug distributor license with the medical gas supplier endorsement shall be posted in a conspicuous place in the wholesaler's place of business for which it is issued.
- (3) A medical gas supplier shall not:
- (a) supply prescription medications, except medical gases, without appropriate licensure as a pharmacy;
 - (b) manufacture or distribute medical gases without appropriate licensure as a medical gas distributor; or
 - (c) instruct patients regarding clinical use of equipment, or provide any monitoring, assessment, or other evaluation of therapeutic effects without appropriate licensure as a respiratory care practitioner.
- (4) A medical gas supplier shall supply medical gas only pursuant to prescription order by an authorized prescriber.
- (5) A medical gas supplier must label each medical gas container with the name, address, and telephone number of the supplier.
- (6) A medical gas supplier shall establish and implement written procedures for maintaining records pertaining to the acquisition and supply of, and complaints related to, medical gases.
- (7) Records shall be retained for at least three years after supply to a patient or one year after the expiration date of the medical gas, whichever is longer.
- (8) Records shall be readily available for review by the board or its inspector.

AUTH: 37-1-134, 37-7-201, 37-7-610, MCA

IMP: 37-7-604, 37-7-605, MCA

NEW RULE VI MEDICAL GAS FEE SCHEDULE (1) The fees for registration to manufacture, distribute, or supply medical gases shall be assessed according to the following schedule:

<u>REGISTRATION</u>	<u>ANNUAL FEE</u>
(a) medical gas distributor	\$75
(b) medical gas supplier	75

AUTH: 37-1-134, 37-7-201, 37-7-610, MCA
IMP: 37-7-604, 37-7-605, MCA

NEW RULE VII CHANGE IN LOCATION (1) Whenever a wholesale drug distributor facility changes its physical location outside of its then existing business location, its original license becomes void and must be surrendered. The wholesale drug distributor facility shall submit a new license application for the new location at least 30 days before such change occurs.

AUTH: 37-7-201, 37-7-610, MCA
IMP: 37-7-604, 37-7-605, MCA

REASON: It is reasonable and necessary to adopt New Rules VII and VIII to clarify that a change in location or ownership of a wholesale drug distributor requires that a new application for licensure be submitted to the board. The new rules will also achieve consistency among the change of location or ownership requirements for general pharmacies, mail order pharmacies, and wholesale drug distributors.

NEW RULE VIII CHANGE IN OWNERSHIP (1) When a wholesale drug distributor changes ownership, the original license becomes void and must be surrendered to the board, and a new license obtained by the new owner. The owner shall submit a new license application at least 30 days prior to the change in ownership.

(2) A change in ownership for the purposes of this rule shall be deemed to occur when more than 50 percent of the equitable ownership of a business is transferred in a single transaction or in a related series of transactions to one or more persons or any other legal entity.

AUTH: 37-7-201, 37-7-610, MCA
IMP: 37-7-604, 37-7-605, MCA

NEW RULE IX FOREIGN INTERN REQUIREMENTS (1) A graduate of a foreign school of pharmacy seeking licensure to practice as a pharmacy intern in the state of Montana shall:

- (a) take the Foreign Pharmacy Graduate Equivalency Exam (FPGEE);
- (b) take the Test of Spoken English (TSE); and one of the following:
 - (i) take the computer-based Test of English as a Foreign Language (TOEFL);
 - (ii) take the paper-based TOEFL; or
 - (iii) take the internet-based TOEFL;

- (c) achieve NABP minimum passing scores on all tests and examinations;
- (d) have an internship practice site identified and that practice site must be a licensed pharmacy in good standing with the board; and
- (e) have an internship preceptor identified and that preceptor must:
 - (i) be a licensed pharmacist in good standing with the board; and
 - (ii) be a registered preceptor in good standing with the board.
- (2) The student and their preceptor must appear before the board.
- (3) The intern shall comply with the internship requirements as set forth in ARM 24.174.602.
- (4) A graduate of a foreign school of pharmacy must complete 1500 hours of internship in the United States in order to be eligible for pharmacist licensure in Montana.

AUTH: 37-1-131, 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: It is reasonable and necessary to adopt New Rule IX because the current internship rules do not adequately and clearly address foreign students. The board receives numerous inquiries from foreign students seeking pharmacy internships in Montana. This new rule will provide clear, consistent, and fair guidelines for foreign students who wish to intern in Montana.

NEW RULE X TECHNICIAN CHECK TECHNICIAN PROGRAM (1) To participate in a technician check technician (TCT) program an institutional pharmacy must meet the following requirements:

- (a) the pharmacy must include TCT as a technician duty, submitted to the Board of Pharmacy by the pharmacist-in-charge as part of the technician utilization plan;
 - (b) develop a site-specific training program tailored to the patient population and medication distribution system;
 - (c) designate one pharmacist to be responsible for meeting the TCT program training and validation requirements;
 - (d) staffing must be adequate to support a consistent utilization of the TCT program;
 - (e) a pharmacist must review all orders against a medication profile containing pertinent clinical information about the patient (allergies, current medication, etc.);
 - (f) the medication description on the batch fill list must contain the same description as the labeling on the unit dose package;
 - (g) the drug distribution system must be structured so that at least one additional check of dispensed medications is completed prior to administration;
 - (h) develop policies and procedures which include a list of the types of work that a technician may check and the types of work that are excluded from being checked by a technician; and
 - (i) utilize the TCT program as a tool to redirect pharmacists from distributive tasks to cognitive and patient centered activities.
- (2) In order to participate in a TCT program a technician must:

- (a) be a registered pharmacy intern in good standing with the board with at least three months experience in unit dose filling; or
 - (b) be a certified pharmacy technician in good standing with the board working full or part time with six months equivalent experience in unit dose filling; and
 - (c) complete site specific training in the TCT program.
- (3) A TCT training program must include:
- (a) didactic lecture (or equivalent training with a self-learning packet);
 - (b) practical sessions (one-on-one training) which consist of observation of a pharmacist checking a unit dose medication batch and/or cart;
 - (c) initial validation (and revalidation if needed); and
 - (d) regular quality assurance audits performed quarterly for the first year then every six months thereafter.
- (4) Approval from the Board of Pharmacy or designee is required prior to program implementation.
- (5) If at any time a technician loses their validation, that individual must not function as a TCT until they are retrained and revalidated.
- (6) All TCT program materials should be readily retrievable for review by the board inspector.

AUTH: 37-7-201, MCA

IMP: 37-7-101, 37-7-201, 37-7-301, 37-7-307, MCA

REASON: It is reasonably necessary to adopt New Rule X allowing for the implementation of technician check technician (TCT) programs so that hospital pharmacies can utilize technicians for distributive functions and redirect pharmacists to more cognitive, patient care activities. Studies have demonstrated that clinical pharmacy services improve patient care and reduce medication errors and that TCT programs have helped to facilitate clinical pharmacy services by freeing pharmacists from distributive tasks. Studies have also demonstrated that qualified pharmacy technicians are as accurate as pharmacists in checking unit dose cassettes. Currently there are two TCT pilot programs in the state with another pending before the board. The adoption of rules for TCT programs will provide consistent program guidelines and help to facilitate the implementation of TCT programs in hospital pharmacies across the state.

NEW RULE XI CENTRALIZED PRESCRIPTION FILLING AND PROCESSING OF DRUG ORDERS (1) A pharmacy may outsource prescription drug order filling or processing to a central filling or processing pharmacy provided the pharmacies:

- (a) have the same owner or have entered into a written contract or agreement that outlines the services to be provided and the responsibilities and accountabilities of each pharmacy in compliance with federal and state laws, rules, and regulations; and
 - (b) share a common electronic file.
- (2) A pharmacy that outsources prescription drug order filling or processing to another pharmacy shall, prior to outsourcing a prescription drug order:

- (a) notify the patient or the patient's agent that prescription filling or processing may be outsourced to another pharmacy;
 - (b) provide the name of the pharmacy that will be filling or processing the prescription or, if the pharmacy is part of a network of pharmacies under common ownership and any of the network pharmacies may fill or process the prescription, the patient shall be notified of this fact; and
 - (c) clearly show the name, address, and telephone number of the delivering pharmacy on the prescription container.
- (3) The patient shall have the choice not to have the prescription outsourced.
 - (4) Each pharmacy engaging in centralized prescription processing shall be jointly responsible for properly filling the prescription.
 - (5) The delivering pharmacy is responsible for providing patient counseling.
 - (6) All central filling or processing of prescription drug orders must be completed in a licensed pharmacy.
 - (7) Pharmacies providing central processing or central filling services to pharmacies in the state of Montana must be licensed in Montana.
 - (8) An out-of-state pharmacy providing central processing or central filling services to pharmacies in the state of Montana must be registered as an out-of-state mail service pharmacy and comply with all Montana statutes and rules regulating mail order pharmacies.
 - (9) A policy and procedure manual relating to centralized filling or processing activities shall be maintained at all pharmacies involved in centralized filling or processing. An electronic copy of the policy and procedure manual shall be submitted to the board. Thereafter the manual shall be available for inspection and copying by the board. The policies and procedures shall:
 - (a) outline the responsibilities of each of the pharmacies which must include but is not limited to:
 - (i) receiving, interpreting, or clarifying prescription orders;
 - (ii) entering data and transferring prescription information;
 - (iii) obtaining refill and substitution authorization information;
 - (iv) performing drug regimen review;
 - (v) interpreting clinical data for prior authorization dispensing;
 - (vi) performing therapeutic interventions; and
 - (vii) providing drug information.
 - (b) include a list of the name, address, telephone numbers, and license or registration number of the pharmacies participating in central filling or processing; and
 - (c) include policies and procedures for:
 - (i) protection of the confidentiality and integrity of patient information;
 - (ii) maintenance of appropriate records to identify the names, initials, or identification codes and specific activities of each of the pharmacists and/or technicians who performed any processing; and
 - (iii) compliance with federal, DEA, and state laws and regulations;
 - (iv) operation of a continuous quality improvement program for pharmacy services designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems; and

(v) annual review of the written policies and procedures and documentation of such review.

AUTH: 37-7-201, MCA

IMP: 37-7-201, 37-7-321, MCA

REASON: It is reasonably necessary to adopt this new rule to provide for the accurate, safe, and confidential outsourcing of prescription drug order filling or processing. Pharmacies and institutions are utilizing central filling and processing of prescriptions as a method to manage workload and costs, decrease wait time to enhance customer service, or in the case of hospitals without a 24/7 pharmacist, improve pharmaceutical care to patients. The board concluded that having well-regulated central filling or processing of prescriptions has the potential to be a safe and effective method of providing pharmacy services after hours for both pharmacies and institutions.

6. The rule proposed to be repealed is as follows:

24.174.822 CENTRAL FILLING BY HUB PHARMACIES found at ARM page 24-19691.

AUTH: 37-7-201, MCA

IMP: 37-7-201, 37-7-321, MCA

REASON: It is reasonable and necessary to repeal this rule because New Rule XI is proposed to address both central filling and central processing of prescriptions.

7. 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 Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdpha@mt.gov, and must be received no later than 5:00 p.m., June 22, 2007.

8. An electronic copy of this Notice of Public Hearing is available through the department and board site on the World Wide Web at www.pharmacy.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.

9. The Board of Pharmacy 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 Pharmacy administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibspha@mt.gov, or made by completing a request form at any rules hearing held by the agency.

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

11. Anjeanette Christiansen, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PHARMACY
MARK MEREDITH, Pharm. D.

/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 May 14, 2007

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

In the matter of New Rule I and the)	NOTICE OF PUBLIC HEARING
amendment of ARM 37.86.5201,)	ON PROPOSED ADOPTION
37.86.5202, and 37.86.5205 pertaining)	AND AMENDMENT
to the disease management program)	

TO: All Interested Persons

1. On June 13, 2007, at 10:00 a.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption and amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on June 4, 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 adopted provides as follows:

RULE I CRITERIA FOR DETERMINING CHRONIC DISEASES MANAGED UNDER THE DISEASE MANAGEMENT PROGRAM (1) The department uses the criteria listed in this rule to specify the chronic conditions included in the disease management program and the age groups eligible to participate. Conditions and age groups are subject to change as clinical practices and evidence-based health care practice guidelines change. The following criteria are used:

- (a) disease management program services improve client self-management, decrease medical service utilization and costs, or improve clinical measures and health outcomes;
- (b) the existing clinical practice for the condition varies from evidence-based health care best practice guidelines;
- (c) the prevalence of the condition in the Medicaid population is sufficient to warrant management;
- (d) a client with the condition is able to understand and apply condition specific management techniques; and
- (e) management of the condition does not clinically conflict with other co-morbidities.

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

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

37.86.5201 DISEASE MANAGEMENT PROGRAM: DEFINITIONS The following terms and definitions apply to the disease management program:

(1) remains the same.

(2) "Disease management program services" means specialized services provided to Medicaid clients ~~with the chronic medical conditions~~ meeting the eligibility criteria listed in ARM 37.86.5205. Disease management program services are aimed at care coordination, client education, improved client self-care, and efficiency and cost effectiveness of services.

(3) through (6) remain the same.

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

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

37.86.5202 DISEASE MANAGEMENT PROGRAM: GENERAL (1) The disease management program provides coordinated health care interventions and education for Medicaid clients ~~with the chronic medical conditions~~ meeting the eligibility criteria listed in ARM 37.86.5205. The purpose of the program is to provide and/or coordinate services that decrease utilization and cost while optimizing treatment and improving health outcomes for clients.

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

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

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

37.86.5205 DISEASE MANAGEMENT PROGRAM: CLIENT ELIGIBILITY AND ASSIGNMENT (1) To receive disease management services an eligible client must be ~~a recipient of Montana Medicaid and be diagnosed with at least one of the following chronic medical conditions:~~

(a) ~~asthma~~ a recipient of Montana Medicaid;

(b) ~~diabetes~~ diagnosed with at least one of the chronic conditions selected for program management as determined by Montana Medicaid under [RULE I]; and;

(c) ~~heart failure;~~ within the specified age criteria as determined under [RULE I] for the chronic condition selected for program management.

(d) ~~chronic pain; or~~

(e) ~~cancer.~~

(2) A client must not be:

(a) receiving mental health service plan (MHSP) benefits, specified low income Medicare beneficiary (SLMB) benefits, ~~or~~ qualified Medicare beneficiary (QMB) benefits, qualified individual program (QI) benefits, or both Medicare and Medicaid (dual eligibility) benefits;

(b) residing in a nursing home or institutional setting ~~for more than 30 days;~~

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

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

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

4. The proposed new rule and rule amendments incorporate changes to Montana Medicaid's disease management (DM) program called Nurse First. The rule changes will allow the Department of Public Health and Human Services (DPHHS) flexibility to determine which chronic conditions will be managed in the Nurse First program and which clients will be eligible. The changes are necessary for DPHHS to effectively offer the Nurse First program. Service delivery through disease management organizations (DMO) changes frequently. The Nurse First program must have flexibility to meet Medicaid client needs and respond to changes in appropriation. The proposed rule amendments are intended to effectively deliver medical services and use limited resources.

ARM 37.86.5201 stated that clients meeting specific "chronic medical conditions listed in ARM 37.86.5205" were eligible for DM program enrollment. The amendments delete the list of chronic medical conditions -- asthma, diabetes, congestive heart failure, chronic pain, and cancer -- and add language stating the criteria Medicaid will use to determine which conditions and age groups are selected for DM program management.

The Nurse First program was adopted as a cost savings measure to meet a 2003 legislative mandate to reduce Medicaid expenditures by \$2.5 million. This rule amendment adds qualified individual program (QI) clients to the list of Medicaid clients excluded from the program. This is consistent with current practice. Medicare Savings program clients (qualified Medicare beneficiaries (QMB)), specified low income Medicare beneficiaries (SLMB) and QIs are currently excluded from participation in Nurse First because it is not cost effective for Montana Medicaid.

Dual eligibility clients (Medicare and Medicaid) are also being excluded from the program. Disease management program services are authorized under Montana's 1115(b) waiver, which excludes dual eligibility clients from participation due to "budget neutrality". Including dual eligibility clients' increases Nurse First program costs that do not result in Montana Medicaid savings.

All current nursing home and institutionalized clients are excluded from the program. Current wording excludes from enrollment clients in those care settings for more than 30 days but these clients have never been included in the program due to data and systems limitations. Clients with open nursing home/institutional spans at the first of each month are currently excluded from program enrollment.

