

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 20

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 The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the amendment of ARM)	NOTICE OF PROPOSED
2.44.308, 2.44.412, 2.44.413, 2.44.414,	)	AMENDMENT AND REPEAL
2.44.517A, 2.44.518, and 2.44.527, and)	
repeal of ARM 2.44.505 and 2.44.511)	
pertaining to Independent Contractors,	)	NO PUBLIC HEARING
Calculating Service Credits, Termination	)	CONTEMPLATED
Pay, Earned Compensation, Benefit)	
Adjustments)	

TO: All Concerned Persons

1. On December 27, 2007, the Teachers' Retirement Board proposes to amend and repeal the above-stated rules.

2. The Teachers' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Teachers' Retirement System (TRS) no later than 5:00 p.m. on November 12, 2007, to advise us of the nature of the accommodation that you need. Please contact Rita Karnopp, Teachers' Retirement System, P.O. Box 200139, Helena, Montana 59620-0139; telephone (406) 444-3754; fax (406) 444-2641; TDD/TTY (406) 444-1421; or e-mail rkarnopp@mt.gov.

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

2.44.308 INDEPENDENT CONTRACTOR (1) Any person employed as an independent contractor shall be ineligible for membership in the ~~teachers' retirement system TRS~~. Certification from the Montana Department of Labor and Industry pursuant to 39-71-401, MCA, as an independent contractor shall be accepted as prima facie evidence of independent contractor status by the Teachers' Retirement Board.

(2) In absence of certification by the Department of Labor and Industry, it must be shown that the worker is both free from direction and control of the party utilizing their services and have an independently established business. ~~The burden of proof before the teachers' retirement board is on the employer.~~

(3) If a person's status as an independent contractor is in question, they must become a member of the ~~teachers' retirement system TRS~~ as provided under 19-20-302, MCA. The burden of proof before the Teachers' Retirement Board is on the employer. Upon request, the employer will submit to the Teachers' Retirement Board a copy of the independent contractor certification issued by the Department of Labor and Industry for any contractor employed in a position normally eligible for membership under the TRS.

AUTH: 19-20-201, MCA
IMP: 19-20-302, MCA

Reasonable Necessity: Simply "labeling" a person an independent contractor is not determinative of that status - control is. Tax Counsel, Ice Miller, advised that if independent contractor status is not evaluated under standards at least as restrictive as the Internal Revenue Service's test of independent contractor status that the TRS could be at risk of losing its qualified plan status. Changes are necessary to ensure compliance with regulations governing public pension plans.

2.44.412 VETERANS CALLED TO ACTIVE DUTY (1) Members of the ~~teachers' retirement system TRS~~ called to active duty for a period not to exceed five years and ~~reinstated,~~ reemployed in accordance with the provisions of the Vietnam Era Veterans' Readjustment Act of 1974 Uniformed Services Employment and Reemployment Rights Act of 1994, as amended, ~~to a position eligible for membership under the teachers' retirement system~~ shall be considered continuously employed during their military leave when determining vested interest and eligibility for retirement benefits.

(2) ~~Reinstated~~ Reemployed veterans may elect to purchase creditable service for their military leave to be used in the calculation of retirement benefits. The cost to purchase this service shall be equal to the employee contributions that would have been made had they not been called to active duty. Interest accruing on the balance due to purchase active duty service will not be levied during the ~~first year~~ five years following the date of ~~discharge~~ reemployment. If payment is not completed within ~~one year~~ five years following ~~discharge~~ reemployment, interest will be assessed as provided under ARM 2.44.405.

(3) To qualify for service under this rule, the member called to uniformed service must remain an inactive member of the retirement system during the period of service in the uniformed services by leaving his or her accumulated contributions on deposit.

(4) A member who is making additional contributions under a service purchase contract at the time he or she is called to service in the uniformed services may suspend payments under the contract if they return to employment as required by the Act.

AUTH: 19-20-201, MCA
IMP: 19-20-415, MCA

Reasonable Necessity: The Federal Uniformed Services Employment and Reemployment Rights (USERRA) Act of 1994, is an update to the Vietnam Era Veteran's Readjustment Act. Members called to active duty, upon return to employment covered under the TRS are eligible to qualify any service and benefits lost while serving in a branch of the uniformed services. The changes proposed are necessary to comply with the current provisions of USERRA. In addition, extraneous verbiage needs to be eliminated for the purpose of clarity and we have proposed that.

2.44.413 CREDITABLE SERVICE FOR MEMBERS AFTER JULY 1, 1989-
ACTUARIAL COST (1) The actuarial cost to purchase creditable service by ~~members who first became members on or after July 1, 1989,~~ will vary by the member's compensation, age, and years of service at the time they apply or are eligible to purchase the additional service.

(a) The total compensation reported to the ~~teachers' retirement system~~ TRS for the most recent fiscal year or the member's average final compensation, whichever is greater, will be used to determine the actuarial cost.

(b) remains the same.

(c) The years of service used in the formula to determine the actuarial cost ~~will be determined by~~ include the total number of years of creditable service the member is eligible to ~~receive~~ purchase on the date they apply or are eligible to purchase service under this rule.

(2) Service will be credited to the member's account at the time they have completed payment in full. If the member retires or dies prior to completing payment in full, purchasable service terminates ~~payments or advises the TRS that they will not make any further payments, the service purchased~~ will be credited on a prorated basis.

AUTH: 19-20-201, MCA

IMP: Title 19, chapter 20, part 4, MCA

Reasonable Necessity: The rule catchphrase does not adequately reflect the purpose of the rule. In addition, extraneous verbiage needs to be eliminated for the purpose of clarity. It is also necessary to make changes to comply with IRS Private Letter Ruling received March 3, 1999. Members electing to purchase service under the provisions of 19-20-415, MCA, and who have signed an irrevocable election to purchase that service, may only stop payroll deductions upon termination of employment in all positions reportable to the Teachers' Retirement System.

2.44.414 INSTALLMENT PURCHASE (1) If a member signs ~~a revocable~~ an irrevocable payroll deduction authorization and subsequently ~~reduces the monthly payment amount or terminates monthly payments before the terms of the contract are fulfilled, the member's account will be credited with the prorated portion of the service purchased to date.~~

(2) ~~The~~ terminates employment, the cost to purchase the balance of the remaining service will be recalculated at the time the member, ~~if eligible,~~ reapplies to purchase the balance of the service. ~~Interest will be included at the rate set by the board.~~

AUTH: 19-20-201, MCA

IMP: ~~19-20-401, 19-20-402, 19-20-403, 19-20-404, 19-20-405, 19-20-406, 19-20-407, 19-20-408, 19-20-409, 19-20-410, 19-20-411, 19-20-414, 19-20-415, 19-20-416, 19-20-417, 19-20-426, 19-20-427,~~ MCA

Reasonable Necessity: The proposed changes are necessary because federal law governing the purchase of service under an irrevocable agreement

prohibits the reduction or termination of payments until the terms of the contract are fulfilled, or the individual terminates employment. In addition, extraneous verbiage needs to be eliminated for the purpose of clarity.

2.44.517A REPORTING OF TERMINATION PAY (1) A completed and signed Termination Pay Form together with the employee and employer contributions due must be received by the ~~teachers' retirement system~~ TRS by the 15th of the month, following the month in which the employee terminated employment. Only termination pay that is paid at the time of termination and retirement is reportable to the TRS.

(2) Tax deferred contributions remitted by an employer cannot exceed the total termination pay amount payable to the employee. Any contributions due that are greater than the termination pay amount payable to the employee cannot be picked up by the employer.

(3) Interest will be assessed at the actuarially assumed rate on employee and/or employer contributions ~~received after the 15th~~ over 30 days delinquent.

~~(3) The member and their employer will be notified in writing when contributions due on termination pay are over 30 days past due.~~

(4) If contributions on termination pay are not received within 60 days of the effective date of retirement, monthly benefits calculated using termination pay ~~will~~ may be recalculated and adjusted retroactive to the date of retirement.

(5) If the member submits the employee contributions due but the employer refuses or does not timely remit the employer contributions due, the member will be given ~~an additional~~ 30 days to work with the employer to remit contributions due before benefits will be recalculated.

(6) The retiree and their employer will be notified in writing prior to assessing interest on unpaid contributions, or recalculating retirement benefits.

AUTH: 19-20-201, MCA

IMP: 19-20-101~~(5)~~, 19-20-716, MCA

Reasonable Necessity: Proposed amendments are necessary to clearly state the procedures for the collection of delinquent contributions on termination pay and assessment of interest, conditions under which benefits may be recalculated, and to provide for notification to members. Collections of this sort are necessary.

2.44.518 LIMIT ON EARNED COMPENSATION-10% CAP (1) The earned compensation for each year used in calculating a member's average final compensation may not exceed either the member's actual earned compensation or earnings adjusted by this rule for the preceding year, by more than 10% except for increases that result from:

(a) ~~result from~~ collective bargaining agreements;

(b) ~~have been granted by the employer to all other similarly situated employees~~ a change or adjustments in a salary schedule covering a certifiable group of employees not covered under a collective bargaining agreement. The employer must certify the ~~similarly situated~~ group of employees affected by the change or

adjustment in the salary schedule, the increase received by each employee, and the methodology for determining the increases;

(c) ~~result from~~ compensation received for summer employment, provided summer compensation does not exceed the lesser of:

(i) one-ninth of the academic year contract for each full month or prorated for each portion of a month employed during the summer; ~~or~~

(ii) ~~110% of the summer compensation the member was eligible to earn each month during the preceding summer;~~

(d) ~~have resulted from~~ change of employer; ~~or~~

(e) ~~have resulted from~~ re-employment for a period of not less than one year following a break in service;

(f) a promotion to an existing permanent position with the same employer.

The assignment of temporary duties or a new job added to existing duties, an acting or interim appointment, a change in classification or title, or an increase in compensation received would not qualify as a promotion; or

(g) the combination of salary from multiple employers that when reviewed separately does not exceed 10%.

(2) and (2)(a) remain the same.

(b) official minutes of board meetings;

(c) collective bargaining agreements; or

(d) salary schedules.

(3) remains the same.

(4) ~~The 10% cap shall be calculated as per the following example and applied consistently to all members:~~

	FY 1996	FY 1997	FY 1998	FY 1999
BASE CONTRACT	\$64,750.00	\$70,230.00	\$90,000.00	\$90,000.00
10% CAP	NA	NA	77,253.00	84,978.00
EXCESS BASE EARNINGS	NA	NA	12,747.00	5,022.00
SUMMER COMPENSATION (3 months)	21,583.00	23,700.00	30,000.00	20,000.00
SUMMER 10% CAP	NA	23,410.00	25,751.00	NA
EXCESS SUMMER EARNINGS	NA	290.00	4,249.00	NA
TOTAL EXCESS		\$22,308.00		
AVERAGE FINAL COMPENSATION		\$93,640.00	\$103,004.00	\$104,978.00

Average final compensation is equal to total compensation less excess earnings not qualifying for an exemption.

AUTH: 19-20-201, MCA

IMP: 19-20-101(5), 19-20-715, MCA

Reasonable Necessity: ARM 2.44.518 is proposed to be amended to eliminate extraneous verbiage for the purpose of clarity. In addition, the stricken language is over restrictive and in some instances may go beyond the statement of intent attached to the original legislation. The board has added an exemption for permanent promotions to existing positions. It is the board's intent to limit the exemption for promotions to a permanent change in positions without recourse to return to a previous position, as opposed to a temporary promotion and/or assignment of additional duties, and to limit this exemption to promotions to a preexisting position and not to a new position created in the final years preceding the member's retirement. The example has been deleted because it is not possible to include an example that covers most or even a typical situation, making any single example less useful and confusing.

2.44.527 PAYMENT FOR SERVICE - CALCULATION OF RETIREMENT BENEFITS (1) ~~All payments for the purchase of service credits must be completed by the 15th of the month in which the member retires.~~

(2) ~~If payment~~ If the final payment due to purchase service credits is over 30 ~~60~~ days past due, the member ~~and their employer~~ will be notified in writing that contributions, plus accrued interest, are due and payable; and that benefits will be recalculated and ~~adjusted~~ corrected retroactive to the date of retirement if payment is not received within ~~60~~ 30 days of ~~the effective date of retirement~~ notification.

AUTH: 19-20-201, MCA

IMP: 19-20-801, 19-20-901, 19-20-1001, MCA

Reasonable Necessity: The failure to contribute the amounts necessary to purchase additional service should result in recalculation of retirement benefits as soon as possible before the system suffers any significant loss. The rule is necessary to clarify the time lines for notification, and when benefits will be adjusted.

4. The rules proposed for repeal are as follows:

2.44.505 ELIGIBILITY FOR SURVIVOR BENEFITS located at page 2-3263, Administrative Rules of Montana. This rule would not be replaced.

AUTH: 19-20-201, MCA

IMP: 19-20-1001, MCA

Reasonable Necessity: The substantive language is included in 19-20-1001, MCA.

2.44.511 REINSTATEMENT OF BENEFITS located at page 2-3265, Administrative Rules of Montana. This rule would not be replaced.

AUTH: 19-20-201, MCA

IMP: 19-20-302, 19-20-731, MCA

Reasonable Necessity: The substantive provisions of ARM 2.44.511 can be found in 19-20-731, MCA.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: David L. Senn, Teachers' Retirement System, P.O. Box 200139, Helena, Montana 59620-0139; telephone (406) 444-3376; fax (406) 444-2641; or e-mail dsenn@mt.gov, and must be received no later than 5:00 p.m., November 23, 2007.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to David L. Senn at the above address no later than 5:00 p.m., November 23, 2007.

7. If the agency receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons directly affected by the proposed actions; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of the persons directly affected has been determined to be 3,890 persons based on the total active, inactive, and retired membership of the Teachers' Retirement System.

8. The Teachers' Retirement System maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in paragraph 2 above or may be made by completing a request form at any rules hearing held by the Teachers' Retirement System.

9. An electronic copy of this Proposal Notice is available through the Teachers' Retirement System's web site at www.trs.mt.gov. The TRS strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

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

/s/ Dal Smilie
Dal Smilie
Rule Reviewer

/s/ David L. Senn
David L. Senn
Executive Director
Teachers' Retirement System

Certified to the Secretary of State October 15, 2007.

BEFORE THE STATE COMPENSATION INSURANCE FUND
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PROPOSED
of ARM 2.55.320 pertaining to) AMENDMENT
classifications of employments)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On December 7, 2007, the Montana State Fund proposes to amend the above-stated rule.

2. The Montana State Fund will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Montana State Fund no later than 5:00 p.m. on November 16, 2007, to advise us of the nature of the accommodation that you need. Please contact Nancy Butler, Montana State Fund, P.O. Box 4759, 5 South Last Chance Gulch, Helena, Montana 59604-4759; telephone (406) 444-7725; fax (406) 444-1493; or e-mail nbutler@mt.gov.

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

2.55.320 METHOD FOR ASSIGNMENT OF CLASSIFICATIONS OF EMPLOYMENTS (1) and (2) remain the same.

(3) The State Fund staff shall assign its insureds to classifications contained in the classifications section of the State Compensation Insurance Fund Policy Services Underwriting Manual ~~issued~~ effective July 1, ~~2006~~ 2007, and assign new or changed classifications as approved by the board. That section of the manual is incorporated by reference. Copies of the classification section of the manual may be obtained from the Insurance Operations Support Department of the State Fund, 5 South Last Chance Gulch, P.O. Box 4759, Helena, Montana 59604-4759.

AUTH: 39-71-2315, 39-71-2316, MCA

IMP: 39-71-2311, 39-71-2316, MCA

REASON: This amendment to ARM 2.55.320 is reasonably necessary at this time to reflect the updates to the State Fund's Underwriting Manual that are now available up to July 1, 2007. The updates are made to the manual each year to reflect changes to the classifications that are made from time to time by the Classification Review Committee established in Title 33, chapter 16, MCA, and which classification changes are adopted by the State Fund. In accordance with 39-71-2316(1)(e), MCA, "After the rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and

premium rates." The manual is an administrative manual used by State Fund staff in their usual duties of assigning classifications to insured employers of the State Fund. These classifications each have a premium rate that is adopted by the State Fund board in accordance with the board's ratemaking authority. This rule update and amendment is made each year to adopt the current version of the manual.

The only change to classifications for fiscal year 2008 effective policies is to remove the mandatory inclusion of office and clerical workers within the scope of class code 9015 - Camp Operations. By making this change, those policyholders who are assigned this class code can also be assigned class code 8810 - Office and Clerical workers.

The substitution of the word "effective" for "issued" is reasonably necessary as it more accurately reflects the State Fund's practice of publishing the manual prior to July 1, with an effective date of July 1.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Nancy Butler, Montana State Fund, P.O. Box 4759, 5 South Last Chance Gulch, Helena, Montana 59604-4759; telephone (406) 444-7725; fax (406) 444-1493; or e-mail nbutler@mt.gov. Any comments must be received no later than December 3, 2007.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments, orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments to Nancy Butler at the above address no later than December 3, 2007.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those has been determined to be 2,700 persons based on 27,000 policyholders.

7. The Montana State Fund 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, e-mail, and mailing address of the person and specifies that the person wishes to receive notices regarding the Montana State Fund. If you prefer to receive notices by e-mail, please indicate this in your request. Such written request may be sent or delivered to Nancy Butler, Montana State Fund, P.O. Box 4759, 5 South Last Chance Gulch, Helena, Montana, 59604-4759, faxed to the office at (406) 444-1493; or e-mail nbutler@mt.gov, or may be made by completing a request form at any rules hearing held by the Montana State Fund.

8. An electronic copy of this Notice of Proposed Amendment is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ Nancy Butler

Nancy Butler, General Counsel
Rule Reviewer

/s/ Joe Dwyer

Joe Dwyer
Chairman of the Board

/s/ Dal Smilie

Dal Smilie, Chief Legal Counsel
Rule Reviewer

Certified to the Secretary of State October 15, 2007.