The department considered continuing to list the chronic conditions that qualified a client for the program but determined it was more cost effective and provided better client health care to list the criteria the department uses to determining which conditions and age groups are selected to participate in the program.

No budgetary increase is anticipated from these amendments. This rule change

impacts approximately 84,000 Medicaid clients and 6,000 providers. Cancer will no longer be a condition subject to disease management, which will remove approximately 300 Medicaid clients from the program. Dual eligible clients will no longer be part of the program, which will remove approximately 200 clients from the program.

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 June 21, 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.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply. This proposal notice does not initially implement new or amended legislation.

/s/ Geralyn Driscoll
Rule Reviewer

/s/ Russell Cater for
Director, Public Health and
Human Services

Certified to the Secretary of State May 14, 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 PUBLIC HEARING
37.86.3701, 37.86.3702, 37.86.3705,) ON PROPOSED AMENDMENT
37.88.101, 37.88.901, 37.88.1116, and)
37.89.103 pertaining to case)
management services for youth with)
serious emotional disturbance)

TO: All Interested Persons

1. On June 21, 2007, at 10:00 a.m., a public hearing will be held in the Wilderness Room, 2401 Colonial Drive, 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 June 11, 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.

37.86.3701 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, DEFINITIONS (1) remains the same.

~~(2) "Assistance in daily living" means the ongoing monitoring of how a client is coping with life on a day-to-day basis and the provision of assistance by a case manager which supports a client in daily life. Assistance with daily living skills includes but is not limited to:~~

- ~~(a) assistance with shopping and budgeting;~~
~~(b) teaching use of public transportation and other resources;~~
~~(c) monitoring and tutoring with regard to health maintenance; and~~
~~(d) monitoring contact with family members.~~

~~(3)~~ (2) "Case planning" means the development of a written individualized strength based case management plan based on the assessment. The case management plan must also include a crisis plan. The case management plan for the client which is arrived at is developed by the case manager with the participation of:

- (a) remains the same.
- (b) the client advocate if requested by the parent, legal guardian, or youth;
- (c) and (d) remain the same.

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

(4) "Crisis plan" means an individualized plan for the client that identifies potential problems that, if left unaddressed, may lead to the client experiencing a mental health crisis. This must include, but is not limited to:

(a) helping the client and family identify what to do when a mental health crisis occurs;

(b) identifying specific resources for the client and family prior to a mental health crisis;

(c) informing the client and family of the case manager's sub crisis role in responding to a crisis;

(d) informing the client and family of the other treatment team member's roles in responding to a crisis;

(e) informing the client and family of the mental health center's crisis telephone service; and

(f) assisting the client and family in developing the necessary skills to manage some of their own crises.

~~(5) "Crisis response" means immediate action by an intensive case manager or care coordination case manager for the purpose of supporting or assisting a client or other person in response to a client's mental health crisis. Crisis response must be made in a manner consistent with the least restrictive alternative measures or settings available for the client's condition. Crisis response may include contact with a client's family members if necessary and appropriate.~~

(5) "Crisis response" means the immediate action taken by an individual trained to respond to mental health emergencies when a person presents as a danger to self or others. A case manager must take immediate action to contact an appropriately trained individual or emergency responder if they believe a client presents a danger to self or others. Crisis response must be made in a manner consistent with the least restrictive alternative measures or settings available for the client's condition. Crisis response may include contact with a client's family members if necessary and appropriate.

(6) "Monitoring and follow-up" means regular contacts by the case manager with the youth and their family or caregivers, and their service providers to assure the appropriateness of services to the youth/family. Monitoring is used to identify and address concerns which may create barriers to services, and to assure the youth receives services as indicated in the case plan.

(7) "Sub crisis response" means timely action taken by a case manager for the purpose of supporting or assisting a client and family with urgent problems that if left unaddressed could lead to the client experiencing a mental health crisis.

(8) "Timely action" means the support or assistance is provided in a time frame consistent with the nature of the problem in an attempt to prevent a crisis.

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

IMP: 53-6-101, MCA

37.86.3702 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, ELIGIBILITY (1) remains the same.

(2) "Serious emotional disturbance (SED)" means with respect to a youth

between the ages of six and 17 years that the youth meets requirements of (2)(a) and either (2)(b) or (2)(c).

(a) The youth has been determined by a licensed mental health professional as having a mental disorder with a primary diagnosis falling within one of the following DSM-IV (or successor) classifications when applied to the youth's current presentation (current means within the past 12 calendar months unless otherwise specified in the DSM-IV) and the diagnosis has a severity specifier of moderate or severe:

(i) through (xvii) remain the same.

(xviii) bulimia nervosa (severe) (307.51); and

(xix) intermittent explosive disorder (312.34); and

~~(xx) attention deficit/hyperactivity disorder (314.00, 314.01, 314.9) when accompanied by at least one of the diagnoses listed above.~~

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

~~(c) In addition to mental health services, the youth demonstrates a need for specialized services from at least one of the following human service systems during the previous 6 months:~~

~~(i) education services, due to the diagnosis determined in (a), as evidenced by identification as a child with a disability as defined in 20-7-401(4), MCA with respect to which the youth is currently receiving special education services;~~

~~(ii) child protective services as evidenced by temporary investigative authority, or temporary or permanent legal custody;~~

~~(iii) the juvenile correctional system, due to the diagnosis determined in (2)(a), as evidenced by a youth court consent adjustment or consent decree or youth court adjudication; or~~

~~(iv) current alcohol/drug abuse or addiction services as evidenced by participation in treatment through a state-approved program or with a certified chemical dependency counselor.~~

(d) through (d)(vi) remain the same but are renumbered (c) through (c)(vi).

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

IMP: 53-6-101, MCA

37.86.3705 CASE MANAGEMENT SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, SERVICE COVERAGE (1) Case management services for youth with serious emotional disturbance include:

(a) and (b) remain the same.

~~(c) assistance in daily living;~~

~~(d) (c) coordination, referral, and advocacy; and crisis and sub crisis response; and~~

~~(e) crisis response.~~

(d) monitoring and follow-up.

(2) Case management services for youth with serious emotional disturbance are provided by a licensed mental health center with a case management endorsement in accordance with these rules and the provisions of Title 50, chapter 5, part 2, MCA, and implementing rules.

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

37.88.101 MEDICAID MENTAL HEALTH SERVICES, AUTHORIZATION REQUIREMENTS (1) Mental health services for a Medicaid recipient youth under the Montana Medicaid program will be reimbursed only if the following requirements are met:

~~(a) the recipient is a youth who has been determined to have a serious emotional disturbance as defined in ARM 37.86.3702;~~

(a) the client has been determined to have a serious emotional disturbance as defined in ARM 37.86.3702, with the following exceptions:

(i) a youth is not required to have a serious emotional disturbance for group outpatient therapy or the first 24 sessions of individual and family outpatient therapy services per state fiscal year, unless they are provided concurrently with a service requiring prior authorization or comprehensive school and community treatment. Youth must have a mental health diagnosis, as designated by the department, for group outpatient therapy and/or the first 24 sessions of individual and family outpatient therapy services per state fiscal year; or

(b) (ii) the department has determined prior to treatment on a case by case basis that treatment is medically necessary for early intervention and prevention of a more serious emotional disturbance; or

~~(c) prior authorization has been obtained for outpatient therapy services that are provided concurrently with comprehensive school and community treatment (CSCT) program services described at ARM 37.106.1955, 37.106.1956, 37.106.1960, 37.106.1961, 37.106.1965 and 37.86.2225; or~~

(b) for prior authorized services, the serious emotional disturbance has been determined by the department or its designee.

~~(d) the recipient is 18 or more years of age and has been determined to have a severe disabling mental illness as defined in ARM 37.86.3502.~~

~~(2) For all mental health services provided to a Medicaid recipient under the age of 18, prior authorization is not required for the first 24 sessions of an individual or family outpatient service in the state fiscal year. Limitations for outpatient services are set forth in the fee schedule dated July 1, 2005. This rule does not apply to a session with a physician for the purpose of medication management.~~

(2) Prior authorization by the department or its designee is required for the following services for a Medicaid client who is a youth:

(a) individual or family outpatient therapy services in excess of 24 sessions per state fiscal year. Additional limitations for outpatient therapy services are set forth in the current fee schedule dated July 1, 2006. This rule does not apply to a session with a physician for the purpose of medication management;

(b) targeted case management in excess of 60 units of services per state fiscal year;

(c) all outpatient therapy services that are provided concurrently with comprehensive school and community treatment (CSCT) described at ARM 37.86.2224, 37.86.2225, 37.106.1955, 37.106.1956, 37.106.1960, 37.106.1961, and 37.106.1965; or

(d) as provided for in other rules.

(3) Mental health services for a Medicaid adult under the Montana Medicaid program will be reimbursed only if the following requirement is met:

(a) the client is 18 or more years of age and has been determined to have a severe disabling mental illness as defined in ARM 37.86.3502;

~~(3)~~ (4) For all mental health services provided to an adult Medicaid recipient client under the Montana Medicaid program, prior authorization is not required for the first 16 visits in the 12-month period beginning July 1, 2003 and each 12-month period thereafter for outpatient mental health counseling services billed under Current Procedure Terminology 4th Edition (CPT4) codes 90804, 90806, 90810, 90812, 90846, and 90847 only.

~~(4)~~ (5) Adult intensive outpatient therapy services may be medically necessary for a person with safety and security needs who has demonstrated the ability and likelihood of benefit from continued outpatient therapy. The person must meet the requirements of ~~(4)(a)~~ (5)(a) or (b). The person must also meet the requirements of ~~(4)(e)~~ (5)(c). The person has:

(a) through (c) remain the same.

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

~~(8)~~ (9) Review of authorization requests by the department or its designee will be made with consideration of the clinical management guidelines ~~(2004)~~ (2006).

A copy of the clinical management guidelines ~~(2004)~~ (2006) can be obtained from the department by a request in writing to the Department of Public Health and Human Services, Addictive and Mental Disorders Division, Mental Health Services Bureau, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905 (for adult services), or to the Department of Public Health and Human Services, Health Resources Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951 (for youth services) or can be viewed on the department's web site at www.dphhs.mt.gov/aboutus/divisions/addictivementaldisorders/index.shtml <http://www.dphhs.mt.gov/amdd/index.shtml>; or <http://www.dphhs.mt.gov/mentalhealth/children/index.shtml>.

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

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

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

37.88.901 MENTAL HEALTH CENTER SERVICES, DEFINITIONS

(1) and (2) remain the same.

(3) "Child or adolescent" means a person 17 years of age and younger or a person who is under 24 20 years of age and is enrolled in secondary school.

(4) through (18) remain the same.

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

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

37.88.1116 INPATIENT PSYCHIATRIC SERVICES, CERTIFICATION OF NEED FOR SERVICES, UTILIZATION REVIEW AND INSPECTIONS OF CARE

(1) Prior to admission and as frequently as the department may deem necessary, the department or its agents may evaluate the medical necessity and

quality of services for each Medicaid recipient client.

(a) In addition to the other requirements of these rules, the provider must provide to the department or its agent upon request any records related to services or items provided to a Medicaid recipient client.

(b) and (2) remain the same.

(3) Medicaid reimbursement is not available for inpatient psychiatric services unless the provider submits to the department or its designee in accordance with these rules a complete and accurate certificate of need for services that complies with the requirements of 42 CFR, part 441, subpart D and these rules.

(a) For recipients clients determined Medicaid eligible by the department as of at the time of admission to the facility, the certificate of need must:

(i) remains the same.

(ii) be made by an independent team of health care professionals that has competence in diagnosis and treatment of mental illness and that has knowledge of the recipient's client's situation, including the recipient's client's psychiatric condition. The team must include a physician that has competence in diagnosis and treatment of mental illness, preferably in child psychiatry, a licensed mental health professional, ~~and, for residential psychiatric care, an intensive case manager employed by a mental health center~~ and for residential psychiatric care, an intensive case manager employed by a mental health center or other individual knowledgeable about local mental health services designated by the department. The case manager, or other individual designated by the department, must sign the certificate of need and indicate whether or not they believe the residential psychiatric care services are the least restrictive for treatment of the youth's serious emotional disturbance (based on their knowledge of community services). Authorization is not based on the case manager or other individual's support, or lack of support, for residential psychiatric care services.

(b) For recipients clients who are transferred between levels of inpatient psychiatric care within the same facility, the certificate of need may be completed by the facility-based team responsible for the plan of care within 14 days after admission provided that the:

(i) certificate of need has been signed by an intensive case manager employed by a mental health center or other individual knowledgeable about local mental health services as designated by the department, for the reason stated above in this rule; and

(ii) remains the same.

(c) For recipients clients determined Medicaid eligible by the department after admission to or discharge from the facility, the certificate of need must:

(i) remains the same.

(A) 14 days after the eligibility determination for recipients clients determined eligible during the stay in the facility; or

(B) 90 days after the eligibility determination for recipients clients determined eligible after discharge from the facility;

(ii) cover the recipient's client's stay from admission through the date the certification is completed; and

(iii) be made by the facility team responsible for the recipient's client's plan of care as specified in 42 CFR, 441.155 and 441.156.

(d) and (4) remain the same.

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

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

37.89.103 MENTAL HEALTH SERVICES PLAN, DEFINITIONS As used in this subchapter, unless expressly provided otherwise, the following definitions apply:

(1) through (14) remain the same.

(15) "Serious emotional disturbance (SED)" is defined in ARM 37.86.3702(2). means with respect to a youth between the ages of six and 17 years that the youth meets the following requirements of (15)(a) and either (15)(b), or (15)(c):

~~(a) The youth has been determined by a licensed mental health professional as having a mental disorder with a primary diagnosis falling within one of the following DSM-IV (or successor) classifications when applied to the youth's current presentation (current means within the past 12 calendar months unless otherwise specified in the DSM-IV) and the diagnosis has a severity specifier of moderate or severe:~~

- ~~(i) childhood schizophrenia (295.10, 295.20, 295.30, 295.60, 295.90);~~
- ~~(ii) oppositional defiant disorder (313.81);~~
- ~~(iii) autistic disorder (299.00);~~
- ~~(iv) pervasive developmental disorder not otherwise specified (299.80);~~
- ~~(v) Asperger's disorder (299.80);~~
- ~~(vi) separation anxiety disorder (309.21);~~
- ~~(vii) reactive attachment disorder of infancy or early childhood (313.89);~~
- ~~(viii) schizo-affective disorder (295.70);~~
- ~~(ix) mood disorders (296.0x, 296.2x, 296.3x, 296.4x, 296.5x, 296.6x, 296.7, 296.80, 296.89);~~
- ~~(x) obsessive-compulsive disorder (300.3);~~
- ~~(xi) dysthymic disorder (300.4);~~
- ~~(xii) cyclothymic disorder (301.13);~~
- ~~(xiii) generalized anxiety disorder (overanxious disorder) (300.02);~~
- ~~(xiv) posttraumatic stress disorder (chronic) (309.81);~~
- ~~(xv) dissociative identity disorder (300.14);~~
- ~~(xvi) sexual and gender identity disorder (302.2, 302.3, 302.4, 302.6, 302.82, 302.83, 302.84, 302.85, 302.89);~~
- ~~(xvii) anorexia nervosa (severe) (307.1);~~
- ~~(xviii) bulimia nervosa (severe) (307.51);~~
- ~~(xix) intermittent explosive disorder (312.34); and~~
- ~~(xx) attention deficit/hyperactivity disorder (314.00, 314.01, 314.9) when accompanied by at least one of the diagnoses listed above.~~

~~(b) As a result of the youth's diagnosis determined in (15)(a) and for a period of at least six months, or for a predictable period over six months, the youth consistently and persistently demonstrates behavioral abnormality in two or more spheres, to a significant degree, well outside normative developmental expectations, that cannot be attributed to intellectual, sensory, or health factors:~~

- ~~(i) has failed to establish or maintain developmentally and culturally appropriate relationships with adult care givers or authority figures;~~

~~(ii) has failed to demonstrate or maintain developmentally and culturally appropriate peer relationships;~~

~~(iii) has failed to demonstrate a developmentally appropriate range and expression of emotion or mood;~~

~~(iv) has displayed disruptive behavior sufficient to lead to isolation in or from school, home, therapeutic or recreation settings;~~

~~(v) has displayed behavior that is seriously detrimental to the youth's growth, development, safety or welfare, or to the safety or welfare of others; or~~