BEFORE THE STATE LOTTERY COMMISSION
DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PROPOSED
2.63.1201 and the repeal of ARM	)	AMENDMENT AND REPEAL
2.63.1007, concerning the State)	
Lottery's procedures pertaining to prizes	)	NO PUBLIC HEARING
and sales incentives	)	CONTEMPLATED

TO: All Concerned Persons

1. On December 14, 2007, the State Lottery Commission proposes to amend and repeal the above-stated rules. On August 23, 2007, the commission published MAR Notice No. 2-63-383 pertaining to the proposed amendment and repeal of the above-stated rules at page 1139 of the 2007 Montana Administrative Register, Issue No. 16. These rules are being renoticed because the statement of reasonable necessity was found to be insufficient. The statement of reasonable necessity has been revised to better reflect the reason for the proposed changes. All other text in this document has been unchanged and is being submitted exactly as proposed in MAR Notice No. 2-63-383.

2. The State Lottery Commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the State Lottery Commission no later than 5:00 p.m. on November 6, 2007, to advise us of the nature of the accommodation that you need. Please contact John Tarr, State Lottery, P.O. Box 200544, Helena, MT 59620-0544, telephone (406) 444-5804, fax (406) 444-5830, e-mail jtarr@mt.gov.

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

2.63.1201 PRIZES (1) and (2) remain the same.

(3) The claimant's name, city of residence, and amount of prize is public information. The lottery may use a claimant's name and photograph for publicity and advertising purposes only upon written authorization by the claimant.

(4) through (7) remain the same.

(8) Upon validation of a winning claim, a check, electronic transfer, or warrant for the amount of the prize shall be issued to the claimant, less any applicable state or federal income tax withholding.

(9) through (11) remain the same.

(12) If the commission enters into an agreement to participate in a game for prizes over \$100,000 that requires payment periods of more than 20 years or yearly installment payments of less than \$20,000 as a condition of participation, the commission may adopt the installment payment amounts and time periods necessary to comply with the conditions of the game.

~~(42)~~ (13) All prizes payable at the death of a winner, shall be paid to a designated beneficiary, the estate of the deceased, or to a person designated by judicial order.

AUTH: 23-7-202, MCA

IMP: 23-7-202, 23-7-211, MCA

REASONABLE NECESSITY: The amendment to (3) requires that written authorization by the claimant must be given before the information may be used for publicity or for advertising purposes. This is necessary for the Lottery to use claimant information in Lottery advertisement campaigns to promote sales and player awareness of Lottery products.

The amendment to (8) allows the Lottery to provide the option of electronic transfer of prize winnings directly to the claimant's account. When the original rule was written, this type of transfer was not available within the banking world. The use of the electronic funds transfer encourages fast processing and ensures timely payments of prize money. This process is reasonably necessary because it benefits both the state and the claimant who receives payment more quickly, and the state is relieved of the need to process paper warrants.

A new (12) is added to fully implement the exception provided for in 23-7-311(3)(b), MCA, concerning the 20-year maximum pay out period and \$20,000 minimum annual installment for prize payouts. This is reasonably necessary because the Lottery currently participates in Multi-State Lottery games requiring payment periods of more than 20 years.

4. The department proposes to repeal the following rule:

2.63.1007 SALES STAFF INCENTIVE PLAN found at page 2-6542 of the Administrative Rules of Montana.

AUTH: 23-7-202, MCA

IMP: 23-7-202, MCA

REASONABLE NECESSITY: This repeal is necessary because there is no further funding for the Sales Staff Incentive Plan. The repeal is necessary to implement the intent of the Montana Legislature that no sales commission structure be authorized for Lottery sales personnel. Not repealing this rule would place the Montana Lottery in a direct conflict with legislative guidance.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: John Tarr, State Lottery, P.O. Box 200544, Helena, MT 59620-0544, telephone (406) 444-5804, fax (406) 444-5830, e-mail jtarr@mt.gov, and must be received no later than 5:00 p.m., November 23, 2007.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to John Tarr at the above address no later than 5:00 p.m., November 23, 2007.

7. If the commission receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons directly affected by the proposed actions; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 30 persons based on the number of lottery retailers in the state.

8. The State Lottery Commission maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the commission.

9. An electronic copy of this Proposal Notice is available through the Department of Administration's web site at <http://doa.mt.gov/AdministrativeRules.asp>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

By: /s/ Robert Crippen
Robert Crippen, Chair
Montana Lottery Commission

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

Certified to the Secretary of State October 15, 2007.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the proposed amendment)	NOTICE OF PUBLIC HEARING
of ARM 23.16.102, 23.16.103, 23.16.117,)	ON PROPOSED AMENDMENT
23.16.401, 23.16.502, 23.16.508,)	
23.16.1245, 23.16.1716, 23.16.1914,)	
23.16.1915, 23.16.1916, 23.16.1916A,)	
23.16.2001, 23.16.2107, and)	
23.16.2302 concerning the effective date)	
of forms, removal of Form 1 from the)	
rules, and application time limit for)	
utilizing an approved automated)	
accounting and reporting system as part of)	
a vending agreement)	

TO: All Concerned Persons

1. On November 15, 2007, at 9:00 a.m., the Montana Department of Justice will hold a public hearing in the conference room at the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on November 9, 2007, to advise us of the nature of the accommodation that you need. Please contact Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; telephone (406) 444-1971; Fax (406) 444-9157; Montana Relay Service 711; or e-mail rask@mt.gov.

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

23.16.102 APPLICATION FOR GAMBLING LICENSE - LICENSE FEE

(1) and (2) remain the same.

(3) The application must also contain:

(a) ~~a document authorizing~~ authorization for the examination and release of information for use in assessing a gambling license application ~~(form 1), dealer license application (form 2), or nonprofit organization gambling license application (form 3), which must be signed and dated by all or any applicant(s) whose signatures must be attested to before a notary public;~~

(b) remains the same.

(c) a complete set of fingerprints, on a ~~form~~ (Form FD-258) provided by the department, obtained and certified by a local law enforcement agency, the

department, or a private security company approved by the department for each person required to complete a personal history statement;

(d) and (e) remain the same.

(4) Forms 4 through 3, 10 and FD-258, ~~as the forms read on December 1, 2005,~~ are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424.

(5) remains the same.

AUTH: 23-5-115, 23-5-621, MCA

IMP: 16-4-414, 23-5-115, 23-5-177, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: A recent change in the fee charged by the FBI to process fingerprints has required the division to change certain forms used in the license application process. In revising the form, the division determined it is appropriate and in the best interest of the division and the public to combine and simplify certain forms, and this proposed amendment to ARM 23.16.102 reflects these changes. The amendment also omits reference in the rule to the forms' revision date which will allow the division to revise forms as necessary without the need to amend the rules.

23.16.103 INVESTIGATION OF APPLICANTS, FINGERPRINTS TO BE REQUIRED - DISCLOSURE FROM NONINSTITUTIONAL LENDER (1) and (2) remain the same.

(3) The department may require any noninstitutional lender to complete a document (Form 13) authorizing examination and release of information and (Form 10) a personal history statement on the lender, fingerprints on a form provided by the department, as well as any contract, statement, or other document from the lender deemed necessary to assess the suitability of an applicant's funding source as required in 23-5-176, MCA. The document must be signed and dated by the lender and attested to by a notary public. Forms 13, 10, and FD-258 ~~as the forms read on December 1, 2005,~~ are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424.

AUTH: 23-5-115, MCA

IMP: 16-4-414, 23-5-115, 23-5-118, MCA

RATIONALE AND JUSTIFICATION: A recent change in the fee charged by the FBI to process fingerprints has required the division to change certain forms used in the license application process. In revising the forms, the division determined it is reasonably necessary to omit reference in the rule to the forms' revision date which will allow the division to revise forms as necessary without the need to amend the rules.

23.16.117 TRANSFER OF INTEREST TO NEW OWNER (1) through (9)(a)(iii) remain the same.

- (iv) a complete set of fingerprints, ~~on a form (Form FD-258)~~ provided by the department, obtained and certified by a local law enforcement agency, the department, or a private security company approved by the department for each person required to complete a personal history statement; and
 - (v) ~~authorization to disclose form, (Form 1) as that form is described in ARM 23.16.102(3)(a), filed in the name of the receivership, trust or estate; and~~
 - (vi) the department determines the receiver is suitable to hold or own a license.
- (b) remains the same.

AUTH: 23-5-115, MCA
IMP: 16-4-414, 23-5-115, 23-5-118, 23-5-176, MCA

RATIONALE AND JUSTIFICATION: A recent change in the fee charged by the FBI to process fingerprints has required the division to change certain forms used in the license application process. In revising the forms, the division determined it is appropriate and in the best interest of the division and the public to combine and simplify certain forms, and this proposed amendment to ARM 23.16.117 reflects these changes, and makes minor edits in style.

23.16.401 APPLICATION FOR DEALER LICENSE (1) through (1)(b)(ii) remain the same.

- (iii) ~~Forms 4 and 10 for personal history statements.~~
- (2) remains the same.
- (3) The application for a dealer license, ~~is incorporated in these rules by reference as Forms 4 and FD-258, as those forms read on June 22, 2007, and are available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424.~~

AUTH: 23-5-115, MCA
IMP: 16-4-414, 23-5-308, MCA

RATIONALE AND JUSTIFICATION: A recent change in the fee charged by the FBI to process fingerprints has required the division to change certain forms used in the license application process. In revising the form, the division determined it is appropriate and in the best interest of the division and the public to combine and simplify certain forms, and this proposed amendment to ARM 23.16.401 reflects these changes. The amendment also omits reference in the rule to the forms' revision date which will allow the division to revise forms as necessary without the need to amend the rules.

23.16.502 APPLICATION FOR OPERATOR LICENSE (1) and (1)(a) remain the same.

- (b) a complete set of fingerprints, ~~on a form (Form FD-258)~~ provided by the department, obtained and certified by a local law enforcement agency, the department, or a private security company approved by the department for each person required to complete a personal history statement;

(c) through (2) remain the same.

AUTH: 23-5-115, MCA
IMP: 16-4-414, 23-5-115, 23-5-118, 23-5-176, 23-5-177, MCA

RATIONALE AND JUSTIFICATION: The proposed amendment reflects only a minor edit in style to match references to the form throughout the rules.

23.16.508 CHANGES IN MANAGERS, OFFICERS, AND DIRECTORS

(1) remains the same.

(2) New management employees, officers, and directors shall submit a personal history statement and a complete set of fingerprints (Forms 10 and FD-258) ~~and the appropriate document authorizing the examination and release of information (Form 1, 2, or 3).~~

(3) remains the same.

AUTH: 23-5-115, MCA
IMP: 16-4-414, 23-5-176, 23-5-177, MCA

RATIONALE AND JUSTIFICATION: A recent change in the fee charged by the FBI to process fingerprints has required the division to re-examine and change certain forms used in the license application process. In revising the forms, the division determined it is appropriate and in the best interest of the division and the public to combine and simplify certain forms, and this proposed amendment to ARM 23.16.508 reflects these changes.

23.16.1245 CARD ROOM CONTRACTORS LICENSE (1) through (2)(a) remain the same.

(b) ~~f~~Forms 4, 10 and FD-258 as described in ARM 23.16.102;

(c) a complete set of fingerprints, on a ~~form~~ (Form FD-258) provided by the department, obtained and certified by a local law enforcement agency, the department, or a private security company approved by the department for each person required to complete a personal history statement;

(d) through (4) remain the same.

AUTH: 23-5-115, MCA
IMP: 16-4-414, 23-5-324, MCA

RATIONALE AND JUSTIFICATION: A recent change in the fee charged by the FBI to process fingerprints has required the division to re-examine and change certain forms used in the license application process. In revising the forms, the division determined it is appropriate and in the best interest of the division and the public to combine and simplify certain forms, and this proposed amendment to ARM 23.16.1245 reflects these changes.

23.16.1716 SPORTS TAB GAME SELLER LICENSE (1) remains the same.

(a) a sports tab game seller license application. Forms 2 and FD-258, as the forms read on December 1, 2005, are incorporated by reference and available upon request from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424;

(b) Forms 4 and 10 as described in ARM 23.16.102, available upon request from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424;

(c) a complete set of fingerprints, on a form (Form FD-258) provided by the department, obtained and certified by a local law enforcement agency, the department, or a private security company approved by the department for each person required to complete a personal history statement;

(d) through (4) remain the same.

AUTH: 23-5-115, MCA

IMP: 16-4-414, 23-5-115, 23-5-502, 23-5-503, MCA

RATIONALE AND JUSTIFICATION: A recent change in the fee charged by the FBI to process fingerprints has required the division to change certain forms used in the license application process. In revising the form, the division determined it is appropriate and in the best interest of the division and the public to combine and simplify certain forms, and this proposed amendment to ARM 23.16.1716 reflects these changes. The amendment also omits reference in the rule to the forms' revision date which will allow the division to revise forms as necessary without the need to amend the rules.

23.16.1914 DISTRIBUTOR'S LICENSE (1) remains the same.

(a) a distributor's license application, Forms 17 and FD-258, as the forms read on December 1, 2005, are incorporated by reference and available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424;

(b) Forms 4 and 10 for all applicants as described in ARM 23.16.102;

(c) a complete set of fingerprints, on a form (Form FD-258) provided by the department, obtained and certified by a local law enforcement agency, the department, or a private security company approved by the department for each person required to complete a personal history statement;

(d) through (3) remain the same.

AUTH: 23-5-115, MCA

IMP: 16-4-414, 23-5-115, 23-5-128, MCA

RATIONALE AND JUSTIFICATION: A recent change in the fee charged by the FBI to process fingerprints has required the division to change certain forms used in the license application process. In revising the form, the division determined it is appropriate and in the best interest of the division and the public to combine and simplify certain forms, and this proposed amendment to ARM 23.16.1914 reflects these changes. The amendment omits reference in the rule to the forms' revision

date which will allow the division to revise forms as necessary without the need to amend the rules, and makes minor edits in style.

23.16.1915 ROUTE OPERATOR'S LICENSE (1) Before conducting business in the state, a route operator shall obtain a license from the department. An applicant for a license shall submit to the department:

(a) a route operator license application, Forms 17 and FD-258, ~~as the forms read on December 1, 2005, are incorporated by reference and~~ available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424;

(b) ~~f~~Forms 4 and 10 for all applicants as described in ARM 23.16.102;

(c) a complete set of fingerprints, on a ~~form~~ (Form FD-258) provided by the department, obtained and certified by a local law enforcement agency, the department, or a private security company approved by the department for each person required to complete a personal history statement;

(d) through (3) remain the same.

AUTH: 23-5-115, MCA

IMP: 16-4-414, 23-5-115, 23-5-129, MCA

RATIONALE AND JUSTIFICATION: A recent change in the fee charged by the FBI to process fingerprints has required the division to change certain forms used in the license application process. In revising the form, the division determined it is appropriate and in the best interest of the division and the public to combine and simplify certain forms, and this proposed amendment to ARM 23.16.1915 reflects these changes. The amendment omits reference in the rule to the forms' revision date which will allow the division to revise forms as necessary without the need to amend the rules, and makes minor edits in style.

23.16.1916 MANUFACTURER'S LICENSE (1) remains the same.

(a) a manufacturer's license application, Forms 17 and FD-258, ~~as the forms read on December 1, 2005, are incorporated by reference and~~ available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424;

(b) ~~f~~Forms 4 and 10 for all applicants as described in ARM 23.16.102;

(c) a complete set of fingerprints, on a ~~form~~ (Form FD-258) provided by the department, obtained and certified by a local law enforcement agency, the department, or a private security company approved by the department for each person required to complete a personal history statement;

(d) through (3) remain the same.

AUTH: 23-5-115, MCA

IMP: 16-4-414, 23-5-115, 23-5-625, MCA

RATIONALE AND JUSTIFICATION: A recent change in the fee charged by the FBI to process fingerprints has required the division to change certain forms used in the license application process. In revising the form, the division determined it is

appropriate and in the best interest of the division and the public to combine and simplify certain forms, and this proposed amendment to ARM 23.16.1916 reflects these changes. The amendment omits reference in the rule to the forms' revision date which will allow the division to revise forms as necessary without the need to amend the rules, and makes minor edits in style.

23.16.1916A ACCOUNTING SYSTEM VENDOR LICENSE (1) remains the same.

(a) application for an accounting system vendor license using Form 17, with special instructions, and Form FD-258, ~~as the forms read on December 1, 2005, which are incorporated by reference and~~ available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424;

(b) ~~f~~Forms 4 and 10 for all applicants as described in ARM 23.16.102;

(c) through (3) remain the same.

AUTH: 23-5-115, 23-5-621, MCA

IMP: 23-5-110, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: A recent change in the fee charged by the FBI to process fingerprints has required the division to change certain forms used in the license application process. In revising the form, the division determined it is appropriate and in the best interest of the division and the public to combine and simplify certain forms, and this proposed amendment to ARM 23.16.1916A reflects these changes. The amendment omits reference in the rule to the forms' revision date which will allow the division to revise forms as necessary without the need to amend the rules.

23.16.2001 MANUFACTURER OF ILLEGAL GAMBLING DEVICES - LICENSE - FEE - REPORTING REQUIREMENTS - INSPECTION OF RECORDS - REPORTS (1) remains the same.

(a) a manufacturer license application, Form 17, ~~as the form read on December 1, 2005, is incorporated by reference and~~ available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424;

(b) ~~f~~Forms 4, 10 and FD-258 for all applicants as described in ARM 23.16.102;

(c) a complete set of fingerprints, on a ~~form~~ (Form FD-258) provided by the department, obtained and certified by a local law enforcement agency, the department, or a private security company approved by the department for each person required to complete a personal history statement;

(d) through (7) remain the same.

(8) A person who proposes to import an illegal gambling device to be modified into a gambling machine which is specifically authorized by Montana law or rule must be licensed as a manufacturer and hold the department's approval under ARM 23.16.1901(1)(a) for the machine model to which it is to be modified.

(9) Form 22 ~~as the form read on November 3, 1997, is incorporated by reference and~~ available from the Gambling Control Division, 2550 Prospect Ave., P.O. Box 201424, Helena, MT 59620-1424.

AUTH: 23-5-115, 23-5-152, MCA
IMP: 16-4-414, 23-5-112, 23-5-115, 23-5-152, 23-5-611, 23-5-614,
23-5-621, 23-5-625, 23-5-631, MCA

RATIONALE AND JUSTIFICATION: A recent change in the fee charged by the FBI to process fingerprints has required the division to change certain forms used in the license application process. In revising the form, the division determined it is appropriate and in the best interest of the division and the public to combine and simplify certain forms, and this proposed amendment to ARM 23.16.2001 reflects these changes. The amendment omits reference in the rule to the forms' revision date which will allow the division to revise forms as necessary without the need to amend the rules, and makes minor edits in style.

23.16.2107 APPLICATION FOR A VIDEO GAMBLING MACHINE OWNER OR OPERATOR TO UTILIZE AN APPROVED AUTOMATED ACCOUNTING AND REPORTING SYSTEM (1) remains the same.

(2) An owner or operator intending to utilize an approved system in which the data entry and recordkeeping will be performed by the route operator as part of a written vending agreement shall, not less than 30 days prior to the first day of the quarter in which the system is to be utilized, submit to the department an application for use of the approved automated accounting and reporting system.

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

AUTH: 23-5-115, 23-5-621, MCA
IMP: 23-5-637, MCA

RATIONALE AND JUSTIFICATION: The proposed amendment is reasonably necessary because it will allow gambling operators whose recordkeeping functions are to be performed by a route operator on the automated accounting and reporting system to make application as soon as 30 days in advance of the next reporting period.

23.16.2302 MANUFACTURER LICENSE (1) remains the same.

(a) an electronic live bingo or keno manufacturer license application (~~f~~Form 17);

(b) ~~f~~Forms 1 and 10 for all applicants as described in ARM 23.16.102;

(c) through (2) remain the same.

AUTH: 23-5-115, MCA
IMP: 23-5-115, 23-5-424, MCA

RATIONALE AND JUSTIFICATION: A recent change in the fee charged by the FBI to process fingerprints has required the division to change certain forms used in the license application process. In revising the form, the division determined it is appropriate and in the best interest of the division and the public to combine and

simplify certain forms, and this proposed amendment to ARM 23.16.2302 reflects these changes.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; Fax (406) 444-9157; or e-mail rask@mt.gov, and must be received no later than November 23, 2007.

5. Cregg Coughlin, Assistant Attorney General, Gambling Control Division, has been designated to preside over and conduct the hearing.

6. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Consumer Protection Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Rick Ask, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; Fax (406) 444-9157; or e-mail rask@mt.gov, or may be made by completing a request form at any rules hearing held by the Department of Justice.

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

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

/s/ Jon Ellingson
JON ELLINGSON
Rule Reviewer

Certified to the Secretary of State October 15, 2007.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.29.1529 related to allowable) ON PROPOSED AMENDMENT
charges for prescription drugs under a)
workers' compensation claim)

TO: All Concerned Persons

1. On November 16, 2007, at 10:00 a.m., 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 November 9, 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 September 14, 2007, the department held a public hearing to consider the proposed amendment of the above-stated rule. The Department did not receive any comments on the proposed amendment. However, the department did receive one written comment addressing a different part of the rule that was not proposed to be amended in the notice. Based on that comment, the department decided to propose additional amendments as soon as possible in order to clarify the language of the rule.

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

24.29.1529 PRESCRIPTION DRUGS FEE SCHEDULE (1) and (1)(a)
remain the same.

(b) Reimbursement rates to retail pharmacies for brand-name drugs are limited to the lesser of:

(i) the price charged for the prescription drug at the time of dispensing; or
(ii) the average wholesale price (AWP), minus 10 percent, or the price charged for the product at the time of dispensing, plus a dispensing fee, not to exceed \$3.00 per product prescription drug.

(c) Reimbursement rates to retail pharmacies for generic-name drugs are limited to the lesser of:

(i) the price charged for the prescription drug at the time of dispensing; or

(ii) the AWP, minus 25 percent, ~~or the price charged for the product at the time of dispensing, plus a dispensing fee, not to exceed \$3.00 per product prescription drug.~~

(d) and (2) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-727, 39-71-743, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1529 to clarify that the dispensing fee only applies to the designated AWP price of a drug and not to the price charged if the price charged is the lesser amount. This was the department's original intent when initially adopting this rule change. However, it has recently come to the attention of the department that the previous language proved confusing to some users of the rule. In addition, the department has received a specific request for amendment of the rule, as identified in the Notice of Amendment for MAR Notice No. 24-29-223, found elsewhere in this issue of the Montana Administrative Register. Therefore, the department is proposing the amendments in order to provide the clarification.

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., November 23, 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 that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program or areas of law the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. 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 October 15, 2007

BEFORE THE BOARD OF CLINICAL LABORATORY SCIENCE PRACTITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.129.401 fees, 24.129.402) ON PROPOSED AMENDMENT,
supervision, 24.129.603 standards for) ADOPTION, AND REPEAL
licensure, 24.129.2301 unprofessional)
conduct, adoption of NEW RULE I)
inspections, and repeal of 24.129.2302)
notification)

TO: All Concerned Persons

1. On November 20, 2007, at 1:00 p.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 Clinical Laboratory Science Practitioners (board) no later than 5:00 p.m., on November 15, 2007, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdcis@mt.gov.

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

24.129.401 FEES (1) through (2)(e) remain the same.

(f) of license fee

45 35

(g) remains the same.

AUTH: 37-1-131, 37-1-134, 37-1-319, 37-34-201, MCA

IMP: 37-1-134, 37-1-141, 37-34-201, MCA

REASON: House Bill 182 (Chapter 467 L. 2005) required standardization among professional and occupational licensing boards. The department adopted rules effective July 1, 2006, to fulfill this requirement including ARM 24.101.403(1)(i) that requires the fee for changing from inactive to active license status to equal the difference between inactive and active renewal fees. The board determined it is reasonably necessary to amend this rule to comply with the department rule. The board estimates that six individuals will be affected by the fee decrease for an annual decrease in revenue of approximately \$60.

Authority and implementation cites are being amended throughout to accurately reflect all statutes implemented through the rules and to provide the complete sources of the board's rulemaking authority.

24.129.402 SUPERVISION (1) The degree of supervision required of the clinical laboratory technician by the clinical laboratory scientist or specialist shall be determined by the supervisor after an evaluation of appropriate factors including, but not limited to the following:

(a) through (2) remain the same.

AUTH: 37-34-201, MCA

IMP: 37-34-103, 37-34-201, MCA

REASON: The board is amending this rule to comply with ARM formatting requirements.

24.129.603 MINIMUM STANDARDS FOR LICENSURE (1) through (2)(b) remain the same.

(c) American Society of Clinical ~~Pathologist~~ Pathology (ASCP);

(d) American Society ~~of~~ for Microbiology (ASM);

(e) International Society for Clinical Laboratory Technology (ISCLT); ~~or~~

(f) American Board of Medical Genetics (ABMG); or

~~(f)~~ (g) National Certification Agency (NCA).

AUTH: 37-1-131, 37-34-201, MCA

IMP: 37-34-303, MCA

REASON: The board determined it is reasonable and necessary to amend (2)(c) and (d) to use the correct names of the ASCP and ASM. The board is adding (2)(f) to state the board's approval of the examination administered by the American Board of Medical Genetics (ABGM). The board anticipates an increase in ABGM qualified cytogeneticists seeking licensure and is amending this rule to allow PhD applicants who have examined at this higher level to qualify for licensure without having to take an exam for baccalaureate degree holders.

24.129.2301 UNPROFESSIONAL CONDUCT (1) For the purpose of implementing the provisions of 37-1-307, MCA, and in addition to the provisions of 37-1-316, MCA, the board defines "unprofessional conduct" as follows:

(1) through (5) remain the same but are renumbered (a) through (e).

(f) failure to provide proof of current licensure upon inspection of clinical laboratory science licenses by the board or its designated or contracted representative; or

(g) failure to comply with other state or federal statutes or rules regulating the practice of clinical laboratory science.

AUTH: 37-1-131, 37-1-319, 37-34-201, MCA

IMP: 37-1-307, 37-1-316, 37-1-319, MCA

REASON: The board is amending this rule and adding (1)(f) to specify that failure to demonstrate current licensure upon an inspector's request is unprofessional conduct. This addition is reasonably necessary to comply with the adoption of New Rule I that clarifies the board's inspection of licenses.

The board determined it is reasonably necessary to add (1)(g) as licensees are also held to federal Clinical Laboratory Improvement Amendments (CLIA) standards under federal statutes and rules. Following this amendment, the board can file an unprofessional conduct complaint based on a licensee's failure to comply with federal laws and rules. The board is renumbering the rule to comply with ARM formatting requirements.

4. The proposed new rule provides as follows:

NEW RULE I INSPECTIONS (1) The board may perform, or have performed on its behalf, inspections of clinical laboratory science licenses at clinical laboratory facilities.

AUTH: 37-1-131, 37-34-201, MCA

IMP: 37-34-102, 37-34-301, 37-34-307, MCA

REASON: The board is adopting this new rule to clarify the board's process of inspecting clinical laboratory science licenses. This new rule delineates the board's longstanding procedure of ensuring current and valid licensure of clinical laboratory science practitioners while they perform licensed functions in laboratory facilities.

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

24.129.2302 NOTIFICATION OF DENIAL OR DISCIPLINARY ACTION
found at ARM page 24-10843.

AUTH: 37-1-131, 37-34-201, MCA

IMP: 37-1-131, 37-1-307, 37-1-309, 37-34-201, MCA

REASON: The board determined it is reasonably necessary to repeal this rule because it is vague and unnecessarily repeats standards adequately set forth in statute at 37-1-307 and 37-1-309, MCA.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdcsls@mt.gov, and must be received no later than 5:00 p.m., November 28, 2007.

7. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.cls.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The Board of Clinical Laboratory Science Practitioners maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all Board of Clinical Laboratory Science Practitioners administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be mailed or delivered to the Board of Clinical Laboratory Science Practitioners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdccls@mt.gov, or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on September 26, 2007, by regular mail.

10. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF CLINICAL LABORATORY
SCIENCE PRACTITIONERS
KAREN MCNUTT, CLS, CHAIRPERSON

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

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

Certified to the Secretary of State October 15, 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
37.30.730 pertaining to	)	ON PROPOSED AMENDMENT
Vocational Rehabilitation Program)	
provider fees)	

TO: All Interested Persons

1. On November 14, 2007, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the Sapphire Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on November 5, 2007. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

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

37.30.730 VOCATIONAL REHABILITATION PROGRAM: PROVIDER FEES (1) through (1)(a)(iii) remain the same.

(2) The department adopts and incorporates by this reference the vocational rehabilitation fee schedule, dated ~~July 1, 2002~~ October 1, 2007, and published by the department as the Montana Vocational Rehabilitation Policy R, "Fee Schedule", of the Montana Vocational Rehabilitation Policy Manual. A copy of the policy may be obtained through the Department of Public Health and Human Services, Disability Services Division, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

AUTH: 53-7-102, 53-7-203, 53-7-302, 53-7-315, MCA

IMP: 53-7-102, 53-7-105, 53-7-108, 53-7-203, 53-7-302, 53-7-303, 53-7-306, 53-7-307, 53-7-310, MCA

4. This proposed amendment is to ARM 37.30.730, "Provider Fees". This rule governs the compensation of providers for the delivery of services and goods to consumers of vocational rehabilitation services provided through the authorization of the Montana Vocational Rehabilitation program. The rule sets the compensation amounts for provider reimbursement to: 1) providers of physical and mental restoration services; 2) in-state hospitals; and 3) out-of-state hospitals. The rates

are applicable as well to the compensation to providers of services authorized through the department's Blind and Low Vision Services Program.

The proposed amendment would implement a general increase in the rates of reimbursement for physical and mental restoration services. The actual rates of reimbursement appear in the Montana Vocational Rehabilitation Policy R, "Fee Schedule", which is currently incorporated by reference in the text of the rule. The proposed amendment would change the incorporation by reference from the prior published July 1, 2002 edition of Policy R in the Montana Vocational Rehabilitation Policy Manual to the newly adopted October 1, 2007 edition of Policy R.

The October 1, 2007 edition of Policy R incorporates an increase of 1.85% in the various provider rates for physical and mental restoration services which is the rate increase authorized through appropriation by the 2007 Montana State Legislature for the compensation of providers of vocational rehabilitation program authorized physical and mental restoration services.

Expenditures on vocational rehabilitation physical and mental restoration services expenditures in fiscal year 2006 were approximately \$1,600,000. Those services were delivered on behalf of approximately 2,400 vocational rehabilitation recipients. The 1.85% provider increase would result in approximately \$30,000 in increased payments to providers of these services for each fiscal year of the current biennium. The number of providers affected by the increase cannot be estimated since providers are engaged as needed to serve individual health needs for each recipient.

This proposed rule amendment adoption is necessary to assure that there is increased compensation afforded the providers of vocational rehabilitation program authorized physical and mental restoration services so as to maintain the presence of these providers in the market and their availability to provide services to consumers of vocational rehabilitation services. The availability of active providers of vocational rehabilitation services for consumers of the program is essential to efficacy of the program.

The department has only considered the option of the increase in reimbursement at the legislated rate. The Legislature in the course of arriving at the sum to appropriate to be available for this increase gave consideration to the possible options as to whether to increase the rate or not and at amount to do so. The implementation of the increase in reimbursement is in accordance with the increase selected by the Legislature and enacted statutorily through House Bill 2, the General Appropriations bill for the 2007 Legislature. The failure to implement the increase would not only ignore legislative direction but would allow for the compensation for providers to remain static. Static compensation would serve as a disincentive to their continued participation as providers in the program and thereby adversely affecting the consumers in their return to employment and more integrated and active lives.

The department has determined that the best option for implementation of the increase is to apply it to all providers of physical and mental restoration services

rather than to select subsets of providers of those services. This best meets the goal of encouraging the numerous and varied types of providers of the array of restoration services to remain as a whole available in the market to consumers of vocational rehabilitation services.

5. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, 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 November 23, 2007. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

6. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of 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. The web site may be unavailable at times, due to system maintenance or technical problems.

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

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

/s/ Cary B. Lund
Rule Reviewer

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

Certified to the Secretary of State October 15, 2007.

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

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING
Rule I, the amendment of ARM	)	ON PROPOSED ADOPTION,
37.79.102, 37.79.201, 37.79.206,	)	AMENDMENT, AND REPEAL
37.79.207, 37.79.209, 37.79.301,)	
37.79.302, 37.79.303, 37.79.312,)	
37.79.316, 37.79.326, 37.79.501,)	
37.79.503, 37.79.505, 37.79.601,)	
37.79.602, 37.79.605, 37.79.606,)	
37.79.607, and 37.79.801, and the)	
repeal of 37.79.504 pertaining to the)	
Children's Health Insurance Program)	
(CHIP))	

TO: All Interested Persons

1. On November 14, 2007, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on November 5, 2007. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

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

RULE I ELECTRONIC APPLICATIONS AND SIGNATURES (1) The CHIP program will accept electronic applications and signatures. Electronic signatures are allowed in compliance with the requirements of ARM Title 30, chapter 18, subchapters 106, 117, and 122 to the extent those provisions are not inconsistent with this subchapter.

AUTH: 53-4-1009, MCA
IMP: 53-4-1003, MCA

4. The rules as proposed to be amended provide as follows. New matter is underlined. Matter to be deleted is interlined.

37.79.102 DEFINITIONS As used in this subchapter, unless expressly provided otherwise, the following definitions apply:

(1) remains the same.

(2) "Ambulance services" means all mileage, services, procedures, and supplies provided by a licensed ambulance provider.

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

~~(3)~~ (4) "Benefits" means the services an enrollee is eligible for as outlined in this subchapter. All benefits with the exception of dental and eyeglass services, are provided to an enrollee through the insurer department.

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

~~(7)~~ (8) "Earned income" means income received from employment, self-employment activity, profession, vocation or pastime and includes wages, salaries, tips, commissions, profits, farm or ranch income and honoraria payments received as compensation for work performed. Some examples are: bonus, wages, salaries, tips, commission, self-employment, military pay, and severance pay.

(8) through (8)(c) remain the same but are renumbered (9) through (9)(c).

(9) (10) "Enrollee" means an individual who is eligible to receive CHIP benefits as determined by the department under this subchapter and is enrolled with an insurer in the CHIP program. An individual is not an enrollee while on a waiting list or pending issuance of a hearing decision or during any period a hearing officer determines the individual was not eligible for CHIP benefits. The term "enrollee" and "member" are synonymous.

(10) remains the same but is renumbered (11).

~~(11) "Family" means a group of individuals who are residing together as a single economic unit. Members of the economic unit are considered to live together even though a member may reside temporarily in a residential treatment setting. For purposes of this subchapter, a minor living alone shall be considered an economic unit.~~

(12) "Family span" means the 12 month period of eligibility beginning the first day of the month after an applicant qualifies eligibility determination for CHIP benefits is completed and ending the last day of the 12th month. Although qualified for CHIP benefits, applicants placed on the waiting list may not be enrolled during the entire family span.

(13) "Federal poverty level (FPL)" means the poverty income guidelines for 2003 published in the Federal Register by the U.S. Department of Health and Human Services for 2007.