~~(vi) has displayed behavior resulting in substantial documented disruption to the family including, but not limited to, adverse impact on the ability of family members to secure or maintain gainful employment.~~

~~(c) In addition to mental health services, the youth demonstrates a need for specialized services from at least one of the following human service systems during the previous six months:~~

~~(i) education services, due to the diagnosis determined in (15)(a), as evidenced by identification as a child with a disability as defined in 20-7-401(4), MCA with respect to which the youth is currently receiving special education services;~~

~~(ii) child protective services as evidenced by temporary investigative authority, or temporary or permanent legal custody;~~

~~(iii) the juvenile correctional system, due to the diagnosis determined in (15)(a), as evidenced by a youth court consent adjustment or consent decree or youth court adjudication; or~~

~~(iv) current alcohol/drug abuse or addiction services as evidenced by participation in treatment through a state-approved program or with a certified chemical dependency counselor.~~

~~(d) Serious emotional disturbance (SED) with respect to a youth under six years of age means the youth exhibits a severe behavioral abnormality that cannot be attributed to intellectual, sensory, or health factors and that results in substantial impairment in functioning for a period of at least six months or is predicted to continue for a period of at least six months, as manifested by one or more of the following:~~

~~(i) atypical, disruptive or dangerous behavior which is aggressive or self-injurious;~~

~~(ii) atypical emotional responses which interfere with the child's functioning, such as an inability to communicate emotional needs and to tolerate normal frustrations;~~

~~(iii) atypical thinking patterns which, considering age and developmental expectations, are bizarre, violent, or hypersexual;~~

~~(iv) lack of positive interests in adults and peers or a failure to initiate or respond to most social interaction;~~

~~(v) indiscriminate sociability (e.g., excessive familiarity with strangers) that results in a risk of personal safety of the child; or~~

~~(vi) inappropriate and extreme fearfulness or other distress which does not respond to comfort by care givers.~~

~~(16) through (17)(a)(ii) remain the same.~~

~~(18) "Youth" means a person 17 years of age and younger or a person who is under 20 years of age and is enrolled in secondary school an individual who has~~

~~not yet attained 18 years of age, except that for purposes of the definition of serious emotional disturbance, "youth" may include an individual who has not yet attained 21 years of age if the person is enrolled in a full-time special education program.~~

(19) The department adopts and incorporates by reference the ICD-9-CM diagnosis codes with meanings found in the ~~St. Anthony's Ingenix ICD-9-CM Code Book (1998) effective October 1, 1998 through September 30, 1999~~ (2006) valid October 1, 2006 through September 30, 2007, published by ~~St. Anthony Publishing Ingenix~~. The department also adopts and incorporates by reference the DSM-IV diagnosis codes with meanings found in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition Text Revision (1994) (2000), published by the American Psychiatric Association of Washington, D.C. These systems of coding provide the codes and meanings of the diagnostic terms commonly used by treating professionals and are incorporated herein in order to provide common references for purposes of the provision of services through the mental health services plan. Copies of applicable portions of the ICD-9-CM and the DSM-IV may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, Mental Health Services Bureau, 555 Fuller, P.O. Box 202905, Helena, MT 59620-2905 (for adult services) or the Health Resource Division, Children's Mental Health Bureau, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951 (for youth services).

AUTH: 41-3-1103, 52-1-103, 53-2-201, 53-6-113, 53-6-131, 53-6-701, 53-21-703, MCA

IMP: 41-3-1103, 52-1-103, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-21-139, 53-21-202, 53-21-701, MCA

3. The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.86.3701, 37.86.3702, 37.86.3705, 37.88.101, 37.88.901, 37.88.1116, and 37.89.103 pertaining to Medicaid reimbursement for services to children with serious emotional disturbances. The proposed amendments are intended primarily to allow improved treatment management through utilization review of children's targeted case management. The department is also proposing amendments to the definition of "serious emotional disturbance" (SED), the definition and functions of "targeted case management" (TCM), and the certificate of need requirement for residential psychiatric care to be consistent with the standards set by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). CMS is the federal agency responsible for administration of the Medicaid program. The department is also proposing to change the requirement that a youth needs to have a serious emotional disturbance for the first 24 individual and family outpatient therapy sessions in a state fiscal year, to allow for the treatment of milder mental health diagnoses. The department is taking this opportunity to repeal outdated language and to improve language consistency among the rules. The specific changes proposed for each rule and the department's reasoning are described below.

ARM 37.86.3701

The department proposes to make the definitions in this rule and service coverage for Targeted Case Management for Seriously Emotionally Disturbed Youth consistent with the core functions currently billable under Medicaid. As defined by CMS, these functions include assessment; case planning; coordination, referral, and advocacy; and monitoring and follow-up. "Assistance in daily living" is currently defined as a case management service. The department is proposing its repeal because it is not a core function of targeted case management.

The department is proposing an amendment to the definition of "case planning" to include the descriptive term "strength based". The department wishes to emphasize the importance of focusing on strengths to empower families. The department is proposing an amendment to the case planning definition that would make the participation of a client advocate optional upon the request of a youth, parent, or legal guardian. This amendment is necessary because not all youth have a client advocate.

The department is also proposing to add a crisis plan component to the case management plan. The crisis plan would need to be developed by the client, family, and service providers to plan in advance how to respond to the client's mental health crises and to assist the client and family to develop the necessary skills to manage some of their own crises.

The department is proposing to revise the definition of "crisis response" for case management from "crisis response" to "sub crisis response" and require the case manager to respond "timely" instead of "immediately". The response time should be consistent with the nature of the problem that if left unaddressed, could lead to the client experiencing a mental health crisis. The case manager's response to a less urgent crisis or sub crisis does not have to be immediate.

A new definition of "Crisis response" is being proposed. "Crisis response" has been redefined as an individual specifically trained to respond to mental health emergencies, to distinguish it from the role of the case manager. The case manager must take immediate action to contact emergency responders or appropriately trained individuals they believe present a danger to self or others.

A new definition for "crisis plan" is also being proposed. Goals of the crisis plan have been outlined in the new definition. The crisis plan is developed in conjunction with the case management plan. The goals of the crisis plan are to identify potential problems that may escalate into a crisis, to help the client and family identify what to do when a mental health crisis occurs, to identify specific resources prior to a crisis, and for the client and family to develop the skills necessary to manage some of their own crises. If the client or parent cannot implement the crisis plan without assistance, they may need to call the mental health center's crisis telephone service, mental health professional identified in the TCM crisis plan, or emergency responders.

The department is proposing a new definition, "monitoring and follow-up" for a fourth core case management function. This function is defined to include regular contact with the youth and identifying and addressing barriers to service.

The proposed amendments are necessary because, in 2001, a letter to State Child Welfare and State Medical Directors from Olivia Golden, Assistant Secretary for Children and Families and Timothy Westmoreland, Director of the Center for Medicaid and State Operations, CMS provided a definition of case management services. While CMS has not specifically defined case management services in regulations, activities commonly understood to be allowable include: (1) assessment of the eligible individual to determine service needs; (2) development of a specific care plan; (3) referral and related activities to help the individual obtain needed services; and (4) monitoring and follow-up. The Deficit Reduction Act of 2005 (DRA), Public Law No. 109-171, also lists these four core TCM functions and expands on their definition.

ARM 37.86.3701 currently includes services that are not consistent with the federal definitions. Furthermore, the current rules do not list monitoring and follow-up as a stand alone TCM service, although it is referenced as part of coordination, referral, and advocacy. By making the rule more consistent with CMS definitions, the proposed amendments would improve the direction to providers in how case management services are to be delivered. This reduces the chance that providers will bill for services for which Medicaid does not reimburse. It also reduces the risk that providers would be required to return overpayments due to inappropriate billing. It also clarifies the services that SED youth are entitled to and provides improved guidance for providers in delivery of those services.

The department considered and rejected the alternative of not changing ARM 37.86.3701. The department determined the risk of inappropriate billing for targeted case management services and the potential financial effects of overpayment recovery on providers are sufficient to justify amendment of the rule.

ARM 37.86.3702

The current definition of a serious emotional disturbance (SED) limits eligibility for SED services to youth who meet the diagnostic criteria and demonstrate a need for specialized services from at least one of the listed human service systems in the previous six months. The department has determined that such limitation is unnecessary. The diagnosis requirement and the disability requirement adequately define SED for youth ages 6-17 years old. The department is proposing the repeal of the requirement that SED youth demonstrate a need for services from one of the listed human services systems.

The department is also proposing the deletion of attention deficit/hyperactivity disorder (ADHD) as criteria for SED when accompanied by at least one of the other diagnoses in the rule. Since ADHD is not a stand alone diagnosis, its inclusion in the rule is superfluous and tends to cause confusion among providers.

The department considered and rejected definitions of SED established by Congress, the Department of Education, and the Social Security Administration. The Alcohol, Drug Abuse and Mental Health Administration Reorganization Act, 42 U.S.C. 290aa (1992), established a block grant for community mental health services for children with SED. For purposes of the act, the term "serious emotional disturbance" included, "with respect to a child, any child who has a serious emotional disorder, a serious behavioral disorder, or a serious mental disorder." The U.S. Department of Education's definition, which for purposes of assistance to states for the education of children with disabilities is referred to as an "emotional disturbance", at 34 CFR 300.8 describes a condition exhibiting one or more of four characteristics "over a long period of time and to a marked degree that adversely affects a child's educational performance". The Social Security Administration's eligibility standards at 20 CFR 416.924 for the children's Supplemental Security Income program include the presence of a medically determinable severe condition that results in marked and severe functional limitations of substantial duration.

Although each definition contains elements useful in identifying an emotional disturbance, none contain sufficient detail to provide a practical means of determining which diagnoses should be considered severe. The department is proposing a definition of SED that continues to include specific mental health diagnoses recognized by mental health services providers. None of the alternative SED definitions require a demonstrated need for services from a human services system. Therefore, the department is proposing repeal of that requirement.

The department considered and rejected the alternative of retaining the requirement that a youth receive services from more than one agency in order to be determined SED. The department is concerned that such a requirement could result in Medicaid disallowing payment for SED services for a youth who does not need intervention from another source yet needs mental health services.

ARM 37.86.3705

The department is proposing amendments to this rule governing TCM for SED youth that would make it consistent with the core functions that are currently billable under Medicaid. The functions defined by CMS are: assessment; case planning; coordination, referral, and advocacy; and monitoring and follow-up. "Assistance in daily living" is currently defined as a case management service, but is not a core function of targeted case management. Therefore, the department is proposing its deletion from this rule. Crisis planning is a part of case management, but is not a stand alone, billable activity. Therefore, the department is proposing that it also be deleted from this rule.

This rule governs the service coverage for SED youth. The department is proposing these amendments to make it consistent with the proposed definitions in ARM 37.86.3701. Crisis and sub crisis response planning would be added to the existing coordination, referral, and advocacy services. The "crisis response" function would

be deleted and replaced with "monitoring and follow-up".

The department is taking this opportunity to insert the phrase, "with a case management endorsement", to specify in this rule that only mental health centers with such an endorsement are allowed to provide case management services. The department intends this amendment to reflect current practice and policy. It is not intended to be a substantive change.

A 2001 letter to State Child Welfare and State Medical Directors from Olivia Golden, Assistant Secretary for Children and Families and Timothy Westmoreland, Director of the Center for Medicaid and Operations, Center for Medicare and Medicaid Services (CMS), provided a definition of case management services. The letter stated that while CMS has not specifically defined case management services in regulations, activities commonly understood to be allowable include:

- (1) assessment of the eligible individual to determine service needs,
- (2) development of a specific care plan,
- (3) referral and related activities to help the individual obtain needed services, and
- (4) monitoring and follow-up.

The DRA amended section 1915(g) of the Social Security Act (42 U.S.C. 1396n(g)(2)) to include these four core TCM functions.

The proposed amendments to ARM 37.86.3705 are necessary to make it consistent with the definitions proposed in ARM 37.86.3701. The current rule does not list monitoring and follow-up as a stand alone service, although it is referenced as part of (4) coordination, referral, and advocacy. The proposed changes would make TCM consistent with the CMS definition and would improve the understanding of providers and the public about case management services. It would reduce the chance that providers might bill for services Medicaid will not reimburse. It can be burdensome to providers and the department when reimbursement must be recovered due to inappropriate billing.

The department considered and rejected the alternative of not changing ARM 37.86.3701. The department determined the risk of inappropriate billing for targeted case management services and the potential financial effects of overpayment recovery on providers are sufficient to justify amendment of the rule.

ARM 37.88.101

In Montana, the determination of who is SED is done by a variety of agencies and practitioners. As a result, interpretation and application of the current definition is not consistent. The department is proposing that, to be eligible for prior authorized Medicaid mental health services, the department or its designee must determine if a youth is SED. This would result in greater consistency and accuracy in those determinations.

The department is proposing to change the requirement that a youth has to have a serious emotional disturbance for the first 24 sessions of individual and family outpatient therapy services in a state fiscal year. To receive additional individual and family outpatient therapy services, beyond 24 in a state fiscal year, the youth would need to have a serious emotional disturbance. This change is being proposed to intervene earlier and allow for the treatment of milder mental health diagnoses.

Over the past several years, the costs related to TCM for SED youth have increased at a rate greater than the corresponding increase in the total number of SED youth served. The anticipated corresponding decrease in other services, such as residential treatment, has not occurred. The department has determined that steps are necessary to assure that TCM services are being used appropriately. To improve resource management, the department is proposing that TCM be added to the list of services that require prior authorization.

The department is taking this opportunity to replace the term "recipient" throughout the rule with the word "client" to be consistent with the language in other administrative rules. No substantive change is intended by the proposed amendments.

The department is also taking this opportunity to list children's mental health services that require prior authorization. This proposal would make it easier for providers to identify those services and to comply with the prior authorization procedures. It should also reduce the potentially harmful financial effects of inappropriate billing.

The department is proposing an amendment to this rule that would reformat the list of exceptions to the prior authorization requirement. This proposal should make them easier to read and understand.

The department is also proposing new provisions requiring prior authorization of targeted case management services. Targeted case management services would be subject to prior authorization after a client received 60 units of service in a state fiscal year. This proposal is intended to help the department manage Medicaid resources so that Montana youth with the greatest need will be able to access services. Improvement of program management is intended to assure the most effective and efficient use of services.

Incorporation of the clinical management guidelines by reference would be updated from 2004 to 2006.

The Children's Mental Health Bureau (CMHB) that oversees TCM services has had an increasing budget overrun in part due to an increase in TCM services.

Moving to utilization review for TCM would help ensure that only children who meet the state's SED definition are receiving services. TCM services increased 12% in SFY 2006 from SFY 2005. The rate of reimbursement paid to qualified providers for

targeted case management of \$48 per hour (\$12 per 15 minute unit) has not changed during this period of time.

If TCM services were being used effectively, it could be expected that the number of youth in out-of-state and in-state residential psychiatric care and other out-of-home services would be decreasing. Residential psychiatric care was up 17% from SFY 2005 to SFY 2006. The rate of reimbursement for residential psychiatric care was increased 6% during this time period.

This data suggests TCM services are not as effective as they could be. The department is proposing closer monitoring of these services. Closer monitoring should be a cost effective way to assure the efficient use of funds. It would also help achieve the appropriate outcomes for case management, family independence, and self-management of a youth's mental illness. The department is proposing these ARM changes to implement a prior authorization process in order to gather essential management information and to monitor TCM to assure effective and efficient use of services.

The department has determined that there is a wide variation in the interpretation of what it means to qualify as a youth with a serious emotional disturbance (SED). To improve the application of criteria for SED determination, the department is proposing that it or its designee make the determination whether a particular Medicaid client qualifies as SED when receiving prior authorized services.

The proposed rule changes would allow the state to oversee the determination of SED for youth receiving prior authorized services and would add TCM to the services that require prior authorization. These changes would allow CMHB to better manage Medicaid resources so that Montana youth with the greatest need will be able to access services. It would also improve program management to assure the most effective and efficient use of services.

The department considered and rejected other options for addressing the projected cost of Medicaid TCM services. The department could have conducted extensive postpayment utilization review audits to determine if each youth was accurately designated SED and whether each TCM service was justifiable and used appropriately. If a service was found to be unjustified or inappropriate, the department would require the provider to pay back Medicaid funds that it had already received.