(14) and (15) remain the same.

(16) "Income" or "family income" means the adjusted gross earned income, as defined by federal tax law and regulations plus unearned income, and imputed income of the custodial parent of the family as defined in this rule. Regular, continuing, and intermittent sources of income will be annualized for purposes of determining the annual income level. ~~Family income does not include:~~

~~(a) earned income of individuals in the household who are under 19 years of age, unless they are of school age and are not attending school;~~

~~(b) money received from assets drawn down such as withdrawals from a savings account, an annuity or from the sale of a house or a car;~~

~~(c) gifts, loans, one-time insurance payments, or compensation for an injury;~~

~~(d) per capita income to enrolled members of Native American tribes;~~
~~(e) earned income which is excluded and dependent care expenses which are deducted from income under the state Medicaid poverty programs for children;~~
~~or~~

~~(f) income excluded under federal Medicaid regulations.~~

(17) remains the same.

~~(18) "Insurer" means an authorized insurer, health service corporation or health maintenance organization (HMO) with a valid certificate of authority issued by the Montana commissioner of insurance to transact business in the state of Montana.~~

(19) and (20) remain the same but are renumbered (18) and (19).

(20) "Member" means an individual who is eligible to receive CHIP benefits as determined by the department under this and is enrolled in the CHIP program. An individual is not a member while on a waiting list or pending issuance of a hearing decision or during any period a hearing officer determines the individual was not eligible for CHIP benefits. The term "member" and "enrollee" are synonymous.

(21) through (23) remain the same.

~~(24) "Premium" means the amount of money the department pays monthly to an insurer for the provision of benefits for each enrollee. The premium is paid whether or not the enrollee received covered benefits during the month for which the premium is intended. All benefits outlined in this subchapter, except eyeglass and dental benefits, are covered through payment of this premium.~~

~~(25) "Primary care provider" means a participating health care professional designated by the insurer to supervise, coordinate or provide initial care or continuing care to a CHIP enrollee and who may be required by the insurer to initiate a referral for specialty care and to maintain supervision of health care services to the CHIP enrollee.~~

(26) remains the same but is renumbered (24).

(25) "Serious emotional disturbance (SED)" means a designation determined by qualified department staff and based on social history and clinical information in the form of a psychological assessment with DSM-IV diagnosis, completed by a licensed psychologist, social worker, or professional counselor, that a youth is seriously emotionally disturbed according to the definition set forth in ARM 37.86.3702(2).

(27) remains the same but is renumbered (26).

(27) "Third party administrator (TPA)" means an entity with a certificate of registration to conduct business in Montana in accordance with 33-17-603, MCA. The CHIP program may contract for TPA services including but not limited to claims processing, maintaining an adequate network of participating providers, coordination and continuation of care, health education, notices, quality assurance, reporting, case management services, and customer service.

(28) "Unearned income" means income that is not defined as earned under this subchapter and includes interest, dividends, distributions from trusts or estates, social security benefits, veteran's benefits or payments, workers' compensation and unemployment compensation benefits. Unearned income does not include income excluded under federal Medicaid regulations all payments received other than earned income. Some examples are: adoption subsidies, annuities, dividends,

interest, social security benefits, disability, and unemployment insurance payments.

(29) "Waiting list" means a list of applicants who have been determined eligible for CHIP but who are not enrolled because funds are not available ~~to pay~~ their health care premiums.

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.201 ELIGIBILITY (1) An applicant may be eligible for covered services under CHIP if:

(a) and (b) remain the same.

(c) the family of which the applicant is a member has annual family income, without regard to other family resources, at or below ~~450%~~ 175% of the ~~2003~~ federal poverty level (FPL);

(d) through (g) remain the same.

(h) the applicant does not have or has not had creditable health insurance coverage as defined in 42 USC 300gg(c) ~~during the three months~~ 30 days prior to ~~applying~~ becoming eligible for CHIP. This ~~three-month waiting~~ 30 day period shall not apply if the parent or guardian providing the insurance:

(i) dies;

(ii) is fired or laid off;

(iii) can no longer work due to a disability;

(iv) has a lapse in insurance coverage due to new employment; or

(v) has an employer who does not offer dependent coverage.

(i) and (j) remain the same.

(2) Family income information for all family members must be included on the signed and dated application.

(a) Family income includes:

(i) the income of both parents if the child resides with both parents;

(ii) the income of the custodial parent, including any child support received for the child, if the child resides with one parent in a single parent household;

(A) If the custodial parent has remarried, the stepparent's income is imputed to the custodial parent.

(B) The income of individuals under the age of 19 who live in the household but do not attend school is inputted to the custodial parent.

(b) Family income does not include:

(i) money received from assets drawn down such as withdrawals from a savings account, an annuity, or from the sale of a house or a car;

(ii) gifts, loans, one-time insurance payments, or compensation for an injury;

(iii) the first \$2,000 of an enrolled tribal member's per capita payment;

(iv) the first \$2,000 of an enrolled tribal member's tribal land income;

(v) the interest earned on (2)(b)(iv) and (v);

(vi) earned income which is excluded and dependent care expenses which are deducted from income under the state Medicaid poverty programs for children;

(vii) income excluded under federal Medicaid regulations;

(viii) foster care income for any children unless the only children in the family are in foster care; or

(ix) income of an individual with whom a child resides who has no legal obligation to support the child.

(a) and (b) remain the same but are renumbered (c) and (d).

(3) An applicant whose CHIP enrollment ended because his or her parent was activated into military service and who was insured through Tri-care, which is the insurance available to active duty and retired military families during the parent's military activation period, is not subject to the ~~three-month~~ 30 day waiting period for previous creditable health insurance and will be enrolled in CHIP if he or she continues to be eligible for CHIP. Upon notification that the parent was deactivated and the applicant loses Tri-care coverage, the applicant may be re-enrolled:

(a) through (4) remain the same.

(5) Applicants who are losing Medicaid coverage or who were denied Medicaid for a reason other than the family withdrew their application or failed to comply with Medicaid requirements will be referred to CHIP via an electronic report. CHIP eligibility will be determined and applicants will be enrolled in CHIP or placed on the CHIP waiting list.

~~(a) Applicants will be mailed a form to authorize the use and disclosure of health information that will include questions about the family's health insurance and whether health insurance is available to the family.~~

(6) Applicants and their parents or guardians must comply with the procedures specified by ~~the insurer or the department or both~~ as necessary to obtain or access benefits.

(7) CHIP benefits do not start until the applicant is enrolled ~~with the insurer~~ even though the applicant may have been determined eligible for CHIP prior to the date of enrollment.

(8) CHIP eligibility is redetermined within one year after the initial eligibility period, and annually thereafter. A renewal application must be completed, signed, dated, and returned by a specified date for purposes of eligibility redetermination. Prior eligibility for CHIP does not guarantee continued eligibility ~~nor~~ or enrollment ~~with an insurer in CHIP.~~

(9) and (10) remain the same.

AUTH: 53-4-1004, 53-4-1009, MCA

IMP: 53-4-1003, 53-4-1004, MCA

37.79.206 ELIGIBILITY REDETERMINATION, NOTICE OF CHANGES

(1) through (2) remain the same.

(3) A CHIP renewal application must be completed and CHIP eligibility redetermined every 12 months. If the renewal application is not returned before CHIP enrollment is scheduled to end, benefits will terminate. A new application may be completed at a later date but, if the children are determined eligible, they the applicant may be placed on the waiting list if one exists.

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.207 TERMINATION OF ELIGIBILITY AND GUARDIAN LIABILITY

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

(2) CHIP eligibility terminates at the end of the month the department becomes aware:

(a) and (b) remain the same.

(c) ~~the department becomes aware that the enrollee is a beneficiary of other creditable health insurance;~~

(d) remains the same.

(e) ~~upon voluntary disenrollment of the CHIP~~ the enrollee wishes to disenroll;

(f) remains the same.

(g) ~~the department becomes aware that the applicant has moved without providing a new address and CHIP is unable to locate the applicant; or~~

(h) ~~when~~ a completed renewal application has not been received by the department.

(3) remains the same.

(4) A parent or guardian is liable to the department and the department may collect from the parent or guardian the amount of actual ~~premiums or payments to~~ the TPA contractor or both to providers for any benefits furnished to the enrollee because of an intentional misrepresentation or a failure to give notice of changes as required by this subchapter.

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.209 ELIGIBILITY VERIFICATION REVIEWS (1) Income verification is not required to be attached to the application.

~~(1)~~ (2) To verify the eligibility determination, a random sample of families will be required to participate in an eligibility verification review and provide documentation to verify the income information ~~as stated~~ they provided on their applications.

(a) A family will have at least 14 days from the date of the written request by the department to submit the required income documentation.

(b) If a family does not provide documentation, CHIP-eligible applicants will be taken off the CHIP waiting list or disenrolled, as appropriate.

(c) A family who provides documentation after ~~14 days~~ they have been disenrolled or removed from the waiting list will have the application reprocessed as if it is a new application.

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

AUTH: 53-4-1009, MCA

IMP: 53-4-1004, MCA

37.79.301 COVERED BENEFITS (1) The following services, if medically necessary, are covered benefits: ~~An insurer must provide medically necessary benefits including~~

(a) inpatient and hospital;

(b) outpatient hospital;

(c) physician;
(d) advanced practice registered nursing;
(e) prescription drugs;
(f) laboratory and radiology;
(g) mental health;
(h) chemical dependency;
(i) vision;
(j) audiology; and
(k) medical dental benefits as provided in this subchapter unless specific limitations to benefit coverage are noted. A service may be subject to prior authorization requirements.

(2) remains the same.

(3) Emergency services, including urgent care and emergency room screening to determine if a medical emergency exists, shall be available 24 hours per day, seven days per week. In emergency situations, no ~~pre-authorization~~ prior authorization is required to provide necessary medical care and enrollees may seek care from nonparticipating providers. ~~The insurer~~ Prior authorization may, however, ~~require prior authorization~~ be required for any needed follow-up care.

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.302 COVERAGE LIMITATIONS (1) The lifetime maximum benefit coverage is one million dollars per enrollee ~~per enrollee insurer~~.

(2) Pre-existing conditions of each enrollee are covered as of the effective date of enrollment if the condition would be otherwise covered except in the following conditions:

~~(a) an enrollee, hospitalized prior to the date of enrollment, who remains in the hospital on the effective date of initial CHIP coverage shall not be covered for inpatient benefits for such hospitalization only. Upon discharge, the enrollee shall become eligible for benefits for any subsequent inpatient hospitalizations. This exclusion shall not apply to enrollees who are renewing their CHIP enrollment.~~

(3) ~~The insurer shall provide~~ Covered benefits shall be provided to an enrollee who is receiving inpatient hospital benefits up to and including the 11th day after the effective date of losing CHIP benefits.

(4) A newborn of a CHIP enrollee shall have all medically necessary benefits covered by the ~~insurer~~ CHIP program for 31 days after the newborn's date of live birth. Coverage for the newborn shall begin the day of live birth, without regard to whether the newborn is hospitalized on the date of coverage.

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.303 BENEFITS NOT COVERED (1) In addition to any exclusions noted elsewhere in these rules, the following services are not covered benefits:

(a) through (n) remain the same.

(o) ~~ambulance or other~~ any medical transportation;

- (p) ambulance services;
- ~~(p)~~ (q) abortions which are not performed to save the life of the mother or to terminate a pregnancy which is the result of an act of rape or incest;
- ~~(q)~~ (r) in vitro fertilization, gamete or zygote intra fallopian transfer, artificial insemination, reversal of voluntary sterilization, transsexual surgery, or fertility enhancing treatment beyond diagnosis;
- ~~(r)~~ (s) acupressure;
- ~~(s)~~ (t) contraceptives, for the purpose of birth control;
- ~~(t)~~ (u) temporomandibular joint (TMJ) treatment;
- ~~(u)~~ (v) hypnosis;
- ~~(v)~~ (w) durable medical equipment; and
- ~~(w) mental health therapy when the enrollee is not present; and~~
- (x) any treatment which is not medically necessary.

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.312 PRESCRIPTION DRUG BENEFITS (1) through (4) remain the same.

(5) The ~~insurer~~ CHIP program shall use the Medicaid formulary if ~~it~~ the program chooses to employ a formulary.

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.316 MENTAL HEALTH BENEFITS (1) Mental health benefits include:

- (a) inpatient services furnished by public or private licensed and qualified ~~practitioners~~ practitioners in a hospital, including a state-operated mental hospital, a residential service, or a partial hospitalization program; and
- (b) remains the same.
- (2) Mental health benefits are limited to:
 - (a) remains the same.
 - (b) partial hospitalization benefits which are exchanged for inpatient days at a rate of two partial treatment days for one inpatient day; ~~or~~ and
 - (c) remains the same.
- (3) through (3)(g) remain the same.
- (4) Additional mental health benefits are available for children with a serious emotional disturbance. These additional services are limited and may include:
 - (a) additional therapeutic group home care, including room and board;
 - (b) additional office visits for enrollee and/or family;
 - (c) therapeutic family care (moderate level);
 - (d) day treatment;
 - (e) community based psychiatric rehabilitation and support; and
 - (f) respite care.
- (4) remains the same but is renumbered (5).

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.326 DENTAL BENEFITS (1) through (4) remain the same.

(5) Enrollees with significant dental needs beyond those covered in the basic dental plan may, with prior authorization, receive additional services through the CHIP Extended Dental Plan (EDP).

(a) A CHIP enrollee determined eligible for extended dental benefits may receive additional services in the benefit year. The maximum EDP payment to all dental providers for an enrollee's additional dental services is \$1000 per benefit year.

(b) The type of services covered by the EDP are the same type of services covered under the basic dental plan.

(c) The maximum basic and EDP payments combined is \$1350 (\$350 basic plan and \$1000 EDP) for a benefit year.

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

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.501 COST SHARING PROVISIONS (1) Except as provided in (2) and (3), the parent or guardian of each CHIP enrollee whose family income is greater than 100% of the federal poverty level must pay to the provider of service the following copayments not to exceed the cost of service:

(a) through (d) remain the same.

(e) \$3 per prescription or refill of an outpatient generic drug; and

(f) remains the same.

(g) \$6 per mail order prescription or refill of an outpatient generic drug (90 day supply); and

(h) \$10 per mail order prescription or refill of an outpatient brand name drug (90 day supply).

(2) No copayment shall apply to:

(a) and (b) remain the same.

(c) dental, pathology, radiology, or anesthesiology services; or

(d) families with at least one enrollee who is a Native American Indian or Native Alaskan; or

(e) extended mental health services for children with a serious emotional disturbance as stated in ARM 37.79.316(4).

(3) remains the same.

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.503 ENROLLMENT WITH AN INSURER ~~(1) Applicants eligible for CHIP must enroll with an insurer under contract with the department.~~

~~(2) When more than one insurer contracts with the department to provide services in the area in which a family lives, the family may request enrollment with a particular insurer.~~

~~(a) If the family fails to choose an insurer, the department may assign an insurer.~~

~~(3) All eligible CHIP family members must enroll with the same insurer.~~

~~(4) (1) An insurer must~~ The CHIP program will accept without restriction eligible applicants in the order in which they are received for enrollment until the insurer's maximum enrollment, if any, under the contract is reached, at which time eligible applicants will be put on a waiting list and will be enrolled when spaces become available. Applicants come off the waiting list and are enrolled based on the date they were determined eligible.

~~(5) through (5)(b) remain the same but are renumbered (2) through (2)(b).~~

~~(6) (3) The insurer must~~ CHIP program will:

~~(a) provide each enrollee with a handbook of information about CHIP including a summary of benefits; and~~

~~(b) issue an appropriate identification card to each enrollee.~~

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, 53-4-1007, MCA

37.79.505 DISENROLLMENT WITH AN INSURER (1) Participation in CHIP is voluntary and an enrollee may withdraw from the program at any time.

~~(2) An enrollee, parent or guardian may request, without good cause, disenrollment from one insurer and enrollment with another insurer annually.~~

~~(3) An insurer, based on good cause, may request that the department disenroll an enrollee. The request with the reason for the request must be in writing.~~

~~(a) CHIP benefits may be terminated for good cause if the enrollee, parent, or guardian has violated rules adopted by the Montana Commissioner of Insurance for enrollment with an insurer.~~

~~(b) Good cause shall be defined as provided in Montana insurance law and rules and does not include an adverse change in health status.~~

~~(4) (2) Disenrollment takes effect, at the earliest, the first day of the month after the department receives the request for disenrollment, but no later than the first day of the second calendar month after the request for disenrollment is received. The enrollee remains enrolled with the insurer in CHIP and the insurer~~ CHIP program is responsible for benefits covered under the contract until the effective date of disenrollment, which is always the first day of a month.

~~(5) (3) The department will disenroll an enrollee if the enrollee becomes ineligible. from a particular insurer if:~~

~~(a) the contract between the department and the insurer is terminated;~~

~~(b) the enrollee permanently moves outside the geographic area served by the insurer and:~~

~~(i) no other insurer can provide care through participating providers; and~~

~~(ii) the enrollee, parent or guardian does not agree to travel to the nearest participating provider for medical care except in the instances noted in ARM 37.79.605; or~~

~~(c) the enrollee becomes ineligible for CHIP.~~

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.601 CONTRACTS FOR TPA BENEFITS (1) The department may enter into a contract with an ~~insurer~~ entity with a certificate of authority issued by the Montana Commissioner of Insurance to provide ~~any of the benefits~~ third party administration specified in these rules.

~~(2) An insurer entering into a contract with the department for the delivery of benefits assumes the risk that the costs of performance may exceed the consideration available through the premium.~~

~~(3) An insurer must provide the department with documented assurances to show that the insurer is not likely to become insolvent. This requirement may be satisfied by documenting compliance with rules adopted by the commissioner of insurance.~~

~~(4) (2) An insurer~~ A third party administrator may not in any manner hold an enrollee, parent, or guardian responsible for the debts of the ~~insurer~~ third party administrator.

~~(5) The department may contract with one or more insurers in an enrollment area.~~

(6) and (7) remain the same but are renumbered (3) and (4).

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.602 PROVISION OF BENEFITS (1) ~~An insurer~~ The CHIP program may impose the following requirements in the provision of benefits:

(a) remains the same.

~~(b) preauthorization~~ prior authorization for benefits other than emergency services;

(c) and (d) remain the same.

(2) An enrollee must use an insurer's the CHIP program's or the TPA's participating providers unless:

(a) the ~~insurer~~ CHIP program authorizes a nonparticipating provider to provide a service; or

(b) remains the same.

(3) ~~An insurer~~ The TPA and its participating providers must provide covered benefits as listed in this subchapter to enrollees in the same manner as those benefits are provided to non-CHIP members ~~in the insurance plan~~.

~~(4) An insurer may at its discretion offer benefits beyond the scope of CHIP benefits defined in this subchapter.~~

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.605 PARTICIPATING PROVIDERS ~~(1) An insurer, unless otherwise provided in this rule or Montana law, may select the providers of medical services it deems necessary to meet its contractual obligations with the department.~~

~~(2) An insurer must maintain an adequate network of participating providers to serve enrollees. The insurer must notify the department when providers are deleted from the network.~~

~~(3) An insurer may establish its own enrollment and reimbursement criteria for participating providers.~~

~~(4) (1) The insurer third party administrator must offer to federally qualified health centers (FQHCs), rural health clinics (RHCs), Title X family planning providers, Indian health services providers, tribal health providers, urban Indian centers, migrant health centers, and county public health departments terms and conditions that are at least as favorable as those offered to other providers contract providers, if these entities substantially meet the same access and credentialing criteria as other contract providers and only for geographic areas jointly served by the entities and the insurer.~~

~~(5) (2) Upon written notice by the department, the insurer must The department and the third party administrator will deny payment to exclude from providing benefits to CHIP enrollees a provider who is currently suspended or terminated by the Medicaid or the Medicare program in any state.~~

~~(6) and (7) remain the same but are renumbered (3) and (4).~~

~~(5) Participating providers may not bill the enrollee, parent, or guardian for any medical care provided beyond the cost sharing provisions outlined in ARM 37.79.501.~~

~~(8) An insurer may set notification and claim filing time limitations relating to the provision of care by nonparticipating providers. Failure to give notice or file claims within those time limitations, however, does not invalidate any claim if it can be shown not to have been reasonably possible to give such notice and that notice was in fact given as soon as was reasonably possible.~~

~~(9) A provider has no right to an administrative hearing with the department when the insurer has denied payment for a service provided to an enrollee.~~

~~(10) A provider, in providing benefits under contract with an insurer, is not subject to any requirements or rights provided in this rule.~~

~~(14) (6) An insurer A third party administrator may not prohibit a participating provider from:~~

~~(a) discussing a treatment option with an enrollee, parent, or guardian; or~~

~~(b) advocating on behalf of an enrollee within the utilization review or grievance processes established by the insurer third party administrator.~~

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.606 REIMBURSEMENT OF INSURERS THE THIRD PARTY

ADMINISTRATOR (1) In consideration for all services rendered by an insurer a third party administrator under a contract with the department, the insurer third party administrator will receive a payment each month for each enrollee for services provided as agreed in the contract. This payment is the premium. Unless otherwise provided in this rule, the premium represents the total obligation of the department with respect to the costs of medical care and benefits provided to each enrollee under the contract. Payment of the premium is considered to be payment in full and

~~the insurer may not bill the enrollee, parent, or guardian, nor let its providers bill the enrollee, parent, or guardian for any medical care provided beyond the cost-sharing provisions outlined in ARM 37.79.501.~~

~~(2) The insurer may retain any savings realized by the insurer from the expenditures for necessary health benefits by the enrolled population totaling less than the premium paid by the department. The third party administrator will receive a monthly administrative fee and weekly claims payment. These payments are considered to be payment in full and the third party administrator may not bill the enrollee, parent, or guardian for any medical care provided beyond the cost-sharing provisions outlined in ARM 37.79.501.~~

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.607 UTILIZATION REVIEW AND QUALITY ASSURANCE (1) ~~The insurer~~ third party administrator shall have adequate staff and procedures to assure that health care provided to enrollees is medically necessary and appropriate.

(2) ~~The insurer~~ third party administrator shall comply with and cooperate in any external quality review that may be implemented by the department or its designee. An external quality review may include participation in the design of the review, collection of data, and making data available to the department or its designee.

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.801 GRIEVANCE AND APPEAL PROCEDURES (1) ~~An insurer~~ A third party administrator must have a written procedure, approved in writing by the department before implementation, for resolution of grievances or complaints brought by enrollees or their parents or guardians either individually or as a class. In a situation requiring urgent care or emergency care, the department may require the ~~insurer~~ third party administrator to expedite resolution of a grievance within a time line established by the department.

(2) Except when CHIP eligibility has been denied, an enrollee, parent, or guardian must exhaust the ~~insurer's~~ third party administrator's grievance procedure before appeal of the matter may be made to the department.

(3) An applicant, parent, or guardian aggrieved by a denial, suspension, or termination of CHIP eligibility or an enrollee, parent, or guardian aggrieved by a final grievance decision of ~~an insurer~~ a third party administrator, including but not limited to a reduction or denial of benefits, may request a fair hearing in accordance with ARM 37.5.304, 37.5.313, 37.5.322, 37.5.325, 37.5.328, 37.5.334, and 37.5.337. ~~The provisions of ARM 37.5.305 do not apply to such hearings.~~

(4) If a written request for hearing is not received by the department within 90 days after the date a notice of adverse action is mailed by the department or a final grievance decision is mailed by ~~an insurer~~ a third party administrator, the hearing officer may deny a hearing as provided in ARM 37.5.313.

(5) remains the same.

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

5. ARM 37.79.504, RIGHT TO CHOOSE PRIMARY CARE PROVIDER, as proposed to be repealed is on page 37-17686 of the Administrative Rules of Montana.

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

6. The Department of Public Health and Human Services (DPHHS) Children's Health Insurance Plan (CHIP) Bureau is proposing changes to CHIP's Administrative Rules. CHIP is a state and federally funded program to provide health care to children up to the age of 19 with family income and assets greater than the amount that qualifies for Medicaid benefits but less than or equal to 175% of the federal poverty level.

These rule changes are necessary to edit outdated language, to correctly state how custodial parent income is measured and to state program administration changes that were implemented when the CHIP program changed from a fully-insured health plan to a self-insured plan with a contracted third party administrator (TPA).

RULE I

New Rule I is being proposed to allow for electronic applications and signatures. Increased use of internet and computer based applications is efficient and cost effective.

ARM 37.79.102

The proposed amendments to this rule clarify the definition of ambulance based medical services. The current rule language was subject to various interpretations by enrollees and providers. The proposed amendment also updates the federal poverty level (FPL) to the current level published in 2007. Funding for extended mental health benefits for children with SED was appropriated in House Bill 2 by the 2005 Legislature. The amendment to the definition of SED is necessary to correctly state the change required by law, which was effective March 1, 2006. CHIP began providing the benefit March 1, 2006.

On October 1, 2006 DPHHS began to self-administer the CHIP program and contracted with Blue Cross Blue Shield of Montana for TPA services. Due to this change, a definition for third party administrator (TPA) is being added. The definitions of "family", "earned income", and "family income" are being revised to be consistent with the changes to ARM 37.79.201.

ARM 37.79.201

On July 1, 2007 legislation became effective changing the eligibility requirements for CHIP from 150% of FPL to 175% of FPL. (2007 Laws of Montana, Chapter 490.) The proposed change makes the rule consistent with Montana law.

On March 1, 2006 changes were made to the length of time a child may not have creditable coverage before becoming eligible for enrollment in CHIP. The time period was shortened from three months to one month to reduce the time period during which a child is uninsured.

The proposed amendment also restates what income of a custodial parent is included in determining CHIP eligibility. The department is not changing its current practice; it is only clarifying rule language. The proposed amendment correctly states the current policy that child support received is considered unearned income of the custodial parent. The amendment clarifies the current practice that foster care income is not included in family income for purposes of CHIP eligibility unless the only child or children in the family are living with the family for foster care.

ARM 37.79.206

The proposed amendment clarifies language rule to clearly state that applicants are not always placed on a waiting list for participation in CHIP because a waiting list does not always exist. The prior wording of this rule caused confusion on this point.

ARM 37.79.207

The proposed amendment adds voluntary disenrollment to the list of reasons for CHIP eligibility termination. This amendment is not a change; it correctly states current practice.

ARM 37.79.209

DPHHS does not require income documentation at the time of application. It conducts eligibility verification reviews for a random sample of CHIP eligibility determinations. To make the rule consistent with CHIP process, wording changes are being proposed.

ARM 37.79.302

This proposal removes the requirement that enrollees hospitalized prior to the date of enrollment who remain in the hospital on the effective date of CHIP coverage shall not be covered for that hospitalization. This was a restriction by contract of the former contracted insurer. DPHHS believes it is in the best interest of CHIP enrollees to remove this restriction.

ARM 37.79.303

The intent of the rule regarding the exclusion of ambulance based medical services

was vague and difficult to interpret. This proposed rule change includes a definition of ambulance based medical services in ARM 37.79.102 and revises language in the list of excluded benefits.

This amendment also removes the exclusion of mental health therapy when the enrollee is not present. This change permits reimbursement to a CHIP provider for a limited number of visits with parents to discuss mental health issues related to a CHIP enrollee.

ARM 37.79.301, 37.79.312, 37.79.505, 37.79.601, 37.79.602, 37.79.605, 37.79.606, 37.79.607, and 37.79.801

The proposed amendments to these rules state language and program revisions made when the CHIP program changed from a fully-insured contracted insurance plan to a self insured program with a contracted third party administrator (TPA). The program change, which is provided for in 53-4-1007, MCA, was made in October, 2006. The rules are being revised to remove references to contract insurers and delete the description of the process required to enter into contracts for an insurance policy.

ARM 37.79.316

This change is due to legislation for extended mental health benefits for a child with a serious emotional disturbance. The proposed amendment to this rule adds this as a covered benefit. Funding for extended mental health benefits for children with SED was appropriated in House Bill 2 by the 2005 Legislature. We began providing the benefit March 1, 2006.

ARM 37.79.326

On July 1, 2007 legislation became effective adding extended dental benefits to enrollees with significant dental needs. (Session Law 207, Chapter 169.) The proposed amendment to this rule is necessary to make the rule consistent with the change required by law.

ARM 37.79.501

Due to the extended mental health benefit, this proposal lists these benefits as excluded from copayment requirements.

Copayments related to mail-in prescriptions were added to this rule. This is not a change in fees, the copayments related to mail-in prescriptions were missing from the rule.

ARM 37.79.503

The proposed amendment clarifies the process by which eligible children are

removed from the waiting list and enrolled in CHIP if a waiting list is in effect.

ARM 37.79.504

This rule is being repealed because it is meaningless under the current CHIP program. There are no restrictions or requirements regarding the selection of a provider from among participating providers.

Fiscal effects

The department expects the proposed amendments to positively impact up to 16,000 CHIP enrollees. The total fiscal impact is estimated to be \$4.46 million in state fiscal year 2008. \$3.48 million would be federal and \$.98 million would be state funds.

7. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, 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 November 23, 2007. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of 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. The web site may be unavailable at times, due to system maintenance or technical problems.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were notified by letter dated July 26, 2007, sent postage prepaid via USPS.

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

/s/ Geralyn Driscoll
Rule Reviewer

/s/ John Chappuis for
Director, Public Health and
Human Services

Certified to the Secretary of State October 15, 2007.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING
37.82.435 pertaining to Medicaid real	)	ON PROPOSED AMENDMENT
property liens)	

TO: All Interested Persons

1. On November 14, 2007, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on November 5, 2007. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

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

37.82.435 MEDICAID REAL PROPERTY LIEN, NOTICE AND RIGHT TO HEARING (1) At least ~~90~~ 30 days prior to filing a lien under 53-6-171, MCA upon real property of a Medicaid applicant or recipient, the department must provide the applicant or recipient notice of its determination that applicant or recipient is permanently institutionalized and that none of the exceptions provided by 53-6-171, MCA or federal law apply. The notice must inform the applicant or recipient of the exceptions that would prevent imposition of a lien and of the right to a fair hearing as provided in (2).

(2) The applicant or recipient upon whose property the department proposes to impose a lien under 53-6-171, MCA is entitled to a fair hearing according to the provisions of ARM 37.5.304, 37.5.305, 37.5.307, 37.5.310, 37.5.311, 37.5.313, 37.5.316, 37.5.322, 37.5.318, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337. The applicant or recipient must request the hearing within ~~90~~ 30 days of receipt of the notice required under (1).

(a) and (3) remain the same.

AUTH: 2-4-201, 53-6-113, 53-6-189, MCA

IMP: 2-4-201, 53-2-201, 53-6-171, 53-6-172, MCA

4. The Department of Public Health and Human Services (department) is

proposing amendments to ARM 37.82.435 that would reduce the time between a determination that a Medicaid applicant or recipient is permanently institutionalized and imposition of a property lien. Currently, that time and the time allowed for a hearing request is 90 days. The proposed amendments would make it 30 days. Montana law (53-6-171, MCA) and federal regulation (42 CFR 433.36) require the department, following notice and opportunity for hearing, to impose a lien upon the real property, including the home of an institutionalized recipient of recoverable medical assistance. The aim of the law and regulation is to secure the assets of the recipient for recovery of medical assistance paid on behalf of the recipient prior to, on, or after the imposition of the lien when certain conditions are met. Under 53-6-172, MCA the department shall provide the recipient 30 days written notice of its determination under 53-6-171(1)(c), MCA, of its intent to impose a lien, and, of the opportunity for a hearing under to the department's hearing procedures. This rule change would bring the department into compliance with Montana law.

The first proposed amendment is in the first sentence of ARM 37.82.435(1). It would change the 90 day provision to 30 days to be in compliance with 53-6-172, MCA. The second amendment is in ARM 37.82.435(2). It also would change the 90 day provision to 30 days.

53-6-172, MCA states that the department shall provide the recipient 30 days written notice of its determination under 53-6-171(1)(c), MCA, of its intent to impose a lien, and of the opportunity for hearing pursuant to the department's hearing procedures. This proposed rule change would bring the department into compliance with the Montana law specifying a 30 day notice period and opportunity to request a hearing.

No other alternatives were considered because the law specifically provides for the 30 day period.

The proposed rule will not increase or decrease a monetary amount that a person will pay or will receive, such as a fee, cost, or benefit.

The proposed rule will not affect or make any changes in state or federal fund expenditures for the fiscal year or the biennium.

5. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, 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 November 23, 2007. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

6. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of

State strives to make the electronic copy of 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. The web site may be unavailable at times, due to system maintenance or technical problems.

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

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

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State October 15, 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
37.86.1101 and 37.86.1105 pertaining	)	ON PROPOSED AMENDMENT
to Medicaid reimbursement for)	
dispensing fees and outpatient)	
compound prescriptions)	

TO: All Interested Persons

1. On November 14, 2007, at 3:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on November 5, 2007. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

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

37.86.1101 OUTPATIENT DRUGS, DEFINITIONS (1) through (2) remain the same.

(3) "Maximum allowable cost (MAC)" means the upper limit the department will pay for multi-source drugs. In order to establish base prices for calculating the maximum allowable cost, the department hereby adopts and incorporates by reference the methodology for limits of payment set forth in ~~42 CFR 447.331 and 447.332 (1996)~~ 42 CFR 447.512 and 447.514 (2007). The maximum allowable cost for multi-source drugs will not exceed the total of the dispensing fee established by the department and an amount that is equal to the price established under the methodology set forth in ~~42 CFR 447.331 and 447.332~~ 42 CFR 447.512 and 447.514 (2007) ~~for the least costly therapeutic equivalent that can be purchased by pharmacists in quantities of 100 tablets or capsules or, in the case of liquids, the commonly listed size. If the drug is not commonly available in quantities of 100, the package size commonly listed will be the accepted quantity.~~ A copy of the above-cited regulations may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(4) remains the same.

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

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

37.86.1105 OUTPATIENT DRUGS, REIMBURSEMENT (1) Drugs will be paid for on the basis of the Montana "estimated acquisition cost" or the "maximum allowable cost", plus a dispensing fee established by the department, or the provider's "usual and customary charge", whichever is lower; except that the "maximum allowable cost" limitation shall not apply in those cases where a physician or other licensed practitioner who is authorized by law to prescribe drugs and is recognized by the Medicaid program certifies in their own handwriting that in their medical ~~judgement~~ judgment a specific brand name drug is medically necessary for a particular patient. An example of an acceptable certification would be the notation "brand necessary" or "brand required". A check-off box on a form or a rubber stamp is not acceptable.

(2) The dispensing fee for filling prescriptions shall be determined for each pharmacy provider annually.

(a) The dispensing fee is based on the pharmacy's average cost of filling prescriptions and whether the pharmacy dispenses a generic, preferred drug list (PDL) or non-PDL drug. The average cost of filling a prescription will be based on the direct and indirect costs that can be allocated to the cost of the prescription department and that of filling a prescription, as determined from the Montana Dispensing Fee Questionnaire. Considerations in determining the dispensing fee include but are not limited to: prescription volume, overhead costs, pharmacy personnel wages, and special packaging. A provider's failure to submit, ~~upon request, the~~ a properly completed dispensing fee questionnaire ~~properly completed upon request~~ will result in the assignment of the minimum dispensing fee offered. A copy of the Montana Dispensing Fee Questionnaire is available upon request from the department.