The department decided against this option because of the cost of implementing this type of on-site review. CMHB also wanted to avoid the potentially harmful effects on providers who would be required to return Medicaid payments when services were determined to be unwarranted. Such payments could be sizeable, which could put additional financial strain on individual providers and small provider groups. This could have resulted in fewer providers and difficulty accessing services for Medicaid eligible SED youth.

The department also considered and rejected the option of across-the-board rate reductions or eligibility restrictions for all children's mental health services. The department determined it would be inequitable to make across-the-board cuts in rates or eligibility. The department believes that utilization review of specific services will be sufficient to manage resources for those most in need without creating hardships for all CMHB programs or certain populations.

ARM 37.88.901

The definition of "child and adolescent" is being changed to be consistent with the definition of "youth" found in ARM 37.89.103 regarding the age of youth being served. The age has been changed in both rules to read "under 20" rather than 21. Serving youth through 19 would cover most youth attending secondary school.

ARM 37.88.1116

The requirement that an intensive case manager employed by a mental health center or other individual knowledgeable about local mental health services as designated by the department sign the certificate of need (CON) for residential psychiatric care services remains in the rule. However, the intensive case manager or other individual designated by the department will be required to indicate on the CON whether or not they believe there are less restrictive services available to treat the youth's serious emotional disturbance, based on their knowledge of community services. Their signature is required on the CON, but not required for authorization of residential psychiatric care. This change is being made to be consistent with 42 CFR, part 441 D and clarify the role of the intensive case manager or other individual's signature on the CON.

The department is taking this opportunity to replace the term "recipient" throughout the rule with the word "client" to be consistent with the language in other administrative rules. No substantive change is intended by the proposed term.

ARM 37.89.103

The definition of a serious emotional disturbance (SED) found in ARM 37.89.103 Mental Health Services Plan, Definitions is being changed to be consistent with the SED definition change in ARM 37.86.3702 for the reasons stated above for ARM 37.86.3702.

The definition of "youth" is being changed to be consistent with the definition of "child and adolescent" found in ARM 37.88.901, with regard to a person "enrolled in secondary school" versus "enrolled in a full-time special education program". The age limit is being changed in ARM 37.88.901 and 37.89.103 to read "under 20" rather than 21 to serve youth in the Medicaid and Mental Health Service Plan through age 19. Serving youth through age 19 would cover most youth attending secondary school.

Estimated Budget Effects

By prior authorizing TCM services over 60 units once in a SFY, the department would save approximately \$333,938 if the number of units billed were reduced 10%.

Persons and Entities Affected

There are 9,551 Medicaid eligible individuals under 18 years of age who have been identified as having a serious emotional disturbance. Approximately 3,456 of them received TCM in SFY 2006. Approximately 60% would need prior authorized TCM. If 10% of the TCM prior authorized services were not medically necessary, 217 youth could be affected by the proposed rules.

4. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to 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 June 28, 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.

6. The bill sponsor notice requirements of 2-4-302, MCA, do not apply. This proposal notice does not initially implement new or amended legislation.

/s/ John Koch
Rule Reviewer

/s/ Russell Cater for
Director, Public Health and
Human Services

Certified to the Secretary of State May 14, 2007.

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

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
2.43.1002 pertaining to the investment)
policy statement for the Defined)
Contribution Retirement Plan and ARM)
2.43.1802 pertaining to the investment)
policy statement for the 457 Deferred)
Compensation Plan)

TO: All Concerned Persons

1. On March 22, 2007, the Montana Public Employees' Retirement Board published MAR Notice No. 2-2-379 regarding the proposed amendment of the above-stated rules at page 320 of the 2007 Montana Administrative Register, Issue Number 6.
2. The board has amended ARM 2.43.1002 and 2.43.1802 as proposed.
3. No comments were received.

/s/ Elizabeth Nedrow
Elizabeth Nedrow, President
Public Employees' Retirement Board

/s/ Melanie Symons
Melanie Symons, Legal Counsel and
Rule Reviewer

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

Certified to the Secretary of State on May 14, 2007.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption of) NOTICE OF ADOPTION,
NEW RULE I Access to Instructional) AMENDMENT, AND REPEAL
Materials, NEW RULE II Procedural)
Safeguards, NEW RULE III Special Education)
Data Collection and Reporting, NEW RULE IV)
Resolution Process, NEW RULE V Expedited)
Due Process Hearing Resolution Process,)
NEW RULE VI Response to Scientific,)
Research Based Intervention in Learning)
Disability Identification, NEW RULE VII)
Severe Discrepancy in Learning Disability)
Identification, NEW RULE VIII Documentation)
Requirements in Learning Disability)
Identification, and NEW RULE IX Extended)
School Year Services, the amendment of)
ARM 10.16.3007, 10.16.3008, 10.16.3018,)
10.16.3019, 10.16.3121, 10.16.3122,)
10.16.3125, 10.16.3132, 10.16.3135,)
10.16.3136, 10.16.3141, 10.16.3142,)
10.16.3150, 10.16.3180, 10.16.3181,)
10.16.3194, 10.16.3220, 10.16.3320,)
10.16.3321, 10.16.3340, 10.16.3341,)
10.16.3502, 10.16.3504, 10.16.3505,)
10.16.3506, 10.16.3508, 10.16.3510,)
10.16.3515, 10.16.3523, 10.16.3528,)
10.16.3531, 10.16.3560, 10.16.3571,)
10.16.3660, 10.16.3661, 10.16.3662,)
10.16.3803, and 10.16.3810, and repeal of)
ARM 10.16.3129, 10.16.3145, 10.16.3146,)
10.16.3196, 10.16.3322, 10.16.3342,)
10.16.3516, 10.16.3751, and 10.16.3752)
relating to special education)

TO: All Concerned Persons

1. On February 22, 2007, the Superintendent of Public Instruction published MAR Notice No. 10-16-116 regarding the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 220 of the 2007 Montana Administrative Register, Issue Number 4.

2. After consideration of the comments received, the Superintendent of Public Instruction has adopted the following new rules exactly as proposed:

RULE I 10.16.3172 ACCESS TO INSTRUCTIONAL MATERIALS

RULE II	10.16.3501	PROCEDURAL SAFEGUARDS
RULE III	10.16.3143	SPECIAL EDUCATION DATA COLLECTION AND REPORTING
RULE IV	10.16.3508A	RESOLUTION PROCESS
RULE V	10.16.3528A	EXPEDITED DUE PROCESS HEARING RESOLUTION PROCESS
RULE VII	10.16.3019B	SEVERE DISCREPANCY IN LEARNING DISABILITY IDENTIFICATION
RULE VIII	10.16.3019C	DOCUMENTATION REQUIREMENTS IN LEARNING DISABILITY IDENTIFICATION

COMMENT: Northwest Council of Administrators of Special Education (NWCASE) submitted written comments and stated that between New Rules VI, VII, and VIII the following terms are used: insufficient response to intervention, sufficient response to intervention, two intensive individualized interventions, implemented for a sustained period of time, implemented over a reasonable period of time, and level of intervention necessary to sustain the response. The commenter stated that it appears that in some instances, the OPI requires "intensive individualized interventions for a sustained period of time" and in other instances "insufficient or sufficient response to scientific research based interventions over a reasonable period of time."

RESPONSE: The State Superintendent believes that the term "reasonable" in New Rule VI(1) should be changed to "sustained" for consistency and has amended Rule VI accordingly. The remaining terminology used is appropriate within the context in which it is used. New Rules VI and VII are intended to provide general guidance on the basic requirements leading to identification. New Rule VIII identifies the specific requirements for documenting the presence of a learning disability (LD). When a local education agency (LEA) chooses to use a response to scientific, research based intervention model, documentation of two intensive interventions is required. The definition of what constitutes a "sustained period of time" is left up to the LEA to determine. No changes have been made to New Rules VII and VIII.

3. After consideration of the comments received, the Superintendent of Public Instruction has adopted the following new rules with the following changes, stricken matter interlined, new matter underlined:

NEW RULE VI (10.16.3019A) RESPONSE TO SCIENTIFIC, RESEARCH BASED INTERVENTION IN LEARNING DISABILITY IDENTIFICATION (1) A student may be determined to have a specific learning disability based on an insufficient response to scientific, research based interventions resulting in a low level of academic achievement. Insufficient response to interventions occurs when, despite the implementation of the interventions over a ~~reasonable~~ sustained period of time, ~~the student's academic achievement continues to progress at a rate that is significantly below the learning rate of students of a similar age level~~ the student is not achieving adequately based on the student's age or grade level based on state approved K-12 content standards.

(a) through (a)(iii) remain as proposed.

(b) In determining the response to scientific, research based interventions, the evaluation team must consider data regarding how appropriately the intervention was delivered by qualified personnel, as well as, data comparing the student's rate of learning and current levels of performance with the student's initial levels of performance.

(2) A student may be determined to have a specific learning disability if the student is making sufficient response to scientific, research based interventions ~~provided:~~

~~(a) the student has been provided scientific, research based interventions in (1); and~~

~~(b) the level of intervention necessary to sustain the response can only be provided through special education services.~~

COMMENT: The Montana Council of Administrators of Special Education (MCASE) submitted written comments recommending that the term "significantly below" in (1) be changed to "two standard deviations below the population mean" to be consistent with the language in ARM 10.16.3019B.

RESPONSE: Use of a two standard deviation standard would not be an appropriate measurement to use in the context of a scientific, research based intervention process.

COMMENT: NWCASE commented that:

(a) the rule offers no guidance in determining the eligibility based upon the relationship between the student's rate of learning, the student's current rate of learning, and the student's initial levels of performance;

(b) the term "evaluation" should be added before the word "team" in (1)(b);

(c) subsection (2) suggests that if a student is unsuccessful in an intervention program, the student is then qualified under IDEA based upon the student's success in the regular education intervention program;

(d) the rule allows the inclusion of lower ability students who are working at their ability level to be identified as LD resulting in more lower ability students placed in special education when regular education does not develop alternate programs or teachers do not employ differentiated instruction in the regular classroom and thus, there will be a significant increase in the numbers of students receiving special education services under the LD category and given there is no state mandated curriculum, transfer students may not be able to access the same level of intervention from one school to another;

(e) there needs to be some clarification of "initial level of performance" to specify if it is measured from the time the student enters the new school or from his/her school history; and

(f) what state grade level standards will be used as a measure.

RESPONSE: (a) The rule has been clarified to reflect that the standard of determination of a specific learning disability is founded on the student's adequate achievement based on the student's age or grade level based on state approved K-

12 content standards.

(b) The State Superintendent concurs with this comment and has amended the rule accordingly.

(c) The language in (2) has been clarified to indicate that the intent allows for the child to be identified as having a LD when the level of intervention necessary to sustain the response can only be provided through special education.

(d) One of the criteria for a child to be identified as having a LD when using the response to intervention process is to show that the child is not achieving adequately for the child's age or to meet state approved grade level standards. The determination of whether the child is not achieving adequately for the child's age or to meet state approved grade level standards is best determined by an analysis of the student's current level of academic performance and the student's rate of learning when provided research based interventions.

This process may result in some lower ability students being identified as eligible for special education. However, this can occur only if there is an insufficient response to scientific, research based interventions. Whether this will result in more students determined eligible for special education remains to be seen. The identification rate is probably more a function of the fidelity of a school district's application of scientific, research based interventions. The rules, as written, encourage districts to rigorously apply scientific, research based interventions before determining a student as having a LD when using the response to intervention method for LD identification.

(e) It is up to the LEA to define "initial level of performance;" and

(f) The state does not have a state curriculum but it does have state approved K-12 content standards. In accordance with accreditation rules, districts must align their curriculum to the state approved K-12 content standards. For purposes of clarity, references to state grade level standards have been replaced by the phrase "state approved K-12 content standards."

NEW RULE IX (10.16.3324) EXTENDED SCHOOL YEAR SERVICES

(1) remains as proposed.

(2) IEP teams shall use recoupment and regression as the criteria for determining eligibility for extended school year services (ESY). In the absence of the opportunity to collect data to determine regression, the IEP team may conclude that ESY services are necessary based on observations and other information that suggest regression and difficulty with recoupment may occur.

(3) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with 34 CFR 300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.

COMMENT: MCASE commented that they are pleased to see a clarification of the criteria to be used for determining eligibility for ESY services and that the proposed rule is consistent with the requirements for a free appropriate public education (FAPE) and the U.S. Department of Education's interpretation as contained in the comment and discussion section of the final rules as published in the Federal Register.

COMMENT: A commenter stated she was pleased with the definition of ESY eligibility and its standard of regression and recoupment.

COMMENT: The Montana Advocacy Program (MAP) commented that the proposed new rule addressing ESY was not necessary to comply with new federal statutes and regulations and that it limited the availability of FAPE for students with disabilities and thus is in violation of the Individuals with Disabilities Education Act (IDEA). It was further stated that the standard of regression and recoupment does not allow for an individualized approach.

RESPONSE: The proposed new rule was determined necessary to ensure that LEAs and IEP teams have a common standard for determining a student's need for ESY. This has been a source of confusion for LEAs as well as parents. In its comments in the Federal Register regarding the final regulations under IDEA, the U.S. Department of Education commented that the IDEA does allow for the establishment of an ESY standard of regression and recoupment. Language has been added to the rule to address the individually oriented requirements of IDEA and the provision of FAPE. Language has also been added to make it clear to IEP teams that documentation of past regression is not required for the IEP team to make a determination that ESY is necessary.

The OPI publishes an ESY guidance document that assists IEP teams in determining eligibility for ESY based on a standard of regression and recoupment.

4. The Superintendent of Public Instruction has amended ARM 10.16.3007, 10.16.3018, 10.16.3121, 10.16.3132, 10.16.3135, 10.16.3136, 10.16.3142, 10.16.3150, 10.16.3180, 10.16.3181, 10.16.3220, 10.16.3321, 10.16.3340, 10.16.3341, 10.16.3502, 10.16.3504, 10.16.3506, 10.16.3523, 10.16.3528, 10.16.3531, 10.16.3560, 10.16.3571, 10.16.3660, 10.16.3661, 10.16.3662, 10.16.3803, and 10.16.3810 as proposed.

5. In consideration of the comments received, the Superintendent of Public Instruction has amended the following rules as proposed with the following changes, stricken matter interlined, new matter underlined:

10.16.3008 ADVERSELY AFFECT THE STUDENT'S EDUCATIONAL PERFORMANCE (1) "Adversely affect the student's educational performance" means that there is evidence that measures of student performance (e.g., achievement tests, grades, behavioral or developmental assessments, classroom based assessment, observations, progress monitoring, or criterion-referenced tests, etc.) indicate a pattern of educational, developmental, or functional attainment or achievement below the student's age or grade level based on state approved K-12 content standards that can wholly or in part be attributed to the disabling condition.

COMMENT: NWCASE recommended deletion of the terms "developmental" and "functional" because the terms are addressed in the actual definitions of the individual categories (i.e., cognitive delay, traumatic brain injury, orthopedic

impairment) and that the statement was incomplete because it doesn't reflect educational standards. NWCASE recommended that the rule be amended to read "indicate a pattern of educational attainment below expected state standards for age and grade level."

RESPONSE: The State Superintendent has determined that language should be added regarding "state approved K-12 content standards" and has amended the rule accordingly. The inclusion of the terms "developmental" and "functional" provides breadth and clarification to the rule and therefore remains as proposed.

COMMENT: One commenter recommended deleting the word "observations" from the list to measure student performance because observations are not measurable.

RESPONSE: Some assessments require the use of observations and therefore the State Superintendent has determined that the language should remain as proposed.

10.16.3019 CRITERIA FOR IDENTIFICATION OF STUDENT AS HAVING SPECIFIC LEARNING DISABILITY

(1) The student may be identified as having a specific learning disability if, when provided learning experiences appropriate to the student's age or grade-level based on state approved K-12 content standards:

(a) The student does not make sufficient progress to meet age or ~~state~~ grade level based on state approved K-12 content standards in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, mathematics ~~reasoning~~ problem solving.

(b) Consistent with district ~~policy~~ procedures, evaluation teams shall use either response to scientific, research based intervention under ARM 10.16.3019A or severe discrepancy under ARM 10.16.3019B when determining whether the student is not making sufficient progress toward age or grade level based on state approved K-12 content ~~grade-level~~ standards.

(c) The student may not be identified as having a specific learning disability if the student's significantly low rate of progress in meeting age or grade level based on state approved K-12 content ~~grade-level~~ standards is primarily the result of a visual, hearing, or motor impairment; cognitive delay; emotional disturbance; environmental or economic disadvantage; cultural ~~difference~~ factors; or a lack of appropriate instruction.