(b) The dispensing fees assigned for in-state providers shall range between a minimum of \$2.00, a \$5.50 dispensing fee for non-PDL brand medications and new in-state providers and a maximum of \$10.00 for PDL and generic medications ~~and a maximum of \$4.70~~.

(c) and (d) remain the same.

(3) In-state pharmacy providers that are new to the Montana Medicaid program will be assigned an interim ~~\$3.50~~ \$5.50 dispensing fee until a dispensing fee questionnaire, as provided in (2), can be completed for six months of operation. At that time, a new dispensing fee will be assigned which will be the lower of the dispensing fee calculated ~~in accordance with (2) for the pharmacy or the \$4.70~~ dispensing fee as provided in (2)(b). Failure to comply with the six months dispensing fee questionnaire requirement will result in assignment of a dispensing fee of \$2.00.

~~(4) "Unit dose" prescriptions will be paid by a separate dispensing fee of \$0.75. This "unit dose" dispensing fee will offset the additional cost of packaging supplies and materials which are directly related to filling "unit dose" prescriptions by the individual pharmacy and is in addition to the regular dispensing fee allowed. Only one unit dose dispensing fee will be allowed each month for each prescribed~~

medication. A dispensing fee will not be paid for a unit dose prescription packaged by the drug manufacturer.

(4) The department shall reimburse pharmacies for compounding drugs only if the client's drug therapy needs cannot be met by commercially available dosage strengths and/or forms of the therapy.

(a) Prescription claims for compound drugs shall be billed and reimbursed using the National Drug Code (NDC) number and quantity for each compensable ingredient in the compound.

(b) No more than 25 ingredients may be reimbursed in any compound.

(c) Reimbursement for each drug component shall be determined in accordance with ARM 37.86.1101.

(d) Prior authorization requirements for individual components of a compound must be met for reimbursement purposes.

(e) Prior authorization shall be required to be reimbursed for a dispensing fee over \$12.50.

(f) The dispensing fee for each compounded drug shall be \$12.50, \$17.50, or \$22.50 based on the level of effort required by the pharmacist.

(g) The department does not consider reconstitution to be compounding.

(h) The department will publish guidelines for billing the different level of effort fees.

(5) through (7) remain the same.

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

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

4. The department is proposing a change to the reimbursement methodology for pharmacy providers based the direction provided in the Deficit Reduction Act of 2005 (Public Law No. 109-171) and the proposed federal regulations to implement it (42 CFR Chapter IV). These changes are necessary because the existing rules are inconsistent with the reimbursement methodology proposed by the Centers for Medicare and Medicaid Services (CMS). Specifically, the proposed amendments to 42 CFR 447 change the methodology by which the department calculates the federal upper payment limit. The portions of the rules to be deleted are inconsistent with the new methodology. The department has made every effort to anticipate the consequences of the new federal rules in determining the changes needed to adjust to the new reimbursement methodology. The department analyzed data provided by CMS and has determined that, overall, there will be up to a 29% decrease in reimbursement from Medicaid for generic drugs. Reimbursement for brand name products will remain about the same.

The department has the option of considering other pricing methodologies as long the department meets the Federal Maximum Allowable Cost (FMAC) provisions. That is, in the aggregate, the department must not pay more for those drugs that have an FMAC. The department has explored other pricing methodologies, such as Retail Acquisition Cost (RAC), and Wholesale Acquisition Cost (WAC). At this time, the department has chosen to continue the use of FMAC to ensure compliance with the reporting and payment requirements. Many manufacturers do not report RAC or

WAC, and the administrative burden of the coding and researching these pricing methodologies would be prohibitive at this time.

The department is proposing a minor grammatical change to ARM 37.86.1105(2)(a). This change is intended to make the sentence easier to read and understand. No substantive change is intended.

Dispensing Fees

The department is proposing changes to the pharmacy dispensing fee rule to reflect results from a state-wide Montana Medicaid cost of dispensing survey, as well as to address the redefinition "dispensing fee" in the Deficit Reduction Act of 2005 (DRA). The new definition of dispensing fee as provided in the DRA includes specialty packaging as a consideration in the overall dispensing fee. The department conducted a dispensing fee survey of in-state providers in February to April of 2007 to determine the actual cost for a Montana Medicaid pharmacy provider to dispense a drug. 99% of Montana Medicaid pharmacies responded. The department found that Montana pharmacy providers have seen an increase in the cost of dispensing medications since the last change in pharmacy dispensing fees in 2002. The dispensing fee currently allowed for Montana Medicaid is \$4.86. The survey results showed that an average cost to dispense a drug for Montana pharmacies is \$10.74. The range of costs to dispense, within one standard deviation, was \$6.16 to \$15.26. Excluding those pharmacies whose cost to dispense was outside one standard deviation, the department found the average cost to dispense was \$9.93. A nationwide survey performed by Grant Thornton LLP, on behalf of the National Association for Chain Drug Stores (NACDS) found an average national cost of dispensing of \$10.50 per prescription, and a Montana-specific cost of dispensing of \$11.46. The NACDS survey had a significantly lower response rate (25-33% responses) than the department's survey. However, their results correlated well with the department's more complete data.

From the above analysis, the department determined that a \$10.00 maximum dispensing fee was adequate reimbursement for Montana pharmacies, while still capturing some of the savings intended by the DRA. Many pharmacies will not receive the maximum dispensing fee because their overall costs to dispense were less than \$10.00. Those pharmacies with a cost to dispense lower than \$10.00 will receive their reported cost to dispense, as their dispensing fee. Out-of-state prescriptions would still be reimbursed with a dispensing fee of \$3.50.

The department estimates that the average maximum dispensing fee will be \$8.75 per prescription for in-state pharmacies overall. This figure was arrived at by creating a weighted average of known costs to dispense combined with the pharmacy volume. The department analyzed whether the \$10.00 maximum dispensing fee was adequate to cover the costs of special packaging. The DRA definition of "dispensing fee" now includes special packaging, such as unit dose packages. Seventy-four pharmacies billed Montana Medicaid for the special packaging in State Fiscal Year (SFY) 2007. Three of these providers were out-of-

state. Of the 71 Montana providers, 14 would have dispensing fees less than \$8.75. The prescriptions filled for these 14 pharmacies are 6.7% of the total of 56,082 prescriptions billed using a unit dose indicator. The department's conclusion is that the elimination of a separate unit dose dispensing fee will minimally impact those pharmacies providing unit dose packaging.

The department considered setting differential dispensing fees based on prescription volume, number of stores, or population dynamics. However, there was no significant difference in costs to dispense between chain pharmacies and independently owned pharmacies. Nor was there a discernable difference for a small population compared to a large population. The major cost differentials came when looking at prescription volume: smaller volume stores (less than 50,000 prescriptions yearly) generally had higher costs to dispense than high volume stores.

This finding was corroborated by the NACDS survey. However, these differences were not significant enough to justify a dispensing fee differential based on store volume. These differences tend to be accounted for in the "cost to dispense" calculation. The department instead chose to increase the dispensing fee for all in-state providers to maintain a widespread provider base. The department, in setting the dispensing fees based on whether the drug is generic, preferred or nonpreferred, enforces its commitment to the dispensing of medications that represent the best value to Montana Medicaid clients and the state. To that end, the department proposes to implement a higher dispensing fee on generic and preferred drugs.

Compounded Prescriptions

The department is also proposing changes to the compounding dispensing regulations. This is necessary to ensure federal matching funds are available for compounded prescriptions paid for by Medicaid. The department until now has allowed pharmacies to bill compounds using department-assigned drug codes (00888 codes). The cost of these compounds since 2001 has been \$2,852,011. The average cost of a prescription billed using these codes was \$83.92. To ensure Montana Medicaid only reimburses for covered outpatient drugs as outlined in 42 USC 1396r-8, the department must reimburse for each covered drug within the compound.

In comparison, "line item" compound billing reduces the overall costs of the compounds. The department has reimbursed "line item" compounds since 2004. The department has reimbursed \$2,203,349 worth of compounded prescriptions using line item billing while collecting \$242,368 in rebates.

The department is aware that some components in a compound are not rebatable items. The department has chosen to create compounding fees that take into account that there are occasionally nonrebatable components in compounds and allows them as overhead in the costs of doing business as a pharmacy. The average cost for nonrebatable ingredients in compounds is \$4.08. Many of the nonrebatable compound ingredients cost less than a dollar per compound. Further, many of the nonrebatable compound ingredients currently used by pharmacies have

rebtable alternatives. The department encourages providers to explore rebtable or less costly excipients.

One solution to the problem of nonreimbursable ingredients in a compound was to allow the pharmacies to bill clients for the cost of these ingredients. However, this would have shifted costs to the client in addition to their existing cost share. This cost shifting might limit access to needed prescriptions for clients.

Another alternative for compound billing would be a methodology from private insurers that pay for compounded drugs, that allow the pharmacy to bill for the highest cost ingredient, then using a multiplier for the final volume of the compound. For example, if one milliliter (ml) of a medication that costs \$2.00 a unit is used in the compound, and the final volume is 25 ml, the final cost of the compound is $\$2.00 \times 25 = \50.00 . Federal rebate provisions do not allow for this methodology. The department will collect the actual number of units of a drug dispensed to report back to the manufacturer for rebate collection.

Compounding takes more time and effort by the pharmacist than a commercial prescription. By adding a "level of effort" based dispensing fee for compounding, the pharmacy is reimbursed for the time it takes to create a compound. \$12.50, \$17.50, and \$22.50 are the level of effort costs allowed. The department anticipates that the lowest fees will be used for those compounds typically made in an outpatient pharmacy, such as "magic mouthwash", "Wilson's Solution", or mupirocin in nasal saline. Higher compounding fees will be reserved for compounds that typically require aseptic technique under a laminar flow hood, or complex ingredient manipulation. Although the concern is that pharmacies will bill only the highest dispensing fee, level of effort is easily auditable. The department will also require a prior authorization for any dispensing fee over \$12.50. The Prior Authorization Unit is staffed with practicing pharmacists and can easily make such determinations. The pharmacy program will publish guidelines on proper level of effort billing to further ensure consistency in application of these rules based on common practice guidelines for time and effort required for producing compounds, and guidance from other states which have similar tiered compounding fees.

Fiscal Effects

The department estimates the proposed amendments would result in \$48,991 to \$111,800 in additional dispensing fees per year, based on 6,300 compounded prescriptions yearly. However, this cost is offset by the cost savings yearly due to an estimated \$211,692.00 in rebate and federal matching funds not realized by allowing 00888. The result would be a net cost savings to the department of \$99,892.00.

The department has the discretion to treat compounds the same as regular prescription drugs and allow the maximum regular dispensing fee, currently at \$4.86. The department considered and rejected a plan to keep entire cost savings without offsetting by additional dispensing fees, as other states have elected to do. This,

however, would have discouraged pharmacies from compounding prescriptions for clients needing medication not commercially available, thus creating an access problem for Medicaid recipients.

Most Montana pharmacies are capable of submitting online claims for compounds by line item. Those pharmacies that do not have electronic billing capability may still bill compounds by line item on paper. The standard MA-5 form may be used for billing of compounds to Montana Medicaid.

The department analyzed the impact of these rules using accepted statistical practices. The department took into account the fact that all out-of-state providers would receive the same \$3.50 dispensing fee they do now. The department also estimated the impact of pharmacies having a lower cost to dispense prescription drugs than the maximum, as well as looking at the impact should all in-state providers receive the maximum dispensing fee. The overall impact to the budget of these two proposed changes will result in an annual savings of \$181,042.

5. The department proposes the amendments be effective January 1, 2008.

6. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, 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 November 23, 2007. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of 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. The web site may be unavailable at times, due to system maintenance or technical problems.

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

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

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State October 15, 2007.

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

In the matter of the amendment of ARM)
37.82.101 pertaining to Medicaid)
eligibility)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On November 20, 2007, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room, 2401 Colonial Drive, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on November 5, 2007. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

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

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

(2) The department adopts and incorporates by reference the state policy manuals, namely the Family Medicaid Manual and the Aged Blind Disabled (ABD) Medicaid Manual governing the administration of the Medicaid program dated January 1, ~~2007~~ 2008. The Family Medicaid Manual, the ABD Medicaid Manual, and the proposed manual updates are available for public viewing at each local Office of Public Assistance or at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson Street, Fifth Floor, P.O. Box ~~202952~~ 202925, Helena, MT 59601-~~2952~~ 2925. The proposed manual updates are also available on the department's web site at www.dphhs.mt.gov/legalresources/proposedmanualchange.shtml.

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

IMP: 53-6-101, 53-6-131, 53-6-141, MCA

4. The Montana Medicaid program is a joint federal-state program that pays

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

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

ARM 37.82.101 currently adopts and incorporates by reference the Medicaid policy manuals effective January 1, 2007. The department proposes to make some revisions to these manuals that will take effect on January 1, 2008. The amendment of ARM 37.82.101 is therefore necessary in order to incorporate into the Administrative Rules of Montana the revised versions of the policy manuals and to permit all interested parties to comment on the department's policies and to offer suggested changes. It is estimated that changes to the Family and ABD Medicaid Manuals could affect 78,618 Medicaid recipients. Manuals and draft manual material are available for review in each local office of public assistance and on the department's web site at www.dphhs.mt.gov. Following is a brief overview of the changes being made to each manual section for the Family Medicaid manual and the ABD Medicaid manual.

ABD Medicaid Manual

MA 002 Medically Needy -- The Sixtieth Montana Legislature appropriated \$1.1 million of state special revenue dollars for fiscal years 2008 and 2009 to increase the amount of income that is disregarded in determining eligibility for the medically needy category of Medicaid. This appropriation will result in an additional \$3.3 million in federal Medicaid matching funds, for a total of \$4.4 million additional funds for the biennium. Persons or households whose income exceeds the maximum income limit for Medicaid eligibility although they otherwise qualify may become eligible for Medicaid as medically needy individuals by incurring medical expenses equal to the difference between the medically needy income limit and the person or household's net countable income. The difference between the medically needy income limit and the household's countable income is known as the household's medically needy incurment. If a household's countable income is lower, its incurment will be smaller, and it will be easier for the household to qualify for Medicaid. A household's countable income is calculated by subtracting certain

income disregards, such as the \$20 general income disregard or the \$65 work expense disregard, from gross income. An increase in the amount of income disregarded in computing a household's income makes it easier for households to qualify for Medicaid as medically needy individuals.

The department is implementing the Legislature's mandate to count less income by allowing an additional deduction of \$50 per month to be subtracted from each medically needy household's net countable income when determining the medically needy incurment. The new deduction will be \$50 per month for all households, regardless of household size, beginning August 1, 2007. The deduction will increase to \$100 per month effective July 1, 2008. The department chose to implement the Legislature's mandate to count less income by adding a deduction rather than by raising the medically needy income limit because the medically needy income limit is based on the categorically needy income standards for Family Medicaid. Thus, an increase in the medically needy income limits would require an increase in the Family Medicaid categorically needy income standards which would make more families eligible for regular (nonmedically needy) Medicaid. This would increase Family Medicaid expenditures approximately \$7 million annually. The department therefore opted to use a deduction from income instead. The department chose to deduct the same amount from the countable income of all households regardless of household size or other factors because this is simpler than adjusting the deduction amount depending on household size or other factors.

MA 105-1 Disability Determination Overview -- In order for an individual to qualify for Medicaid, he or she must first fit into a coverage group. An individual qualifies for Medicaid under the disabled coverage group if the individual meets the disability criteria used by the Social Security Administration (SSA). In some instances, SSA does not make a disability determination, such as in the case of an individual who does not meet financial requirements of the Supplemental Security Income (SSI) program and does not have adequate quarters of work to qualify for "regular" SSA benefits. DPHHS has a disability determination contractor that normally makes disability determinations in these situations. However, in the past, determinations of developmental disability by the Developmental Disabilities Program (DDP) of DPHHS were also recognized. The agency recently discovered that DDP uses a somewhat different set of state criteria to determine developmental disability than SSA does. Therefore, a person could be determined developmentally disabled by DDP, but not fit the SSA criteria. For this reason the department must stop recognizing DDP determinations as verification that an individual is disabled according to SSA criteria. All individuals not determined disabled by SSA, or by their death, will be processed for a disability determination through the state's disability determination contractor.

MA 400 Resources Overview -- In some cases aliens who are admitted for permanent residence in the United States have been sponsored by an individual for entry into the country. When a sponsored alien applies for Medicaid coverage, the resources of the sponsor are deemed available to the sponsored alien. The amount of resources deemed available to the sponsored alien is determined by determining

the total amount of the sponsor or sponsors' resources and subtracting from that amount the applicable Medicaid resource limit, that is, \$2,000 for an individual or \$3,000 for a couple. The department proposes to make certain changes to the policy governing deeming of a sponsor's resources in order to make it simpler.

If the alien's sponsor is married and living with his or her spouse, the resource limit for a couple, \$3,000, is deducted from the total resources of the sponsor and the sponsor's spouse to determine the amount of resources deemed available to the alien. Under the current policy, however, if a sponsor's spouse with whom the sponsor resides is also a cosponsor of the alien, each spouse is allowed the resource limit for an individual, and a total of \$4,000 is deducted from their total resources instead of a deduction of \$3,000 for a couple. In such a case, due to the higher deduction, fewer resources are deemed available to the sponsored alien. The manual currently does not specify what deduction is used when an alien has two sponsors who are not married to each other. In order to make the policy on deeming less complicated, it is now being revised to provide that the resource limit for a couple will be used when a sponsor's spouse with whom the sponsor resides is also a cosponsor of the alien. Additionally, the manual will now provide that two separate sponsors not married to each other are treated the same as a sponsor and his or her spouse, so the deduction for a couple, \$3,000, will be used in that case also.

MA 401-1 Resource Ownership/Accessibility/Equity Value -- The definition of when an asset is considered available has been restated to clarify that a resource is considered available if the individual has either a legal or equitable interest in the asset, and the resource is counted if the individual has the legal or equitable ability to access the funds or to convert noncash property into cash, regardless of their practical ability to do so. This is merely being added for clarification and does not represent a change in policy.

MA 402-1 Countable and Excluded Resources -- This section of the manual currently sets forth policies for counting or excluding annuities owned by Medicaid applicants or recipients but does not specify how to treat annuities owned by the eligible spouse of a Medicaid applicant or recipient. An eligible spouse is defined as an aged, blind, or disabled spouse of a Medicaid applicant or recipient where neither spouse is institutionalized or has been found eligible for Home and Community Based Waiver (Waiver) services. If one member of a couple is institutionalized or found eligible for Waiver services, however, or if Waiver eligibility is being determined, the applicant/recipient's spouse (whether ABD or not) is considered a community spouse rather than an eligible spouse. This section is now being revised to specify that annuities owned by an eligible spouse will be treated the same as annuities owned by a Medicaid applicant or recipient, because it is logical to apply the same criteria for excluding annuities owned by an eligible spouse as is used for annuities owned by an applicant or recipient.

The manual currently does not set forth a policy for determining the value of an annuity. It is necessary to add provisions for determining the value of annuities to

the manual so that all employees making Medicaid eligibility determinations are using the same method of evaluating annuities and so interested parties can ascertain the department's policy by referring to the manual. The manual is being revised to state that the value of an annuity is determined by multiplying the total annual payments by the period of the annuity remaining on the date for which value is being determined. If the period of the annuity is based on an annuitant's lifetime, the annual payments are multiplied by the annuitant's life expectancy per the table in the policy manual. If the annuity is a "period certain" annuity, then annual payments are multiplied by the annuitant's life expectancy or the period certain, whichever is less. The department has determined that this is a reasonable method of calculating the value of an annuity. Nevertheless, the applicant or recipient will be given an opportunity to rebut the value of an annuity calculated by this method by providing verified purchase offers from disinterested sources in the business of buying annuities.

The manual provides that irrevocable funeral agreements are excluded resources. The manual currently specifies five criteria that must be satisfied in order for a burial agreement to be considered irrevocable and excludable. This provision is being revised to add a sixth requirement that the funeral agreement must comply with 53-6-169, MCA, which provides that if the funeral agreement originally held funds in excess of \$5,000, any funds not expended for the funeral expenses are payable to Montana Medicaid. The requirement for the agreement to comply with 53-6-169, MCA, ensures that the funeral home with whom the agreement is made is aware of the obligation to refund excess funds to Montana Medicaid, which may result in more funds being returned to Montana Medicaid.

The manual currently provides that in order for a contract-for-deed to be excluded as a resource, the contract must be amended to provide that all payments due after the recipient's death shall be made to the Montana Medicaid program. The policy is being changed to require instead that the Medicaid recipient irrevocably assign to the Montana Medicaid program any interest the recipient has in the contract after the Medicaid recipient's death in order for the contract to be excluded. This change is being made because it was brought to the department's attention that the amendment of the contract-for-deed would require the consent of the purchaser. If the purchaser did not cooperate, the contract could not be amended and the contract therefore could not be excluded. The new policy requiring the assignment of payments under the contract rather than amendment of the contract allows the Medicaid recipient to comply with the criteria for exclusion without the cooperation of the purchaser.

The manual currently provides that property necessary for self-employment is an excluded resource. This provision is being amended to specify that property necessary for self employment will be excluded only if the owner is materially participating in the operation of the business at least ten hours per week throughout the year, claims the endeavor is self-employment, and, if filing income taxes, reports the income on Schedule C, F, or SE. If these criteria are not met, the property will be treated as income producing property rather than self employment property, and

the property will then be excluded only if the requirements for the exclusion of income producing property are satisfied. The addition of objective criteria such as ten hours per week of material participation will make it easier to determine whether property is self-employment property or income producing property.

Discussion of IRA owners being required to exercise options to access periodic payments from the accounts has been removed, because it is unnecessary. The only time this would be applicable to an IRA is if the IRA was in the form of an annuity, in which case the annuity policy would apply. Instead, a statement has been added that applicants and recipients are required to exercise available options to receive periodic payments from retirement accounts that are excluded as resources.

MA 404-1 Asset Transfers -- This section has been enhanced to clarify that transfers that are alleged to have been made exclusively for purposes other than to qualify for medical assistance must be carefully evaluated, and such exclusive purpose must be completely unrelated to any plans to preserve assets for the use of nondependent family members (or others). This merely represents a clarification, not a change in policy. A change is being made in regard to what constitutes compensation for a transfer of assets, however. Currently the manual states that compensation does not include services or gifts previously provided to the applicant or recipient out of love or concern without expectation or promise of payment. The definition of compensation is being revised to specify that services or gifts previously provided out of love or concern without expectation and promise of payment do not constitute compensation. This change is being made to make the department's policy consistent with the federal Supplemental Security Income regulation on transfers of assets at 20 CFR 416.1246(c), which provides that compensation is money, property, or services provided prior to the transfer pursuant to a legally enforceable agreement. If the person who furnished the services or gifts had an expectation of payment but there was no promise of payment by the applicant or recipient, a legally enforceable agreement does not exist. The revision of the policy to require a promise to pay as well as an expectation of payment ensures that only services or gifts furnished pursuant to a legally enforceable agreement will be considered compensation for a transfer of assets.

A new policy regarding personal care contracts is being added to this section. The manual will now specify that when a Medicaid applicant or recipient has entered into a personal care contract with a third party other than the nursing home, assisted living facility, or adult foster home in which the applicant resides, any payment to the third party for services which are duplicative of services already included in the services package being received in the person's living situation is considered an uncompensated asset transfer. This policy is necessary because the department has recently become aware of an increase in the number of personal care contracts entered into between Medicaid applicants or recipients and family members under which relatives are being paid for performing tasks which the facility is required to perform, such as feeding the applicant at meal time or washing the applicant's clothes. Such contracts may be used as a way to transfer money to a relative while

avoiding the appearance of an uncompensated transfer. The department proposes to adopt this policy because it is not reasonable for an applicant or recipient to use resources which could be used to pay for nursing home care or other medical expenses to pay for services that the facility is being paid to provide.

Additionally, the manual will state that if payment is made to a third party for services which do not duplicate services already required to be provided, the amount of the payment must be reasonable according to usual and customary charges for such services provided by persons in the business of providing such services for a fee. This policy is also necessary to ensure the person performing the personal care contract is being paid only a reasonable amount rather than the personal care contract being used to transfer money to a relative while avoiding the appearance of an uncompensated transfer.

MA 404-2 Penalty Periods for Asset Transfers -- The average cost of nursing home care in Montana is used to calculate penalty periods for uncompensated asset transfers made by nursing home and Home and Community Based Waiver recipients. The federal Medicaid statute at 42 USC 1396p(c) mandates that the penalty period for a disqualifying transfer of assets be computed by dividing the value of the assets transferred without compensation by the average monthly cost to a private patient of nursing facility services at the time of application in the state where the person is applying for or receiving Medicaid. The average private pay cost is recalculated annually. The average is now being changed to reflect the results of the most recent survey of private nursing home rates in Montana, as conducted by the department's Senior and Long Term Care Division. The updated average is \$4,680 per month, increased from the 2007 average of \$4,512. The higher the average private pay cost of care is, the shorter the penalty period will be, so the increase in the private pay rate will result in Medicaid paying for nursing home care sooner for applicants who have made uncompensated transfer of assets. The fiscal impact of the increase in the private pay rate is expected to be approximately \$43,000 annually in total Medicaid expenditures, of which approximately \$30,100 is general fund.

MA 501-2 Native American Income -- In accordance with federal law, lease payments received by Native Americans on individually owned trust or restricted land up to \$2,000 per calendar year are excluded as income. 25 USC section 1408 provides that such payments shall not be considered income in determining eligibility for assistance under the Social Security Act or any other federal or federally assisted program. Medicaid is one of the programs authorized by the Social Security Act. Until now the department has followed the practice of the SSI cash assistance program of applying only payments received during the time an individual was receiving assistance against this \$2,000 exclusion. This practice is not required by the language of 25 USC 1408, however. This practice also creates a disincentive to maintain ongoing Medicaid eligibility and penalizes those who maintain Medicaid year round. Additionally, it is simpler to exclude lease payments up to \$2,000 per calendar year without regard to the applicant or recipient's eligibility status in the month when the payment was received. The fiscal impact of this policy is

anticipated to be zero, as any minimal increase in expenditures would be offset by the elimination of administrative complexities and a decrease in eligibility determination errors.

MA 503-1 Self-Employment Income -- Differentiating between self-employment and hobbies, and between self-employment income and passive income from income producing property is often difficult. Whether an activity represents self-employment or not can make a difference to whether some resources are countable or excluded, and whether income is considered earned or unearned; both may make the difference between an individual qualifying for Medicaid or not. This section has been expanded to provide further guidance in making determinations. The definition of self-employment has been expanded to further explain that "material participation" in a self-employment enterprise affects the amount of income generated; if a person participates less, the income also goes down, or when the person participates more, the income increases. When a person claims to be self-employed, evidence must be provided to substantiate the claim. Evidence may include a business license, registration of the business with the Secretary of State, advertising, regular transactions made in the business name, bank accounts, and/or charge accounts in the business name, and sustained, ongoing activity of the business. Independent contractors should be registered with the Montana Department of Labor and Industry. Although corporations may be thought of by the owners as self-employment enterprises, corporations are not self-employment enterprises. As such, property owned by the corporation and the stock owned by the shareholders cannot be excluded as necessary for self-employment. This is consistent with previous clarifications made to other sections of the Aged, Blind and Disabled Medicaid policy.

The manual currently states that in-kind income (for example food or shelter) received in return for self-employment activities should be prorated among the members of the family. This does not correctly state the department's policy. In-kind income received by several household members cannot simply be prorated among household members. A separate determination of in-kind income must be made for each member of a family or household, based on their own situation. It is therefore necessary to make this change to state correctly the department's policy. These clarifications are intended to avoid conflict and assist in supporting determinations, there is no fiscal impact expected from these changes.

MA 603-3 Income Deeming Computation for a Sponsored Alien -- As explained above under Section MA 400, Resources Overview, the resources of a sponsored alien, as well as the resources of the sponsor's spouse, if sponsor lives with his or her spouse, are considered in determining the alien's eligibility for Medicaid. Similarly, the income of the sponsor and the sponsor's spouse is deemed available to the eligible alien. The department proposes to make certain changes to the policy governing deeming of a sponsor's resources in order to make it less complicated. In order to simplify the calculation, the income of a sponsor's spouse will be treated the same whether the spouse is a cosponsor of the alien or not. Additionally, if two unmarried individuals are cosponsors of an alien, the income deeming calculation

will be the same as if the cosponsors were a couple. If two cosponsors are both married and living with their spouses, each couple's income will be deemed to the sponsored alien(s) separately. No financial impact is expected as a result related to this change. Sponsored aliens rarely apply for Medicaid in Montana, and the amount of income deemed from the sponsor to the alien based on these changes is not expected to significantly impact eligibility. This is a procedural simplification with no significant fiscal impact anticipated.

MA 702-2 Cash Option Refund -- As explained in Section MA 002, Medically Needy, above, a person whose income exceeds the income limit for Medicaid eligibility may become eligible for Medicaid as a medically needy individual by incurring medical expenses equal to the difference between the medically needy income limit and the person's net countable income. A person whose income exceeds the Medicaid income limit also had the option of qualifying for Medicaid by making a cash payment to the department in an amount equal to the difference between the medically needy income limit and the person's net countable income. Persons who qualify by making a cash payment become eligible for Medicaid on the first day of the month, whereas Medicaid eligibility for those who become eligible by incurring medical expenses does not begin until the day after the individual's incurment for the month is met. A provision is now being added stating that households receiving Veterans Aid and Attendance (A&A) benefits cannot meet their medically needy incurment by using the cash payment option for reasons discussed below. The department is now specifying for the first time that households receiving A&A benefits cannot use the cash payment option because the department had not realized until now the reasons why use of the cash option is not appropriate for these households. The reason for this new policy is as follows:

The household must first pay medical expenses with the A&A benefit, which the Veterans Administration pays in addition to the regular monthly pension to help pay medical expenses for veterans who are bedridden, blind, who require the aid of another person to perform personal functions required in everyday living, or who are patients in a nursing home due to mental or physical incapacity. The A&A benefit is thus a third party payment for medical expenses. The department's rule governing medically needy incurments, ARM 37.82.1107, provides that only expenses which are not the liability of a third party can be used to meet a medically needy incurment. Expenses that the household pays with its A&A benefit therefore cannot be used to meet the household's incurment. Only medical expenses incurred after the A&A benefit has been exhausted can be applied toward an incurment. Since the cash option results in Medicaid benefits being issued for the entire month, use of the cash option by a household receiving an A&A benefit could result in expenses that are intended to be covered by the A&A payment being paid by Medicaid. Therefore, households with Veterans A&A benefits must use the medical expense option. There is no fiscal impact to the program because of this change.

MA 904-2 Post-Eligibility Treatment of Income for Institutionalized Spouses -- After a person who resides in a nursing facility or other medical institution is found eligible for institutional Medicaid coverage, the department computes the amount of the

institutionalized person's income that must be applied toward the cost of institutional care. Certain deductions are made from the institutionalized person's gross monthly income to arrive at the person's contribution to the cost of care. This section specifies the allowable deductions used to compute the contribution to the cost of care for institutionalized spouses. Several changes are being made to this section. First, the personal needs allowance, which was \$40 per month, is being increased to \$50 per month because the Sixtieth Montana Legislature appropriated \$256,509 of state special revenue dollars for fiscal years 2008 and 2009 to increase the personal needs allowance to \$50.

The second change is the removal of the home maintenance allowance from the list of allowable deductions from income for an institutionalized spouse. The home maintenance allowance is being eliminated because the federal statute that sets forth allowable deductions from income for institutionalized spouses in computing the contribution to the cost of care, 42 USC 1396r-5(d), does not include a home maintenance allowance. The deduction is only allowed for institutionalized individuals. The third change in policy is in regard to the deduction for incurred medical expenses. A provision is being added that no deduction is allowed for nursing home expenses incurred during an asset transfer penalty period, that is, during the period of time when a person is ineligible for Medicaid nursing home benefits because of an uncompensated transfer of assets. It would defeat the purpose of penalizing uncompensated transfers by making the transferor ineligible for Medicaid if the transferor could then use the nursing home bills that accumulated during the penalty period to become eligible for Medicaid in a future month. This provision is being added now because the department has learned that in other states recipients are trying to use expenses incurred during penalty periods to meet their incurment for future months. Total fiscal impact of the change to the personal needs allowance is estimated to be an increase of \$256,509 of state special revenue for 2008 and 2009. The other changes are not expected to have any significant fiscal impact.

MA 904-3 Post-Eligibility Treatment of Income for Institutionalized Individuals -- As discussed above in regard to MA 904-2, Post-Eligibility Treatment of Income for Institutionalized Spouses, Section MA 904-3 is being revised to state that the personal needs allowance has been increased from \$40 to \$50 due to an appropriation by the Sixtieth Montana Legislature for this purpose. As also discussed in regard to MA 904-2, above, Section MA 904-3 is being revised to state that nursing home expenses incurred during an asset transfer penalty period cannot be used to meet an incurment for a future month. Total fiscal impact of the change to the personal needs allowance is \$128,255 from state special revenue. Incurred medical expense policy change is not expected to have fiscal impact at this time.

MA 1401-1 Estates Recovery -- The federal Medicaid statute at 42 USC 1396p(b)(1)(A) mandates that state Medicaid agencies seek to recover from the estates of deceased Medicaid recipients certain payments Medicaid has made on the recipients' behalf, namely, all payments for care in a nursing facility or certain other medical institutions, regardless of the recipient's age at the time the services

were furnished, if the recipient was permanently institutionalized, and all payments for home and community based services furnished when the recipient was 55 years of age or older. States also have the option to recover the amount paid for any type of service or item furnished when the recipient was 55 years of age or older. Section 53-6-167, MCA, requires the department to pursue estate recovery for all services provided to a recipient aged 55 or older as well as for nursing home services. This section of the manual currently provides that all that institutionalized individuals must sign form HCS-120 "Estate Recovery" as a condition of eligibility for Medicaid. This form notifies recipients of Medicaid estate recovery policies. By signing and returning the form, the individual acknowledges that he or she was notified of these policies. The manual currently does not require recipients of home and community based services to sign the form HCS-120. This was an oversight, since federal law has always required estate recovery for home and community based services provided when a person is over the age of 55. The policy is now being changed because it is important to ensure that recipients of home and community based services as well as nursing home residents are notified of estate recovery requirements and acknowledge that they have received such notice. This change has no fiscal impact.

Family Medicaid Manual

FMA 003 Medically Needy Income Levels -- The Sixtieth Montana Legislature appropriated \$1.1 million of state special revenue dollars for fiscal years 2008 and 2009 to increase the amount of income that is disregarded in determining eligibility for the medically needy category of Medicaid. This appropriation will result in an additional \$3.3 million in federal Medicaid matching funds, for a total of \$4.8 million additional funds for the biennium. Persons or households whose income exceeds the maximum income limit for Medicaid eligibility although they otherwise qualify may become eligible for Medicaid as medically needy individuals by incurring medical expenses equal to the difference between the medically needy income limit and the person or household's net countable income. The difference between the medically needy income limit and the household's countable income is known as the household's medically needy incurment. If a household's countable income is lower, its incurment will be smaller, and it will be easier for the household to qualify for Medicaid. A household's countable income is calculated by subtracting certain income disregards, such as the \$20 general income disregard or the \$65 work expense disregard, from gross income. An increase in the amount of income disregarded in computing a household's income makes it easier for households to qualify for Medicaid as medically needy individuals.