COMMENT: NWCASE recommended adding "ability levels" back into (1) and the word "state" to grade level standards; to change "mathematics reasoning" to "mathematics problem solving;" changing the term "policy" to "procedures" and either defining the phrase "significantly low rate of progress" or deleting it.

COMMENT: A commenter requested that clarification be made to identify what "state grade level standards" will be used as the measure.

COMMENT: A commenter recommended that the terminology "mathematics reasoning" be changed to "mathematics problem solving."

RESPONSE: The State Superintendent has determined that the addition of "ability levels" to the first sentence would not be consistent with the intent of the U.S. Department of Education. In the comment section of the Federal Register, Vol. 71, #156, page 46652, it is stated that "the first element in identifying a child with SLD should be a child's mastery of grade-level standards, not abilities. A clarification will be made throughout the rules to refer to state standards as "state approved K-12 content standards". The term "policy" has been replaced with "procedures" and the term "mathematics reasoning" has been changed to "mathematics problem solving".

Additionally, for purposes of consistency with federal regulations, the State Superintendent has replaced "cultural difference" with "cultural factors" in (1)(c).

10.16.3122 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR STUDENTS WITH DISABILITIES (1) through (3) remain as proposed.

(4) The local educational agency shall implement procedures for students with disabilities in private elementary and secondary schools ~~as defined by 20-5-102, MCA,~~ and consistent with the requirements of 34 CFR 130 through 148 and state administrative rules.

(5) The local educational agency may not require parents to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202c of the Controlled Substances Act (21 USC 812c) for a student child as a condition to attending school, receiving an evaluation under 34 CFR 300.300 through 300.311, or receiving special education and related services in an individualized education program in accordance with 34 CFR 300.174 ~~accordance with the requirements of the Individuals with Disabilities Education Act.~~

(6) through (8) remain as proposed.

COMMENT: NWCASE recommended that the proposed language in (5) of the rule be revised to read as follows: "the LEA may not require parents to obtain a prescription for substances identified under schedules I-V in section 202c of 21 USC 813c as a condition of attending school ... in accordance with 34 CFR 300.311."

RESPONSE: The State Superintendent concurs with NWCASE's comment and has amended the rule as set forth above.

COMMENT: MAP commented that the clarification of "resides" in (1) was helpful but felt that further clarification of the responsibility for FAPE was needed because there are different requirements, depending on the circumstances of the child, and as a result, it can be confusing and there may be gaps in which the circumstances of some children are unintentionally overlooked.

RESPONSE: There are a variety of controlling policies, administrative rules, state statutes, and interagency agreements that determine and define financial and FAPE responsibilities. While we acknowledge that this can be confusing at times due to the numerous circumstances surrounding placement of individual children, it's

not possible to address all unique circumstances in this rule.

Additionally, the State Superintendent has eliminated the language "as defined by 20-5-102, MCA" from (4), which effectively eliminated home school children, based on the determination that there needs to be further investigation into the impact of this change prior to adoption of the proposed language.

10.16.3125 LOCAL EDUCATIONAL AGENCY CHILD FIND RESPONSIBILITIES (1) through (1)(b)(i) remain as proposed.

(ii) describe student identification activities including audiological, health, speech/language, and visual screening, and review of data or records for students who have been or are being considered for retention, delayed admittance, long term suspension or expulsion, waiver of learner outcomes (accreditation standards), regular education intervention ~~procedures~~, and ~~results of progress monitoring procedures, and procedures for identification of children who are suspected of being a child with a disability even though they are advancing from grade to grade;~~

(iii) remains as proposed.

(iv) identify the ~~policy~~ procedures of the local education agency for identification of a student as having a specific learning disability. If a local educational agency adopts a ~~policy~~ procedures to use a response to scientific, research based intervention in learning disability identification, it must identify the subject areas (language arts, math, reading), grades, and schools buildings for which such a ~~policy applies~~ procedures apply; and

(v) through (4) remain as proposed.

COMMENT: NWCASE recommends striking "and results of progress monitoring" in (1)(b)(ii) and replacing it with "and children suspected of a disability even though advancing from grade to grade." Additional recommendations were to change the term "policy" to "procedures" and to add "subject areas (language arts, math, reading)."

RESPONSE: The State Superintendent concurs with comments from NWCASE and has amended the rule as set forth above.

10.16.3141 SUPERINTENDENT OF PUBLIC INSTRUCTION RESPONSIBILITY FOR MONITORING (1) through (1)(a)(ii) remain as proposed.

(iii) development of strategies to enable the local educational agency to improve services, educational practices, and outcomes for students with disabilities;

(iv) through (2)(b) remain as proposed.

COMMENT: MAP recommended that subsection (1)(a)(ii) be revised to add the terms "educational practices and outcomes".

RESPONSE: The State Superintendent concurs and has added the language as suggested.

10.16.3194 SUPERINTENDENT OF PUBLIC INSTRUCTION

NOTIFICATION TO LOCAL EDUCATIONAL AGENCY OF INELIGIBILITY TO RECEIVE FUNDS UNDER PART B (1) through (3) remain as proposed.

(4) If an LEA is determined to be not eligible for receipt of Part B funds for failure to comply with any of the requirements under Part B and implementing federal and state regulations, the Superintendent of Public Instruction will not ~~make a final determination that the local educational agency is not eligible for receipt of~~ withhold funds without first providing reasonable notice and an opportunity for a hearing in accordance with 34 CFR 300.155.

(5) remains as proposed.

COMMENT: MAP recommended that (4) be revised to read "...the superintendent will not withhold funds without first providing reasonable notice and an opportunity for hearing in accordance with 34 CFR 300.155."

RESPONSE: The State Superintendent concurs with the recommendation and has amended the rule accordingly.

10.16.3320 REQUEST FOR INITIAL EVALUATION (1) remains as proposed.

(2) A local educational agency shall establish procedures for requesting an initial evaluation which include methods for collecting information to determine whether a comprehensive educational evaluation is necessary and the types of evaluations warranted.

(a) ~~The~~ When the request for initial evaluation is made by an LEA, the request must include a statement of the reasons for the request, including documentation of ~~general~~ regular education interventions for students enrolled in school, and the signature of the person making the request.

(b) When the request for initial evaluation is made by a parent, the request must include a statement of the reasons for the request and the signature of the person making the request.

~~(b) (c)~~ The All requests shall document the suspicion that the student may have a disability which adversely affects the student's educational performance to the degree ~~which requires~~ that the student needs special education and related services.

~~(e) (d)~~ If an a comprehensive educational evaluation in accordance with 34 CFR 300.301 through 300.311 is warranted, the local educational agency shall obtain consent of the parent before conducting ~~an~~ a comprehensive educational evaluation.

(3) remains as proposed.

COMMENT: NWCASE recommended that the term "comprehensive educational evaluation" be reinstated in this rule to be consistent with the title of ARM 10.16.3321 and also because a LEA has no obligation to conduct assessments that have no bearing on the student's educational program. It was further recommended that there needs to be consistency in terminology used (e.g., general education or regular education) and that "requires" special education in this rule be amended to read "needs" special education.

RESPONSE: The State Superintendent agrees with NWCASE's recommendations and has amended the rule accordingly. Also, "general" education has been replaced with the term "regular" education consistently across the rules proposed to be amended.

COMMENT: MAP stated that the proposed rule places a burden on parents by requiring them to document regular education interventions as well as to address other documentation requirements when requesting an initial evaluation and requested that the rule be modified to address these concerns.

RESPONSE: The State Superintendent agrees with MAP's comment and has amended the rule by amending (1)(a) and adding (1)(b).

10.16.3505 PARENTAL CONSENT (1) through (2)(c) remain as proposed.

(i) If parental consent cannot be obtained within a reasonable time, the local educational agency shall send written notice to the parent requesting approval and stating that the student with disabilities shall be provided special education and related services according to the student's individualized education program (IEP) as developed by the local educational agency 15 days from the date of the notice.

(ii) through (2)(d)(ii) remain as proposed.

COMMENT: MAP commented that the rule doesn't address parent consent for re-evaluations and that language be added to the rule to address this issue. It was also recommended that the proposed deletion of the language "as developed by the local education agency" be reinstated to prevent confusion about what IEP can be implemented - the last agreed upon IEP or the IEP proposed by the LEA or public agency.

RESPONSE: ARM 10.16.3505 requires implementation of parent consent requirements consistent with 34 CFR 300.300. Therefore, LEAs must obtain parental consent for re-evaluation and the State Superintendent does not feel any language needs to be added to the rule. The State Superintendent does agree with MAP's comment regarding reinstatement of language in (2)(c)(i) and has amended the rule accordingly.

COMMENT: One commenter stated a concern regarding parents who refuse special education services who had previously consented to the services and the LEA's responsibility for FAPE. The commenter wanted the rules to be amended if the federal regulations are amended or OSEP adopts a new regulation.

RESPONSE: If the U.S. Department of Education amends or adopts new regulations under IDEA, the State Superintendent will review the current rules to determine if they need to be amended to be consistent with the federal regulations.

10.16.3508 INITIATING SPECIAL EDUCATION DUE PROCESS

(1) remains as proposed.

(2) The Superintendent of Public Instruction shall develop a model form to assist ~~parents~~ the complainant in filing a request for due process. The request shall include:

(a) through (e) remain as proposed.

(f) a proposed resolution of the problem to the extent known and available to the ~~parents~~ complainant at the time.

(3) and (4) remain as proposed.

COMMENT: MAP commented that a complaint can be filed by a parent or an LEA and therefore suggests that the term "parents" in (2) and (2)(f) be changed to "complainant".

RESPONSE: The State Superintendent concurs with MAP's comment and has amended ARM 10.16.3508 accordingly.

10.16.3510 NOTICE OF HEARING (1) The impartial hearing officer shall, within ~~ten~~ five business days of completion of the resolution process, ~~schedule~~ conduct a prehearing conference pursuant to ARM 10.16.3512. The impartial hearing officer shall inform the parties of all future proceedings in this matter. The notice of hearing shall include:

(a) remains as proposed

(b) a schedule for discovery, prehearing motions and posthearing legal briefs and/or proposed findings of fact, conclusions of law and order;

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

(2) The notice of hearing shall be sent by certified mail to ~~all parties~~ any party not represented by counsel. Any party represented by counsel shall be served by regular mail addressed to the attorney representing the party.

(3) If the impartial hearing officer does not have details of the issues and matters to be discussed at the time of issuing the notice of hearing, a party or impartial hearing officer may later demand a more detailed account of the issues and matters to be discussed. ~~The dates scheduled by the impartial hearing officer in the notice of hearing may be continued by the impartial hearing officer to such a convenient date as stipulated by the parties and approved by the impartial hearing officer.~~

(a) remains as proposed.

(4) The dates scheduled by the impartial hearing officer in the notice of hearing may be continued by the hearing officer as stipulated by the parties or upon motion of a party showing reasonable necessity for the continuance. In determining whether to grant a request for continuance or approve a stipulation for continuance, the hearing officer shall consider the potential negative impact on the student who is the subject of the hearing.

COMMENT: MAP commented that due to time constraints the prehearing conference should be conducted within five days. MAP also suggested that the notice of hearing include a schedule for discovery, prehearing motions, and posthearing legal briefs and/or findings of fact. MAP also suggested that either party be allowed to file a motion for continuance as well as both parties stipulating to a

continuance.

RESPONSE: The State Superintendent concurs with MAP's comments and has amended the rule as suggested.

10.16.3515 SCOPE AND LIMITATION OF DISCOVERY (1) Unless otherwise limited by order of the impartial hearing officer, the scope and limitation of discovery shall be as set forth in Montana Rules of Civil Procedure, Rule 26 found in Title 25, chapter 20, MCA, except that answers to written discovery requests shall be served on the other party within 20 days after service of the request.

COMMENT: MAP suggested that this rule be amended to shorten the 30 day time period allowed by the Montana Rules of Civil Procedure for responding to discovery requests to 20 days based on the time limitations for due process hearings and decisions under IDEA. MAP submitted additional comments related to amending ARM 10.16.3514 and 10.16.3517.

RESPONSE: The State Superintendent agrees with MAP's comments regarding the discovery time period and has amended this rule accordingly. The comments regarding ARM 10.16.3514 and 10.16.3517 cannot be addressed by this rulemaking procedure as they were not in the notice of proposed rulemaking action. However, the State Superintendent will review these rules to determine if further rulemaking is warranted to address MAP's concerns.

6. The Superintendent of Public Instruction has repealed the following rules as proposed:

- ARM 10.16.3129 PARENTAL INVOLVEMENT
- ARM 10.16.3145 PROCEDURES FOR RECOVERY OF FEDERAL FUNDS FOR MISCLASSIFIED CHILDREN
- ARM 10.16.3146 FAILURE TO RETURN FEDERAL FUNDS FOR SERVICES TO MISCLASSIFIED CHILDREN
- ARM 10.16.3196 OFFICE OF PUBLIC INSTRUCTION DISAPPROVAL OF FEDERAL FUNDS: OPPORTUNITY FOR HEARING
- ARM 10.16.3322 COMPOSITION OF A CHILD STUDY TEAM
- ARM 10.16.3342 TRANSFER STUDENTS: INTRASTATE AND INTERSTATE
- ARM 10.16.3516 LIMITATIONS ON DISCOVERY BY THE IMPARTIAL HEARING OFFICER
- ARM 10.16.3751 OFFICE OF PUBLIC INSTRUCTION RESPONSIBILITY FOR CHILD COUNT
- ARM 10.16.3752 LOCAL EDUCATIONAL AGENCY RESPONSIBILITY FOR CHILD COUNT

7. The Superintendent of Public Instruction has thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received and responses that do not result in a change to the proposed rules.

COMMENT: MAP suggested adding language to ARM 10.16.3135(1)(a) to address review of public input to identify statewide training needs and assessment of the implementation of evidence based research practices utilized by LEAs in the delivery of special education and related services.

RESPONSE: Public input is addressed through triennial needs assessments, the Special Education Advisory Council, and the Comprehensive System of Personnel Development Council. An analysis of that input is addressed in (1)(a)(i). The addition of language addressing assessment of the implementation of evidence based research practices utilized by LEAs in the delivery of special education and related services would impose further reporting requirements on LEAs and is not a requirement under IDEA. ARM 10.16.3135 remains as proposed.

COMMENT: In connection with ARM 10.16.3220, MAP suggested:

(a) adding a requirement that the policies and procedures to be attached to the program narrative so that there is an official record of them and not just a description;

(b) that OPI require an explicit statement within the program narrative of the age of entitlement established for students;

(c) that districts be required to submit a plan for providing special education and related services through age 21 by a date certain; and

(d) a requirement be added that the OPI make the program narratives available to the public on the OPI web site.

RESPONSE: The State Superintendent believes:

(a) this requirement is already addressed and no further language needs to be added;

(b) directions for submission of program narratives already require that LEAs identify the age for entitlement for education, and therefore new language does not need to be added to the rule;

(c) IDEA 2004 does not require the submission of a LEA plan for addressing full educational opportunity goals (FEOG) and that adding the requirement of submission of a LEA plan addressing FEOG would place an unnecessary burden on LEAs;

(d) the rule addresses the requirements for LEAs and not the State Superintendent and therefore no amendment is necessary. However, the State Superintendent agrees that program narratives should be available on the OPI web site. Following review and approval of FY08 program narratives, the narratives will be available on the OPI web site.

COMMENT: One commenter stated appreciation for the "clear outline" of required additional members to initial evaluations in ARM 10.16.3321.

COMMENT: NWCASE recommended that the language in ARM 10.16.3341(4) be amended consistent with 34 CFR 300.306 to read: "[T]he evaluation report shall include a statement that the student needs special education

and related services."

RESPONSE: The State Superintendent thanks the commenter for their comment.

In connection with NWCASE's comment, the State Superintendent believes it is a critical component of the evaluation process that the evaluation team, after reviewing all of the results of the comprehensive educational evaluation, provide a summary statement that identifies why the student needs special education and related services. The summative description of individual need is vital information in making the determination of a student's need for special education and related services.

COMMENT: In connection with ARM 10.16.3341 MAP suggested that provision of educational services by the LEA in which the residential treatment facility is located not be limited to circumstances where the facility is unable or unwilling to provide FAPE and it should be clear which agency or LEA has the financial responsibility and ultimate responsibility for ensuring FAPE, even if FAPE is delivered by a different agency or LEA.

RESPONSE: The State Superintendent has determined that the language in ARM 10.16.3341 should remain as proposed. Section 20-7-435, MCA specifically establishes FAPE responsibilities for children in children's psychiatric hospitals or residential treatment facilities and 20-7-420, MCA specifically establishes financial responsibilities for children in children's psychiatric hospitals or residential treatment facilities. Modifying the parameters for fiscal and FAPE responsibilities for these children would be inconsistent with state statute.

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

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

Certified to the Secretary of State May 14, 2007.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 10.55.602, 10.55.701,)
10.55.705, and 10.55.907)
relating to accreditation standards)

TO: All Concerned Persons

1. On February 8, 2007, the Board of Public Education published MAR Notice No. 10-55-243 regarding the public hearing on the proposed amendment of the above-stated rules at page 169 of the 2007 Montana Administrative Register, Issue Number 3.

2. The Board of Public Education has amended ARM 10.55.602, 10.55.701, and 10.55.705 exactly as proposed.

COMMENT 1: Eric Feaver, President of MEA-MFT supports the proposed amendments to ARM 10.55.602 Definitions, 10.55.701 Board of Trustees, 10.55.705 Administrative Personnel: Assignment of School Administrators/ Principals, and 10.55.907 Distance, Online, and Technology Delivered Learning.

COMMENT 2: Dr. Claudette Morton, Executive Director of Montana Small Schools Alliance, Brian Patrick, Superintendent of Townsend Public Schools, and Michael Redburn, Superintendent of Bozeman Public Schools support the proposed amendments to ARM 10.55.602 Definitions, 10.55.701 Board of Trustees, and 10.55.705 Administrative Personnel: Assignment of School Administrators/ Principals.

Response: The board thanks Mr. Feaver, Dr. Morton, Superintendent Patrick, and Superintendent Redburn for their comments.

3. After consideration of the comments received, the Board of Public Education has amended ARM 10.55.907 with the following changes, stricken matter interlined, new matter underlined:

10.55.907 DISTANCE, ONLINE, AND TECHNOLOGY DELIVERED LEARNING (1) through (3)(a) remain as proposed.

(i) The provisions of (3) and (3)(a) shall not be effective until July 1, 2009.
(b) through (5)(e) remain as proposed.

COMMENT 3: Darrell Rud, Executive Director, SAM, presented two opposition statements from Dr. Bruce M. Whitehead, Principal of Hellgate Elementary School and Brian Patrick, Superintendent of Townsend Public Schools. Dr. Whitehead believes that the current recommendation of Montana licensure and endorsement of all teachers and/or facilitators is too restrictive. The Distance

Learning Task Force's proposals limit many small rural schools from on-line services from Montana's university system, as well as from many high quality NCATE-approved out-of-state providers. He recommended the following language:

10.55.907 DISTANCE, ONLINE, AND TECHNOLOGY DELIVERED LEARNING (3) Except as provided in (3)(a), teachers of distance, online, and technology delivered learning programs shall be licensed and endorsed in Montana and/or endorsed by an NCATE accredited school in the area of instruction taught with such license granted as a result of the completion of a professional educator preparation program accredited by NCATE and/or a state board of education. School districts receiving distance, online, and technology delivered learning programs described in this rule shall have a distance learning facilitator ~~as provided in this rule assigned~~ for each course and available to the students.

(3)(a) When a teacher of distance, online, and technology delivered learning programs and/or courses ~~is not licensed and endorsed as provided in this rule, does not possess the qualifications specified in (3) above,~~ the facilitator must ~~hold a Montana educator license~~ be licensed and endorsed in Montana and/or endorsed by an NCATE accredited school in the area of instruction facilitated.

Response: The board thanks Dr. Whitehead and Superintendent Patrick for their comments. However, the board believes that teachers providing instruction to Montana students in public schools whether in a traditional classroom or via distance, online, and technology delivered learning must be licensed and endorsed in the area of instruction. Pursuant to 20-4-104, MCA Teacher Certification, all teachers teaching in public schools are required to be licensed and endorsed. In addition, all Montana public schools are required to employ teachers who are licensed and endorsed in the area of instruction to meet Montana's federally approved definition of a highly qualified teacher under the No Child Left Behind Act.

COMMENT 4: Dr. Mary S. Moe, Dean and Chief Executive Officer of MSU-Great Falls, requests that the Board of Public Education reconsider proposed amendments to ARM 10.55.907(3)(a), (b), and (c) so that dual credit/dual enrollment opportunities for Montana students can be preserved in the standards. Dr. Moe states that students who are involved in dual credit/dual enrollment courses are more likely to go on to obtain a higher education and save families money which results in more students likely to complete their higher education. The proposed rule would deny students the continued opportunities for dual credit/dual enrollment courses that are provided online. She believes that the proposed changes have gone too far and provides a barrier for small schools. If the teacher needs to be licensed and endorsed in the area of instruction facilitated, then the school should be providing the course. Dr. Moe continued to stress that this rule is stating that the university personnel are not "qualified" to teach the students at Montana public schools, to which she objects.

COMMENT 5: Dr. Daniel Bingham, CEO and Dean of UM-Helena, supports the opposition of Dr. Moe and believes that these proposed amendments to the rule

diminish asynchronous learning and what it is designed to do. Students who cannot function asynchronously will suffer significantly in higher education. It is a vital skill that students need to obtain. These dual credit/dual enrollment courses are college courses and not high school courses. The instructors who teach them are qualified.

COMMENT 6: Dan Zorn, Assistant Superintendent, Kalispell, presented testimony and written documentation on behalf of himself, Mr. Ivan Lorentzen, Trustee, Kalispell Public Schools, and Ms. Darlene Schottle, Superintendent of Kalispell Public Schools. The most significant concern with this rule change is the precedent it appears to set regarding what is considered an acceptable course to be counted toward Montana high school graduation requirements. If the tenets of this rule were applied to dual credit offerings negotiated through partnerships between K-12 and higher education institutions, the beneficial options currently available to the students at Kalispell Public Schools would be limited. It seems logical that an instructor approved and credentialed to teach at the higher education level would also be suitable as an instructor of high school students, when teaching in their area of expertise. In addition, they believe that this rule could ultimately prevent the schools' ability to accept credits from students previously enrolled in home schools or private schools with teachers who do not have Montana certification. Finally, those representing Kalispell Public Schools believe that the facilitator requirements cause financial concerns for large schools as well as small schools because FTEs are spread too thin and are pulled away from traditionally taught classrooms.

COMMENT 7: Allen Sipes, Superintendent, Columbus Schools presented testimony in opposition to the proposed amendment ARM 10.55.907(3)(a). Included with his testimony is a letter in opposition from Jerry Scott, Director, Alliance for Curriculum Enhancement, and twelve signatures in support of the opposition. It is their belief that the proposed changes will directly affect the opportunities their students will have in taking long distance courses and/or recovery credits. If the schools have a certified teacher present, they would schedule the class and students would not have to take the course via distance learning. The proposed change would eliminate the ability of their schools to use independent studies from such places as North Dakota Independent Study, Pierson Digital Learning, Nova Net, and many others presently in use. It would severely limit the number and times that courses could be offered. Presently, their schools and students can connect to such programs 24 hours a day, 7 days a week. These changes would limit the opportunities for students to take dual credit college courses via distance learning.

COMMENT 8: Dr. Tom Gibson, Director of Distance Learning/Business Development, Montana University System, stated his support of the previous testimony of Dr. Mary S. Moe and Dr. Daniel Bingham in opposition to the proposed amendment ARM 10.55.907(3)(a). Not only does he object to the licensure and endorsement requirement, which excludes delivery by a Montana University System faculty, he also opposes ARM 10.55.907(3)(d) and (5)(c), which address the in-service training and the reporting requirements because it creates an additional burden on the university faculty to prove their qualifications. This rule erects barriers

to the P-20 vision that has become the common nomenclature. The university system has asked itself how to maintain quality and open its doors to more opportunities for students. Essentially the university system has come to the conclusion that its units are regionally accredited. Dr. Gibson asked the Board of Public Education to open its doors to the university system to support the education of Montana K-12 students.

COMMENT 9: Dr. Sheila Stearns, Commissioner of Higher Education, strongly discourages the Montana Board of Public Education from taking action on March 9, 2007. Dr. Stearns believes that these changes would hurt the efforts to connect the university delivery programs with the high school delivery programs. She is unanimous and united in opposition to the amendments of ARM 10.55.907(3)(a), (b), (c), and (5)(c) with Dr. Mary S. Moe, Dr. Daniel Bingham, Dr. Tom Gibson, and Dr. Arlene Parisot.

COMMENT 10: Dr. Bruce Messinger, Superintendent of Helena Public Schools and the Chair of the Executive Committee for the Montana Schools E-Learning Consortium (MSELC), opposes the proposed amendments. Dr. Messinger, representing the MSELC, states that if this rule were to pass as presented it would be extremely problematic because MSELC is not ready to assume the E-Learning responsibility for Montana students in 2007. Dr. Messinger, as Superintendent, states that the Helena Public Schools need more flexibility in course offerings, nature of courses, and packaging of courses. This rule seems to restrict the flexibility that is needed, which could lead to an exodus of students out of the public school system. Montana accepts and graduates students who transfer into the state if they come from an accredited high school from another state. It is not questioned as to the licensure and endorsement of the teachers or the standards taught even if the student comes to Montana the second semester of their senior year.

COMMENT 11: Written comments in opposition to ARM 10.55.907(3) and (3)(a) were received from Dr. Claudette Morton, Executive Director of Montana Small Schools Alliance; Brian Patrick, Superintendent of Townsend Public Schools; Jerry Pauli, Superintendent of Thompson Falls Public Schools; D.K. Brooks, Superintendent and Janet Neault, Distance Learning Supervisor of Willow Creek Public Schools; Kathy Pfister, Musselshell County Superintendent; Michael Redburn, Superintendent of Bozeman Public Schools; Renee Rasmussen, Superintendent of Wibaux Public Schools; Jay Eslick, Superintendent of Chinook Public Schools; Gary Blaz, Superintendent of Eureka Public Schools; Bryan Dunn, Superintendent of Great Falls Public Schools; Tom Rogers, Superintendent of Shelby Public Schools; Dennis Maasjo, Superintendent of Bainville Public Schools; Mary Murphy; Dick Kuntz, Assistant Superintendent, Great Falls Public Schools; Alvin Buerkle, Superintendent of Sweet Grass County High School; Glen Monson, Superintendent of Saco Public Schools; Glen Johnson, Superintendent, Chester-Joplin-Inverness Public Schools; Tim Tharp, Superintendent of Dutton/Brady Public Schools; Lee Phillips, Belt Public Schools; Linda Konesky, Counselor, Centerville Public Schools; Lance Melton, Executive Director, Montana School Boards Association; and Joe

Unterreiner, President, Kalispell Chamber of Commerce, Craig Cummings, Principal of Belgrade High School; and Roger E. Britton, Superintendent of Froid Public Schools.

Response: The board thanks each person for his/her comments regarding ARM 10.55.907. The board understands the issues that have been raised and believes that teachers providing instruction to Montana students in public schools whether in a traditional classroom or via distance, online, and technology delivered learning must be licensed and endorsed in the area of instruction. Pursuant to 20-4-104, MCA, Teacher Certification, all teachers teaching in public schools are required to be licensed and endorsed. In addition, all Montana public schools are required to employ teachers who are licensed and endorsed in the area of instruction to meet Montana's federally approved definition of a highly qualified teacher under the No Child Left Behind Act.

In response to the issue of qualified facilitators, the board believes that instruction of a course is more than knowledge of the content. It is imperative that the facilitator be a licensed and endorsed teacher of the content to ensure that the learning environment and supportive instructional methods are appropriate to the learning situation. If the teacher providing the online content, instruction, and communication is licensed and endorsed in the content area, the receiving learning setting requires a licensed teacher or qualified para-educator to maintain the general learning environment.

In consideration of the comments received, some regarding capacity which could be partially construed as fiscal limitations, the board has determined that this rule should be amended to provide for a delayed implementation date in connection with (3) and (3)(a).

/s/ Patty Myers
Patty Myers, Chair
Board of Public Education

/s/ Steve Meloy
Steve Meloy, Executive Secretary
Rule Reviewer
Board of Public Education

Certified to the Secretary of State May 14, 2007.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of) NOTICE OF ADOPTION
NEW RULE I, relating to insurer reporting)
requirements)

TO: All Concerned Persons

1. On March 22, 2007, the Department of Labor and Industry (department) published MAR Notice No. 24-29-214 regarding the public hearing on the proposed adoption of the above-stated rule at page 337 of the 2007 Montana Administrative Register, issue number 6.

2. On April 20, 2007, the Department of Labor and Industry (department) held a public hearing to consider the proposed adoption of the above-stated rule. In addition, a written comment was received before the comment deadline.

3. 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 Montana State Fund commented that while it is implicit in the rule that an employer must report its employer taxpayer identification number to its insurer, the State Fund believes the rule would be clearer and more effective if the requirement were explicit. The State Fund also noted that enforcement of the rule would be simpler with an explicit employer reporting requirement.

RESPONSE 1: The department agrees. In order to promulgate the rule as quickly as possible, the department is adopting the rule exactly as proposed. In addition, in this issue of the Register, the department is proposing to amend the rule to make the employer reporting requirement explicit. Please refer to that notice for more information.

4. The rule has been adopted exactly as proposed and is numbered ARM 24.29.4315.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State May 14, 2007

VOLUME NO. 52

OPINION NO. 2

CITIES AND TOWNS - Term of office of person appointed to fill vacancy in the office of city judge;
CITY COURTS - Term of office of person appointed to fill vacancy in the office of city judge;
MUNICIPAL GOVERNMENT - Term of office of person appointed to fill vacancy in the office of city judge;
PUBLIC OFFICE - Term of office of person appointed to fill vacancy in the office of city judge;
STATUTORY CONSTRUCTION - Construing inconsistencies between general and particular provisions of the code;
MONTANA CODE ANNOTATED - Sections 1-2-102, 7-3-4462, (3), 7-4-4112, (1);
REVISED CODES OF MONTANA 1907 - Section 3236;
REVISED CODES OF MONTANA 1917 - Section 5470.

HELD: When a person is appointed to fill a vacancy in the office of city judge under a commission-manager form of city government, that person serves the remainder of the existing term.

May 3, 2007

Mr. Bruce Becker
Livingston City Attorney
414 East Callender Street
Livingston, MT 59047

Dear Mr. Becker:

You have asked my opinion on a question that I have restated as follows:

When a person is appointed to fill a vacancy in the office of city judge in a city of the second class that operates under the commission-manager form of government, when is the office up for election?

Your question requires the interpretation of two statutes.

Montana Code Annotated § 7-4-4112 is a general statute that provides for filling vacancies in municipal elected offices.

When first passed in 1903 this statute specified a manner of filling a vacancy "for any [municipal] elective office." Rev. Codes Mont. 1907 § 3236. Although the statute was amended in 1981 and 1987, the statute's broad language remains. The law currently states that:

(1) When any vacancy occurs in any elective office, this position shall be considered open and subject to nomination and election at the next general municipal election in the same manner as the election of any other person holding the same office, except the term of office shall be limited to the unexpired term of the person who originally created the vacancy. Pending such election and qualification the council shall, by a majority vote of the members, appoint a person within 30 days of the vacancy to hold the office until his successor is elected and qualified.

Mont. Code Ann. § 7-4-4112(1).

Montana Code Annotated § 7-3-4462 also addresses the issue of filling vacancies. This statute specifically focuses on the office of the city judge in a commission-manager municipality and the filling of a vacancy in that office. The statute was first enacted in 1917 as § 5470 of the Revised Codes of Montana. In its initial iteration the law consisted of one sentence: "The commission shall appoint a police judge, who shall have the power and authority now conferred by existing law." The law made no mention of vacancy appointments. In 1977 the legislature completely revised the statute and addressed the issue of a vacancy. The revision deleted the then-existing statutory language. In its stead the legislature provided the following which remains the current law:

(1) In each municipality having a commission-manager form of government, a city judge shall be elected every 4 years in a nonpartisan election held in conjunction with the regularly scheduled municipal election. The city judge shall hold office for a term of 4 years.

(2) The qualifications to hold the office of city judge shall be set by ordinance by the commission. The ordinance shall be consistent with any rules adopted by the Montana supreme court on city judge qualifications.

(3) If a vacancy occurs in the office of city judge, the commission shall appoint a qualified individual to serve for the remainder of the term.

Mont. Code Ann. § 7-3-4462.

The answer to your question requires an analysis of these two statutes and a resolution of the conflicting provisions pursuant to the rules of statutory construction. One statute provides for a general method for dealing with vacancies in municipal elective offices. The other defines a procedure for one specific office that conflicts with the procedure set forth in the general statute.

Montana Code Annotated § 1-2-102 sets out the applicable rule: "In the construction of a statute, the intention of the legislature is to be pursued if possible. When a general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it."

The Montana Supreme Court has consistently applied this principle and noted that "It is a well-settled rule of statutory construction that the specific prevails over the general. A particular statutory intent controls over a general one which is inconsistent with it." Mont. Code Ann. § 1-2-102. "Further, when two statutes deal with a subject, one in general and comprehensive terms, and the other in minute and more definite terms, the more definite statute will prevail to the extent of any opposition between them." State v. Smith, 2004 MT 191, ¶ 17, 322 Mont. 206, 212, 95 P.3d 137, 141.

Montana Code Annotated § 7-3-4462 is the more specific statute. It comprehensively addresses one municipal office. It provides for the term of office, the type of election that must be conducted, the qualifications for the office and the procedure for filling vacancies. The legislature expressly defined these requirements in this statute for one and only one office. And it did so at a time when the general statute already existed. The Supreme Court will "presume that the legislature would not pass meaningless legislation . . ." State v. McGowan, 2006 MT 163, ¶ 15, 332 Mont. 490, 494, 139 P.3d 841, 844. Montana Code Annotated § 7-3-4462(3) would be meaningless if the older, more general application of Mont. Code Ann. § 7-4-4112 were given effect.

The intent of the legislature must be followed. In 1977, when the legislature passed Mont. Code Ann. § 7-3-4462, the legislature intended to provide for a procedure for filling any vacancy that might arise in the office of the city judge in a commission-manager municipality. It did so knowing that a more general vacancy statute already existed in Montana law and it did so intending that Mont. Code Ann. § 7-3-4462 would be given meaning in its entirety.

THEREFORE, IT IS MY OPINION:

When a person is appointed to fill a vacancy in the office of city judge under a commission-manager form of city government, that person serves the remainder of the existing term.

Very truly yours,

/s/ Mike McGrath
MIKE MCGRATH
Attorney General

mm/cdt/jym

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|---------------|---|
| Known Subject | 1. Consult ARM topical index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each Number and title which lists MCA section numbers and Department corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2007. This table includes those rules adopted during the period April 1 through June 30, 2007, 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 March 31, 2007, 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.

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

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in April 2007 appear. Vacancies scheduled to appear from June 1, 2007, through August 31, 2007, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of May 1, 2007.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM APRIL 2007

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Architects (Labor and Industry)			
Ms. Marie O'Neill Bozeman	Governor	Wood	4/12/2007 3/27/2010
Qualifications (if required): registered architect with the Montana State University			
Board of Dentistry (Labor and Industry)			
Mr. Cliff Christenot Libby	Governor	reappointed	4/12/2007 3/29/2012
Qualifications (if required): denturist			
Dr. David Johnson Great Falls	Governor	Ivers	4/12/2007 3/29/2012
Qualifications (if required): dentist			
Mr. James Madison Jefferson City	Governor	Waller	4/12/2007 3/29/2012
Qualifications (if required): public representative over 55 years of age			
Ms. Carol Price Clancy	Governor	reappointed	4/12/2007 3/29/2012
Qualifications (if required): dental hygienist			
Board of Hail Insurance (Agriculture)			
Mr. Jim Schillinger Baker	Governor	Arntzen	4/11/2007 4/18/2010
Qualifications (if required): public member			

BOARD AND COUNCIL APPOINTEES FROM APRIL 2007

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Pardons and Parole (Corrections)			
Mr. John Rex Miles City Qualifications (if required): having education or experience in criminology	Governor	reappointed	4/12/2007 1/1/2011
Board of Physical Therapy Examiners (Labor and Industry)			
Ms. Patti Jo Lane Great Falls Qualifications (if required): physical therapist	Governor	Mahlum	4/12/2007 7/1/2009
Ms. Kim Miller Virginia City Qualifications (if required): public member	Governor	Cole	4/12/2007 7/1/2009
Board of Public Assistance (Governor)			
Ms. Helen Barta Schmitt Sidney Qualifications (if required): public representative	Governor	Graham	4/2/2007 1/1/2011
Governor's Advisory Council on Economic Security for Montana Families (Governor)			
Rep. Shannon Augare Browning Qualifications (if required): public representative	Governor	not listed	4/26/2007 2/22/2009
Ms. Lori Brengle Glendive Qualifications (if required): public representative	Governor	not listed	4/26/2007 2/22/2009

BOARD AND COUNCIL APPOINTEES FROM APRIL 2007

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Governor's Advisory Council on Economic Security for Montana Families (Governor) cont.			
Ms. Mary Danford Bigfork Qualifications (if required): public representative	Governor	not listed	4/26/2007 2/22/2009
Mr. Everall Fox Billings Qualifications (if required): public representative	Governor	not listed	4/26/2007 2/22/2009
Ms. Sheila Hogan Butte Qualifications (if required): public representative	Governor	not listed	4/26/2007 2/22/2009
Ms. Bethany Letiecq Bozeman Qualifications (if required): public representative	Governor	not listed	4/26/2007 2/22/2009
Ms. Minkie Medora Missoula Qualifications (if required): public representative	Governor	not listed	4/26/2007 2/22/2009
Ms. Barb Stiffarm Havre Qualifications (if required): public representative	Governor	not listed	4/26/2007 2/22/2009
Ms. Elaine Topsky Box Elder Qualifications (if required): public representative	Governor	not listed	4/26/2007 2/22/2009

BOARD AND COUNCIL APPOINTEES FROM APRIL 2007

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Governor's Advisory Council on Economic Security for Montana Families (Governor) cont.			
Ms. Angie Wasia Bozeman Qualifications (if required): public representative	Governor	not listed	4/26/2007 2/22/2009
Mr. Robert Young Bozeman Qualifications (if required): public representative	Governor	not listed	4/26/2007 2/22/2009
Montana Arts Council (Education)			
Ms. Cyndy Andrus Bozeman Qualifications (if required): public representative	Governor	reappointed	4/4/2007 2/1/2012
Mr. Marshall Friedman Whitefish Qualifications (if required): public representative	Governor	Lewing	4/4/2007 2/1/2012
Mr. Rick Newby Helena Qualifications (if required): public representative	Governor	Dudis	4/4/2007 2/1/2012
Ms. Ellen Ornitz Manhattan Qualifications (if required): public representative	Governor	Heltne	4/4/2007 2/1/2012

BOARD AND COUNCIL APPOINTEES FROM APRIL 2007

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Arts Council (Education) cont.			
Ms. Judy Ulrich Dillon	Governor	Crippen	4/4/2007 2/1/2012
Qualifications (if required): public representative			
Montana Pulse Crop Advisory Committee (Agriculture)			
Ms. Leta Campbell Harlem	Director	reappointed	4/20/2007 2/13/2010
Qualifications (if required): none specified			
Private Security Patrol Officers and Investigators (Labor and Industry)			
Lt. Bryan Lockerby Great Falls	Governor	Dahl	4/4/2007 8/1/2009
Qualifications (if required): city police department representative			
Public Employees Retirement Board (Administration)			
Mr. John Nielsen Glendive	Governor	Carey	4/4/2007 4/1/2012
Qualifications (if required): public employee active in retirement system			

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2007 through AUGUST 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Aging Advisory Council (Governor) Ms. Chuckie Cramer, Helena Qualifications (if required): public member</p>	Governor	7/18/2007
<p>Board of Funeral Service (Labor and Industry) Ms. Jean Ruppert, Butte Qualifications (if required): public member</p>	Governor	7/1/2007
<p>Mr. Niles Nelson, Libby Qualifications (if required): licensed mortician</p>	Governor	7/1/2007
<p>Mr. Jered Scherer, Billings Qualifications (if required): cemetarian</p>	Governor	7/1/2007
<p>Board of Hearing Aid Dispensers (Labor and Industry) Mr. Steve Wilson, Helena Qualifications (if required): hearing aid dispenser with no masters</p>	Governor	7/1/2007
<p>Dr. Paula Petersen, Belgrade Qualifications (if required): hearing aid dispenser with national certification in audiology and a master's degree</p>	Governor	7/1/2007
<p>Board of Nursing (Labor and Industry) Ms. Sharon L. Dschaak, Wolf Point Qualifications (if required): licensed practical nurse</p>	Governor	7/1/2007
<p>Ms. Anna Lythgoe, Clancy Qualifications (if required): registered nurse</p>	Governor	7/1/2007

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2007 through AUGUST 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Nursing (Labor and Industry) cont. Ms. Roberta Threet, Clancy Qualifications (if required): licensed practical nurse</p>	Governor	7/1/2007
<p>Board of Pharmacy (Labor and Industry) Ms. Ann H. Pasha, Highwood Qualifications (if required): public member</p>	Governor	7/1/2007
<p>Board of Professional Engineers and Professional Land Surveyors (Labor and Industry) Ms. Paulette Ferguson, Missoula Qualifications (if required): public member</p>	Governor	7/1/2007
<p>Mr. James Hahn, Billings Qualifications (if required): professional surveyor</p>	Governor	7/1/2007
<p>Mr. Vic Cundy, Bozeman Qualifications (if required): professional engineer involved in teaching engineering</p>	Governor	7/1/2007
<p>Mr. David Gates, Butte Qualifications (if required): professional engineer</p>	Governor	7/1/2007
<p>Mr. Casey E. Johnston, Butte Qualifications (if required): licensed electrical engineer</p>	Governor	7/1/2007
<p>Board of Public Accountants (Labor and Industry) Mr. Gary Kasper, Fairfield Qualifications (if required): licensed public accountant</p>	Governor	7/1/2007

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2007 through AUGUST 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Public Accountants (Labor and Industry) cont. Ms. Kathleen M. Burch, Lakeside Qualifications (if required): public member</p>	Governor	7/1/2007
<p>Board of Radiologic Technologists (Labor and Industry) Ms. Anne Delaney, Missoula Qualifications (if required): radiologic technologist</p>	Governor	7/1/2007
<p>Board of Regents (Higher Education) Ms. Heather O'Loughlin, Missoula Qualifications (if required): full-time student at a unit of higher education under jurisdiction of the Board of Regents</p>	Governor	6/30/2007
<p>Board of Veterinary Medicine (Labor and Industry) Dr. Jean Allbright, Billings Qualifications (if required): licensed veterinarian</p>	Governor	7/31/2007
<p>Committee on Telecommunications Access Services for Persons with Disabilities (Public Health and Human Services) Ms. Chris Huth, Helena Qualifications (if required): nondisabled businessperson</p>	Governor	7/1/2007
<p>Community Service Commission (Labor and Industry) Director Keith Kelly, Helena Qualifications (if required): representative of the Department of Labor</p>	Governor	7/1/2007
<p>Mr. Tracy King, Harlem Qualifications (if required): Tribal government member</p>	Governor	7/1/2007

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2007 through AUGUST 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Community Service Commission (Labor and Industry) cont. Dr. Johnel Barcus, Browning Qualifications (if required): representative of the private sector</p>	Governor	7/1/2007
<p>Community Service Commission (Governor) Mr. Cedric Jacobson, Missoula Qualifications (if required): youth representative</p>	Governor	7/1/2007
<p>District Court Council (Supreme Court) Judge Thomas M. McKittrick, Great Falls Qualifications (if required): none specified</p>	elected	6/30/2007
<p>Mr. Glen Welch (city not listed) Qualifications (if required): none specified</p>	nominated	6/30/2007
<p>Economic Development Advisory Council (Commerce) Mr. Jim Smitham, Butte Qualifications (if required): public representative</p>	Governor	7/23/2007
<p>Mr. Evan Barrett, Butte Qualifications (if required): public member</p>	Governor	7/23/2007
<p>Mr. Tony Rudbach, Missoula Qualifications (if required): public member</p>	Governor	7/23/2007
<p>Ms. Corlene Martin, Choteau Qualifications (if required): public representative</p>	Governor	7/23/2007

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2007 through AUGUST 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Electronic Government Advisory Council (Administration)		
Ms. Vickie Zeier, Missoula Qualifications (if required): local government official	Governor	6/18/2007
Ms. Cheryl Patton, Great Falls Qualifications (if required): public representative	Governor	6/18/2007
Ms. Jeanne Murphy, Wolf Creek Qualifications (if required): agency representative	Governor	6/18/2007
Mr. Rick McIntyre, Billings Qualifications (if required): agency representative	Governor	6/18/2007
Mr. Shannon Hanson, Whitefish Qualifications (if required): public representative	Governor	6/18/2007
Family Education Savings Oversight Committee (Commissioner of Higher Education)		
Ms. Sarah Kelly, Helena Qualifications (if required): public member	Governor	7/1/2007
Flathead Basin Commission (Natural Resources and Conservation)		
Mr. Paul Smiley, Kalispell Qualifications (if required): public member	Governor	6/30/2007
Mr. Gary Wicks, Polson Qualifications (if required): public member	Governor	6/30/2007

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2007 through AUGUST 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Flathead Basin Commission (Natural Resources and Conservation) cont. Ms. Kate Hunt, Kalispell Qualifications (if required): public representative	Governor	6/30/2007
Mr. Clinton Whitney, Polson Qualifications (if required): public representative	Governor	6/30/2007
Grant Review Committee (Governor's Office) Ms. Ingrid Childress, Helena Qualifications (if required): representative of the Department of Labor and Industry	Governor	6/30/2007
Interim Mental Health Ombudsman (Governor) Mr. Brian Garrity, Helena Qualifications (if required): none specified	Governor	6/30/2007
Judicial Standards Commission (Justice) Judge Ed McLean, Missoula Qualifications (if required): none specified	elected	6/30/2007
Ms. Patty Jo Henthorn, Big Timber Qualifications (if required): public member	Governor	7/1/2007
Land Information Advisory Council (Administration) Director Dan R. Bucks, Helena Qualifications (if required): department representative	Governor	6/30/2007
Rep. Jon C. Sesso, Butte Qualifications (if required): local government representative	Governor	6/30/2007

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2007 through AUGUST 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Land Information Advisory Council (Administration) cont. Mr. Lance Clampitt, Manhattan Qualifications (if required): U.S. Interior Department representative	Governor	6/30/2007
Mr. Art Pembroke, Helena Qualifications (if required): local government representative	Governor	6/30/2007
Mr. Steve Shannon, Butte Qualifications (if required): private sector representative	Governor	6/30/2007
Director Jeff Hagener, Helena Qualifications (if required): department representative	Governor	6/30/2007
Director Mary Sexton, Helena Qualifications (if required): department representative	Governor	6/30/2007
Director Richard Opper, Helena Qualifications (if required): department representative	Governor	6/30/2007
Mr. Michael T. Birtles, Billings Qualifications (if required): U.S. Interior Department representative	Governor	6/30/2007
Ms. Catherine Maynard, Helena Qualifications (if required): U.S. Interior Department representative	Governor	6/30/2007
Mr. Don Patterson, Missoula Qualifications (if required): U.S. Agriculture Department representative	Governor	6/30/2007

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2007 through AUGUST 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Land Information Advisory Council (Administration) cont.		
Ms. Lisa Kimmet, Terry Qualifications (if required): local government representative	Governor	6/30/2007
Mr. Lorin Peterson, Pablo Qualifications (if required): tribal government representative	Governor	6/30/2007
Mr. Rick Lawrence, Bozeman Qualifications (if required): university representative	Governor	6/30/2007
Mr. Ed Madej, Helena Qualifications (if required): private sector representative	Governor	6/30/2007
Mr. Ken Wall, Missoula Qualifications (if required): GIS professional	Governor	6/30/2007
Mr. Michael Sweet, Missoula Qualifications (if required): GIS professional	Governor	6/30/2007
Mr. Dave Davis, Helena Qualifications (if required): GIS professional	Governor	6/30/2007
Mental Disabilities Board of Visitors (Governor)		
Ms. Gay Moddrell, Kalispell Qualifications (if required): consumer of developmental disability services	Governor	7/1/2007
Ms. Suzanne Hopkins, Lewistown Qualifications (if required): consumer of mental health services	Governor	7/1/2007

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2007 through AUGUST 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Mental Disabilities Board of Visitors (Governor) cont. Ms. Teresa Lewis, Harlem Qualifications (if required): consumer of mental health services</p>	Governor	7/1/2007
<p>Montana Consensus Council (Administration) Mr. LeRoy Not Afraid, Crow Agency Qualifications (if required): public representative</p>	Governor	7/1/2007
<p>Mr. Van Wolverton, Alberton Qualifications (if required): public representative</p>	Governor	7/1/2007
<p>Ms. Eleanor Yellowrobe, Havre Qualifications (if required): public representative</p>	Governor	7/1/2007
<p>Mr. Nick Murnion, Jordan Qualifications (if required): public representative</p>	Governor	7/1/2007
<p>Montana Historical Society Board of Trustees (Historical Society) Mr. Don Wetzel, Bozeman Qualifications (if required): public member</p>	Governor	7/1/2007
<p>Mr. Steve Browning, Helena Qualifications (if required): public member</p>	Governor	7/1/2007
<p>Ms. Mary Murphy, Bozeman Qualifications (if required): historian</p>	Governor	7/1/2007

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2007 through AUGUST 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Historical Society Board of Trustees (Historical Society) cont. Mr. Steve Lozar, Polson Qualifications (if required): public member	Governor	7/1/2007
Ms. Katherine Lee, Glendive Qualifications (if required): public member	Governor	7/1/2007
Mr. Kent Kleinkopf, Missoula Qualifications (if required): public member	Governor	7/1/2007
Montana Noxious Weed Seed Free Forage Advisory Council (Agriculture)		
Mr. Terry Turner, Havre Qualifications (if required): representative of the Montana Weed Control Association	Director	6/30/2007
Ms. Josie Dahlberg, Brockton Qualifications (if required): representative of Agriculture Crop Production	Director	6/30/2007
Mr. Jerry Marks, Missoula Qualifications (if required): representative of Biological Research and Control	Director	6/30/2007
Mr. Jack Eddie, Dillon Qualifications (if required): representative of Western counties	Director	6/30/2007
Mr. Dave Philipps, Lewistown Qualifications (if required): representative of Herbicide Dealers and Applicators	Director	6/30/2007
Ms. Pachy Burns, Big Timber Qualifications (if required): representative of Consumer Groups	Director	6/30/2007

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2007 through AUGUST 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Noxious Weed Seed Free Forage Advisory Council (Agriculture) cont. Mr. Gary Olsen, Harlowton Qualifications (if required): representative of Eastern counties	Director	6/30/2007
Montana Noxious Weed Summit Advisory Council (Agriculture) Mr. Kevin Chappell, Helena Qualifications (if required): State agency representative	Governor	7/26/2007
Mr. Jerry Marks, Missoula Qualifications (if required): MSU Extension Agency representative	Governor	7/26/2007
Director Nancy K. Peterson, Helena Qualifications (if required): Governor representative	Governor	7/26/2007
Mr. Scott Bockness, Billings Qualifications (if required): Montana Weed Control representative	Governor	7/26/2007
Mr. Jim Ghekiere, Chester Qualifications (if required): County Weed District representative	Governor	7/26/2007
Mr. Dave Burch, Helena Qualifications (if required): Montana Department of Agriculture representative	Governor	7/26/2007
Mr. Jim Olivarez, Missoula Qualifications (if required): Federal agency representative	Governor	7/26/2007
Mr. Dave Schulz, Virginia City Qualifications (if required): Montana Association of County Officials representative	Governor	7/26/2007

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2007 through AUGUST 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Noxious Weed Summit Advisory Council (Agriculture) cont.		
Mr. Jon Wraith, Bozeman Qualifications (if required): MSU Agricultural Experiment Station representative	Governor	7/26/2007
Mr. Darrel Briese, Havre Qualifications (if required): Irrigation District representative	Governor	7/26/2007
Mr. Bert Corcoran, Box Elder Qualifications (if required): Tribal representative	Governor	7/26/2007
Ms. Sandi Birch, Dutton Qualifications (if required): Crop Protection Product Industry representative	Governor	7/26/2007
Montana Quarter Commission (Governor)		
Mr. Brian Schweitzer, Whitefish Qualifications (if required): none specified	Governor	6/27/2007
Mr. Gary B. Marks, Whitefish Qualifications (if required): numismatist	Governor	6/27/2007
Mr. Keith E. Gumm, Terry Qualifications (if required): numismatist	Governor	6/27/2007
Ms. Nancy Warneke-Gaynor, Whitefish Qualifications (if required): public representative	Governor	6/27/2007
Mr. Arnie Olsen, Helena Qualifications (if required): historical expert	Governor	6/27/2007

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2007 through AUGUST 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Quarter Commission (Governor) cont. Ms. Sarah Elliott, Helena Qualifications (if required): commission staff	Governor	6/27/2007
Montana Special Education Advisory Panel (Office of Public Instruction) Mr. Terry Teichrow, Helena Qualifications (if required): Representative of Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act	Director	6/30/2007
Ms. Diana Colgrove, Eureka Qualifications (if required): Part C/IDEA Representative	Director	6/30/2007
Ms. Janet Jansen, Lavina Qualifications (if required): Regular Classroom Teacher	Director	6/30/2007
Mr. Dick Slonaker, Chinook Qualifications (if required): Special Education Program Administrator	Director	6/30/2007
Mr. Bob Peake, Helena Qualifications (if required): State Agency	Director	6/30/2007
Ms. Amy McCord, Ashland Qualifications (if required): Private School Representative	Director	6/30/2007
Mr. Terry Galle, Deer Lodge Qualifications (if required): Vocational Community	Director	6/30/2007
Mr. George Jack Burns, Lame Deer Qualifications (if required): Parent of a Child with Disabilities	Director	6/30/2007

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2007 through AUGUST 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Special Education Advisory Panel (Office of Public Instruction) cont.		
Ms. Sharon Hobbs, Billings Qualifications (if required): Higher Education that Prepares Special Education	Director	6/30/2007
Mr. Carroll Jim DeCoteau, Frazer Qualifications (if required): Teacher of Children with Disabilities	Director	6/30/2007
Mr. Dave Mahon, Worden Qualifications (if required): State/Local Administrator	Director	6/30/2007
Mr. Ron Fuller, Boulder Qualifications (if required): Representative from Juvenile and Adult Corrections	Director	6/30/2007
Ms. Barb Rolf, Great Falls Qualifications (if required): Representative of Other State Agencies	Director	6/30/2007
Ms. Coral Beck, Missoula Qualifications (if required): State Child Welfare Agency Responsible for Foster Care	Director	6/30/2007
Montana Wheat and Barley Committee (Agriculture)		
Ms. Janice Mattson, Chester Qualifications (if required): representative of District 3 and a Democrat	Governor	8/20/2007
Mr. Donald L. Fast, Glasgow Qualifications (if required): representative of District 2 and a Republican	Governor	8/20/2007

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2007 through AUGUST 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Motorcycle Safety Advisory Committee (Board of Regents) Mr. Dal Smilie, Helena Qualifications (if required): representative of a motorcycle riding group</p>	Governor	7/1/2007
<p>Mr. Ladd Paulson, Billings Qualifications (if required): peace officer</p>	Governor	7/1/2007
<p>Petroleum Tank Release Compensation Board (Environmental Quality) Mr. Greg Cross, Billings Qualifications (if required): representative of independent petroleum marketers</p>	Governor	6/30/2007
<p>Mr. Shaun Peterson, Helena Qualifications (if required): representative of the insurance industry</p>	Governor	6/30/2007
<p>Postsecondary Scholarship Advisory Council (Higher Education) Ms. Dolores Colburg, Billings Qualifications (if required): having experience in secondary education</p>	Governor	6/20/2007
<p>Private Lands/Public Wildlife Council (Fish, Wildlife, and Parks) Ms. Connie Eissinger, Brockway Qualifications (if required): landowner</p>	Governor	6/30/2007
<p>Mr. Mat Millenbach, Billings Qualifications (if required): hunter/angler</p>	Governor	6/30/2007
<p>Mr. Craig Roberts, Lewistown Qualifications (if required): hunter/angler</p>	Governor	6/30/2007

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2007 through AUGUST 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Private Lands/Public Wildlife Council (Fish, Wildlife, and Parks) cont.		
Mr. Jamie Byrne, Ekalaka Qualifications (if required): outfitter	Governor	6/30/2007
Mr. Jack Rich, Seeley Lake Qualifications (if required): outfitter	Governor	6/30/2007
Ms. Donna McDonald, Alder Qualifications (if required): outfitter	Governor	6/30/2007
Rep. Bill Warden, Bozeman Qualifications (if required): legislator	Governor	6/30/2007
Sen. Lane L. Larson, Billings Qualifications (if required): legislator	Governor	6/30/2007
Mr. Shane Colton, Billings Qualifications (if required): Fish, Wildlife, and Parks commissioner	Governor	6/30/2007
Mr. Gordon Haugen, Bozeman Qualifications (if required): hunter/angler	Governor	6/30/2007
Mr. Max McDonald, Vaughn Qualifications (if required): landowner	Governor	6/30/2007
Mr. Doug Schott, Stevensville Qualifications (if required): outfitter	Governor	6/30/2007

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2007 through AUGUST 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Private Lands/Public Wildlife Council (Fish, Wildlife, and Parks) cont.		
Mr. Arlo Skari, Chester Qualifications (if required): landowner	Governor	6/30/2007
Mr. Land Tawney, Missoula Qualifications (if required): hunter/angler	Governor	6/30/2007
Mr. William Falls Down Sr., Hardin Qualifications (if required): landowner	Governor	6/30/2007
Public Defender Commission (Administration)		
Mr. Mike Sherwood, Missoula Qualifications (if required): attorney nominated by the Montana Supreme Court	Governor	7/1/2007
Ms. Betty Bichsel, Edgar Qualifications (if required): employee of an organization providing addictive behavior counseling	Governor	7/1/2007
Ms. Wendy Holton, Helena Qualifications (if required): attorney nominated by the Montana State Bar	Governor	7/1/2007
Ms. Tara Veazey, Helena Qualifications (if required): member of an organization advocating on behalf of indigent persons	Governor	7/1/2007
Rail Service Competition Council (Governor)		
Mayor Larry J. Bonderud, Shelby Qualifications (if required): knowledge of the trucking industry	Governor	7/1/2007

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2007 through AUGUST 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Rail Service Competition Council (Governor) cont. Mr. William Fogarty, Anaconda Qualifications (if required): having knowledge of class I railroads	Governor	7/1/2007
Ms. Carla Allen, Denton Qualifications (if required): having knowledge of class II railroads	Governor	7/1/2007
Mr. Michael O'Hara, Fort Benton Qualifications (if required): farm commodity producer knowledgeable about transportation of farm commodities	Governor	7/1/2007
Mr. Doug Miller, Troy Qualifications (if required): knowledge of transportation for the mineral industry	Governor	7/1/2007
Mr. Russell Hobbs, Columbia Falls Qualifications (if required): knowledge of transportation for the wood products industry	Governor	7/1/2007
Research and Commercialization Board (Commerce) Mr. Jim Davison, Anaconda Qualifications (if required): public representative	Governor	7/1/2007
Reserved Water Rights Compact Commission (Natural Resources and Conservation) Mr. Gene Etchart, Glasgow Qualifications (if required): public member	Governor	6/1/2007
Sen. Lorents Grosfield, Big Timber Qualifications (if required): public member	Governor	6/1/2007

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2007 through AUGUST 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Reserved Water Rights Compact Commission (Natural Resources and Conservation) cont. Ms. Tara DePuy, Livingston Qualifications (if required): public member	Governor	6/1/2007
Mr. Steve Hughes, Polson Qualifications (if required): public member	Governor	6/1/2007
State Electrical Board (Labor and Industry) Rep. Linda L. Holden, Valier Qualifications (if required): public member	Governor	7/1/2007
State Poet Laureate (Montana Arts Council) Ms. Sandra Alcosser, Florence Qualifications (if required): Montana poet	Governor	7/13/2007
State Workforce Investment Board (Labor and Industry) Mr. Mike McGinley, Dillon Qualifications (if required): county commissioner	Governor	7/1/2007
State-Tribal Economic Development Commission (Governor) Ms. Emorie Davis Bird, East Glacier Park Qualifications (if required): representative of the Blackfeet Tribe	Governor	6/30/2007
Mr. Rodney Miller, Wolf Point Qualifications (if required): representative of the Fort Peck Assiniboine and Sioux Tribes	Governor	6/30/2007
Mr. Roger "Sassy" Running Crane, Browning Qualifications (if required): representative of the Blackfeet Tribe	Governor	6/30/2007

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2007 through AUGUST 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Teachers' Retirement Board (Administration) Ms. Kari Peiffer, Kalispell Qualifications (if required): active teacher</p>	Governor	7/1/2007
<p>Telecommunications Advisory Council Services for Persons with Disabilities (Public Health and Human Services) Ms. Amber Lang, Kalispell Qualifications (if required): having a hearing disability</p>	Governor	7/1/2007
<p>Tourism Advisory Council (Commerce) Ms. Vicki Hucke, Helena Qualifications (if required): having experience in the private sector travel industry</p>	Governor	7/1/2007
<p>Ms. Rhonda Fitzgerald, Whitefish Qualifications (if required): public member from Glacier Country</p>	Governor	7/1/2007
<p>Mr. Stan Ozark, Glasgow Qualifications (if required): public member from Missouri River Country</p>	Governor	7/1/2007
<p>Workforce Investment Board (Labor and Industry) Mr. John Prinkki, Red Lodge Qualifications (if required): county commissioner</p>	Governor	7/1/2007
<p>Youth Justice Council (Justice) Mr. Dennis Dronen, Great Falls Qualifications (if required): juvenile probation officer</p>	Governor	8/15/2007

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2007 through AUGUST 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Justice Council (Justice) cont. Judge Pedro Hernandez, Billings Qualifications (if required): representative of the local court system	Governor	8/15/2007
Mr. Ted Lechner, Billings Qualifications (if required): volunteer who works with delinquents or potential delinquents	Governor	8/15/2007
Ms. Cathy Kendall, Helena Qualifications (if required): ex-officio member	Governor	8/15/2007
Ms. Katie Yother, Bozeman Qualifications (if required): youth representative	Governor	8/15/2007
Ms. Beth McLaughlin, Helena Qualifications (if required): ex-officio member	Governor	8/15/2007
Mr. Steve Gibson, Helena Qualifications (if required): ex-officio member	Governor	8/15/2007
Mr. Rick Robinson, Lame Deer Qualifications (if required): having competency in addressing problems facing youth	Governor	8/15/2007
Ms. Karin Billings, Helena Qualifications (if required): ex-officio member	Governor	8/15/2007
Ms. Bonnie Wallem, Kalispell Qualifications (if required): representative of a nonprofit organization with special emphasis on youth development	Governor	8/15/2007

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2007 through AUGUST 31, 2007

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Justice Council (Justice) cont. Ms. Jennifer Kistler, Helena Qualifications (if required): youth representative	Governor	8/15/2007
Mr. Dale Four Bear, Poplar Qualifications (if required): involved with programs that are alternatives to incarceration	Governor	8/15/2007
Mayor Pam Kennedy, Kalispell Qualifications (if required): local elected official	Governor	8/15/2007
Father Jerry Lowney, Helena Qualifications (if required): having competency in addressing programs facing youth	Governor	8/15/2007
Ms. Emily Matt Salois, Missoula Qualifications (if required): having competency in addressing programs facing youth	Governor	8/15/2007
Mr. Wayne Stanford, Stevensville Qualifications (if required): having competency in addressing programs facing youth	Governor	8/15/2007
Ms. Teri Young, Great Falls Qualifications (if required): juvenile parole officer	Governor	8/15/2007
Ms. Penny Kipp, Pablo Qualifications (if required): having competency in addressing programs facing youth	Governor	8/15/2007
Ms. Donnalyn Strangeowl, Ashland Qualifications (if required): youth representative	Governor	8/15/2007

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2007 through AUGUST 31, 2007

Board/current position holder

Appointed by

Term end

Youth Justice Council (Justice) cont.

Ms. Sarah Royston, Helena

Governor

8/15/2007

Qualifications (if required): youth representative