The department is implementing the Legislature's mandate to count less income by allowing an additional deduction of \$50 per month to be subtracted from each medically needy household's net countable income when determining the medically needy incurment. The new deduction will be \$50 per month for all households, regardless of household size, beginning August 1, 2007. The deduction will increase to \$100 per month effective July 1, 2008. The department chose to implement the Legislature's mandate to count less income by adding a deduction rather than by

raising the medically needy income limit because the medically needy income limit is based on the categorically needy income standards for Family Medicaid. Thus, an increase in the medically needy income limits would require an increase in the Family Medicaid categorically needy income standards which would make more families eligible for regular (nonmedically needy) Medicaid. This would increase Family Medicaid expenditures approximately \$7 million annually. The department therefore opted to use a deduction from income instead. The department chose to deduct the same amount from the countable income of all households regardless of household size or other factors because this is simpler than adjusting the deduction amount depending on household size or other factors.

FMA 004 Pregnancy -- The Sixtieth Montana Legislature indicated its wish that the income limit used to determine eligibility for Pregnancy Medicaid be increased from 133% of the federal poverty level (FPL) to 150% of the FPL by appropriating \$2.2 million of state special revenue dollars for fiscal years 2008 and 2009 for this purpose. Section 53-6-131(7), MCA, provides that Medicaid must be provided to pregnant women whose income does not exceed 133% of the FPL, but neither the federal nor the state Medicaid statute specifies how income must be calculated in determining an individual's income for Medicaid. The department therefore has increased the amount of income disregarded in determining eligibility for pregnancy Medicaid rather than increasing the income standards to expand eligibility for this coverage group in accordance with the Legislature's intent without actually increasing the income limit to 150% of the FPL. The department has consulted with the Centers for Medicare and Medicaid Services (CMS) regarding the use of higher income disregards to achieve expanded eligibility for this coverage group and was advised that this is acceptable to CMS. The fiscal impact is estimated at \$2.2 million of health and Medicaid initiatives account special revenue and \$2.5 million in federal Medicaid matching funds, for a total of \$4.7 million for the biennium.

FMA 307-4 Estates Recovery -- The federal Medicaid statute at 42 USC section 1396p(b)(1)(A) mandates that state Medicaid agencies seek to recover from the estates of deceased Medicaid recipients certain payments Medicaid has made on the recipients' behalf, namely, all payments for care in a nursing facility or certain other medical institutions, regardless of the recipient's age at the time the services were furnished, if the recipient was permanently institutionalized, and all payments for home and community based services furnished when the recipient was 55 years of age or older. States also have the option to recover the amount paid for any type of service or item furnished when the recipient was 55 years of age or older. Section 53-6-167, MCA, requires the department to pursue estate recovery for all services provided to a recipient aged 55 or older as well as for nursing home services. This section of the manual currently provides that all that institutionalized individuals must sign form HCS-120 "Estate Recovery" as a condition of eligibility for Medicaid. This form notifies recipients of Medicaid estate recovery policies. By signing and returning the form, the individual acknowledges that he or she was notified of these policies. The manual currently does not require recipients of home and community based services to sign the form HCS-120. This was an oversight, since federal law has always required estate recovery for home and community based services

provided when a person is over the age of 55. The policy is now being changed because it is important to ensure that recipients of home and community based services as well as nursing home residents are notified of estate recovery requirements and acknowledge that they have received such notice. This change has no fiscal impact.

FMA 400 Resources Overview and FMA 401-1 Resource Ownership/Accessibility/Equity Value -- The definition of when an asset is considered available has been restated to clarify that a resource is considered available if the individual has either a legal or equitable interest in the asset, and the resource is counted if the individual has the legal or equitable ability to access the funds or to convert noncash property into cash, regardless of their practical ability to do so. This is merely being added for clarification and does not represent a change in policy.

FMA 503-1 Self-Employment -- Differentiating between self-employment and hobbies, and between self-employment income and passive income from income producing property is often difficult. Whether an activity represents self-employment or not can make a difference to whether some resources are countable or excluded, and whether income is considered earned or unearned; both may make the difference between an individual qualifying for Medicaid or not. This section has been expanded to provide further guidance in making determinations. The definition of self-employment has been expanded to further explain that "material participation" in a self-employment enterprise affects the amount of income generated; if a person participates less, the income also goes down, or when the person participates more, the income increases. When a person claims to be self-employed, evidence must be provided to substantiate the claim. Evidence may include a business license, registration of the business with the Secretary of State, advertising, regular transactions made in the business name, bank accounts, and/or charge accounts in the business name, and sustained, ongoing activity of the business. Independent contractors should be registered with the Montana Department of Labor and Industry. Although corporations may be thought of by the owners as self-employment enterprises, corporations are not self-employment enterprises. As such, property owned by the corporation and the stock owned by the shareholders cannot be excluded as necessary for self-employment. This is consistent with previous clarifications made to other sections of the Aged, Blind and Disabled Medicaid policy.

The manual currently states that in kind income (for example food or shelter) received in return for self employment activities should be prorated among the members of the family. This does not correctly state the department's policy. In kind income received by several household members cannot simply be prorated among household members. A separate determination of in kind income must be made for each member of a family or household, based on their own situation. It is therefore necessary to make this change to state correctly the department's policy. This is consistent with previous clarifications made to other sections of the Family Medical Manual.

5. The department intends the amendment to be applied effective January 1, 2008.

6. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, 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 November 23, 2007. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of 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. The web site may be unavailable at times, due to system maintenance or technical problems.

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

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

/s/ Barbara Hoffmann
Rule Reviewer

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

Certified to the Secretary of State October 15, 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
37.86.1801, 37.86.1802, 37.86.1806,	)	ON PROPOSED AMENDMENT
and 37.86.1807 pertaining to durable)	
medical equipment and medical)	
supplies)	

TO: All Interested Persons

1. On November 15, 2007, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room, 2401 Colonial Drive Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process (including reasonable accommodations at the hearing site) or who need an alternative accessible format of this notice. If you need an accommodation, contact the department no later than 5:00 p.m. on November 5, 2007. Please contact Rhonda Lesofski, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; telephone (406)444-4094; fax (406)444-1970; e-mail dphhslegal@mt.gov.

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

37.86.1801 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, DEFINITIONS ~~(4)~~ (5) "Prosthetic devices" means replacement, corrective, or supportive devices or appliances which artificially replace a missing portion of the body to:

- (a) prevent or correct physical deformity or malfunction; or
- (b) support a weak or deformed portion of the body.

~~(2)~~ (1) "Durable medical equipment" means the most economical and medically necessary equipment appropriate for use in a patient's home, ~~or~~ residence, school, or workplace as outlined in ARM 37.86.1802(4) including, but not limited to, wheelchairs, walkers, canes, crutches, hospital beds, oxygen equipment, and sickroom equipment.

(2) ~~(3)~~ "Medical supplies" means disposable or nonreusable medical supplies, including, but not limited to, splints, bandages, and oxygen.

(3) "Prescription" means a prescription or order as provided in ARM 37.86.1802.

(4) "Prior authorization" means the Medicaid program's review and approval of an item's medical necessity and coverage by Medicaid prior to the delivery of the item.

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

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

37.86.1802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS (1) These requirements are in addition to those contained in rule provisions generally applicable to Medicaid providers. Requirements for prosthetic devices, durable medical equipment, and medical supplies utilized by nursing facility residents are contained in the department's rules governing nursing facility reimbursement when the nursing facility bills for separately billable items as a skilled nursing durable medical equipment provider as outlined in ARM 37.40.330.

(2) Reimbursement for prosthetic devices, durable medical equipment, and medical supplies shall be limited to items delivered in the most appropriate and cost effective manner. The items must be medically necessary and prescribed ~~in writing prior to delivery~~ in accordance with (2)(a) by a physician or other licensed practitioner of the healing arts within the scope of his practice as defined by state law.

(a) The prescription must indicate the diagnosis, the medical necessity, and projected length of need for prosthetic devices, durable medical equipment, and medical supplies. The original prescription must be retained in accordance with the requirements of ARM 37.85.414. ~~Prescriptions for medical supplies used on a continuous basis shall be renewed by a physician at least every 12 months and must specify the monthly quantity of the supply.~~ Prescriptions may be transmitted by an authorized provider to the durable medical equipment provider by electronic means or pursuant to an oral prescription made by an individual practitioner and promptly reduced to hard copy by the durable medical equipment provider containing all information required. Prescriptions for durable medical equipment, prosthetics, and orthotics (DMEPOS) shall follow the Medicare guidelines outlined in chapters 3 and 4 of the Region D Medicare Supplier Manual (July 1, 2007), which is adopted and incorporated by reference. For items requiring prior authorization the provider must include a copy of the prescription when submitting the prior authorization request.

(i) remains the same.

(b) Subject to the provisions of (3), medical necessity for oxygen is determined in accordance with the Medicare criteria ~~set forth in the~~ outlined in the Medicare Durable Medical Equipment Regional Carrier (DMERC) Region D Supplier Manual, Coverage Issue 60-4, Use of Home Oxygen, pages X-5 through X-9, (December 1, 1997), (July 1, 2007), Local Coverage Determination (LCD) and policy articles (July 1, 2007), and National Coverage Determination (NCD) (July 1, 2007), which is are adopted and incorporated by reference. The Medicare criteria specify the health conditions and levels of hypoxemia in terms of blood gas values for which oxygen will be considered medically necessary. The Medicare criteria also specify the medical documentation and laboratory evidence required to support medical necessity. A copy of the Medicare criteria may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(c) through (3) remain the same.

(4) Reimbursement for out-of-home use includes:

(a) medically necessary wheelchair tie downs and head rests for transportation to work or school and laterals and flat free inserts required for activities in the workplace or at school used by children age 20 and under; and

(b) medically necessary wheelchair tie downs and head rests for transportation outside the home to go to work or school and laterals and flat free inserts used by adults in the workplace or at school.

(5) Reimbursement for nursing home residents includes:

(a) medically necessary custom molded wheelchair positioning equipment used by nursing home residents not covered under nursing home per diem (see department nursing home rules). A copy of the Medicaid criteria may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

~~(4)~~ (6) The following items are not reimbursable by the program:

(a) items determined not to be medically necessary by the Medicare program, except as provided in (3);

(b) orthopedic shoes, corrections, and shoe repairs unless the criteria in ~~(4)(b)(i)~~ (6)(b)(i) or (ii) are met and the physician's prescription indicates that:

(i) the shoes are attached to a brace or orthotic device which cannot be accommodated in a regular shoe; or

(ii) the shoes are covered under Medicare criteria for therapeutic shoes for diabetics under the same conditions ~~The department adopts and incorporates by reference the Durable Medical Equipment Regional Carrier (DMERC) Region D Supplier Manual for coverage of therapeutic shoes for diabetics (March 1998). This manual describes the conditions under which the Medicare program will cover therapeutic shoes for diabetics. A copy of the Medicare criteria is available upon request from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951;~~

(c) through (p) remain the same.

(q) personal computers; ~~and~~

(r) sexual aids or devices;

(s) items included in the nursing home per diem rate; and

(t) backup equipment.

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

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

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

37.86.1806 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, REIMBURSEMENT REQUIREMENTS

(1) Requirements for the purchase or rental of prosthetic devices, durable medical equipment, medical supplies and related maintenance, repair, and services are as follows:

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

(b) For all purposes under this rule and ~~ARM 37.86.1806 and~~ 37.86.1807, the amount of the provider's usual and customary charge may not exceed the reasonable charge usually and customarily charged by the provider to all payers.

The charge will be considered reasonable if less than or equal to the manufacturer's suggested list price. For items without a manufacturer's suggested list price, the charge will be considered reasonable if the provider's acquisition cost from the manufacturer is at least 50% of the charge amount. For items that are custom fabricated at the place of service, the amount charged will be considered reasonable if it does not exceed the average charge of all Medicaid providers by more than 20%. For rental items, the reasonable monthly charge may not exceed a percentage of the reasonable purchase charge, as specified in (3).

(c) through (2) remain the same.

(3) Medicaid reimbursement for items provided on a rental basis is limited as follows:

(a) Total Medicaid rental reimbursement for items listed in Medicare's capped rental program or classified by Medicare as routine and inexpensive rental will be limited to ~~420%~~ 105% of the purchase price for that item. Monthly rental fees will be limited to 10% of the purchase price for the first three months and 7.5% of the remaining months and payments will be limited up to 42 13 months or less as outlined in chapter 5 of the Region D Medicare Supplier Manual.

(i) For purposes of this limit, the purchase price is the purchase fee specified in the department's fee schedule established under ARM 37.86.1807.

(ii) Interruptions in the rental period of less than 60 days will not result in the start of a new ~~42-~~ 13-month period or new ~~420%-of~~ purchase price limit, but periods in which service is interrupted will not count toward the ~~42-~~ 13-month limit.

(iii) A change in supplier during the ~~42-~~ 13-month period will not result in the start of a new ~~42-~~ 13-month period or new ~~420%-of~~ purchase price limit. Providers are responsible to investigate whether another supplier has been providing the item to the recipient and Medicaid will not notify suppliers of this information. The provider may rely upon a separate written statement of the recipient that another supplier has not been providing the item, unless the provider has knowledge of other facts or information indicating that another supplier has been providing the item. The supplier providing the item in the ~~twelfth~~ thirteenth month of the rental period is responsible to transfer ownership to the recipient.

(iv) If rental equipment is changed to different but similar equipment, the change will not result in the start of a new ~~42-~~ 13-month period or new ~~420%-of~~ purchase price limit, unless:

(A) the change in equipment is medically necessary as a result of a substantial change in the recipient's medical condition;

(B) a new certification of medical necessity for the new equipment is completed and signed by a physician; and

(C) the Acute Services Bureau prior authorizes the change in equipment.

(b) During the ~~42-~~ 13-month rental period, Medicaid rental reimbursement includes all supplies, maintenance, repair, components, adjustments, and services related to the item during the rental month. Separately billable supplies allowed by Medicare will be reimbursed by Medicaid as outlined in the most current Region D Medicare Supplier Manual. No additional amounts related to the item may be billed or reimbursed for the item during the ~~42-~~ 13-month rental period. The supplier providing the rental equipment during the rental period is responsible for all maintenance and servicing of the equipment.

(c) After ~~42~~ 13 months rental, the recipient will be deemed to own the item and the provider must transfer ownership of the item to the recipient. After the ~~42-~~ 13-month rental period, the provider may bill separately for supplies, maintenance, repair, components, adjustments, and services related to the item, subject to the requirements of these rules, except that repair charges are not reimbursable during the manufacturer's warranty period.

(d) All rentals will be paid on a monthly basis, except ~~air fluidized beds~~ phototherapy (bilirubin) lights which will be reimbursed at a daily rental rate.

(i) Medicaid will pay an entire monthly rental fee for the initial month of rental even if less than a full month. When a rental extends into a second or subsequent month, Medicaid will pay a rental fee for a partial month only if the partial month period is at least 15 days.

(e) Items classified by Medicare as needing frequent and substantial servicing will be reimbursed by Medicaid on a monthly rental basis only. The ~~420%~~ cap specified in (3)(a) does not apply and rental reimbursement may continue as long as the item is medically necessary.

(f) through (6) remain the same.

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

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

37.86.1807 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, FEE SCHEDULE (1) remains the same.

(2) Prosthetic devices, durable medical equipment, and medical supplies shall be reimbursed in accordance with the department's Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Fee Schedule, effective ~~July 2006~~ January 2008, which is adopted and incorporated by reference. A copy of the department's Prosthetic Devices, Durable Medical Equipment, and Medical Supplies Fee Schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) The department's DMEPOS Fee Schedule for items other than ~~those wheelchairs and items~~ billed under generic or miscellaneous codes as described in (1) shall include fees set and maintained according to the following methodology:

(a) 100% of the Medicare region D allowable fee;

(b) Except as provided in (4), for all items for which no Medicare allowable fee is available, the department's fee schedule amount shall be 75% of the provider's usual and customary charge, ~~until a reasonable fee is established through a pricing cluster as described in (3)(b)(ii).~~

(i) For purposes of (3)(b) and (4), the amount of the provider's usual and customary charge may not exceed the reasonable charge usually and customarily charged by the provider to all payers.

(A) The charge will be considered reasonable if less than or equal to the manufacturer's suggested list price.

(B) For items without a manufacturer's suggested list price, the charge will be considered reasonable if the provider's acquisition cost from the manufacturer is at least 50% of the charge amount.

(C) For items that are custom fabricated at the place of service, the amount charged will be considered reasonable if it does not exceed the average charge of all Medicaid providers by more than 20%.

(D) For rental items, the reasonable monthly charge may not exceed a percentage of the reasonable purchase charge, as specified in ARM 37.86.1806(3).

~~(ii) For the purposes of (3)(b), a pricing cluster consists of product retail price lists from manufacturers and distributors. Such pricing is used to compare all provider billed charges for an item/service billed under a specific procedure code. The average charge from a 12-month period is considered reasonable if equal to or less than the average retail price of the pricing cluster. If the average charge is considered reasonable, a permanent fee will be set at 75% of the reasonable charge.~~

~~(iii)~~ (ii) Items having no product retail list price, such as items customized by the provider, will be reimbursed at 75% of the provider's usual and customary charge as defined in (3)(b)(i).

(4) The department's DMEPOS Fee Schedule, referred to in ARM 37.86.1807(2), for ~~all wheelchairs and~~ items billed under generic or miscellaneous codes as described in (1) shall be 75% of the provider's usual and customary charge as defined in (3)(b)(i).

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

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

4. The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.86.1801, 37.86.1802, 37.86.1806, and 37.86.1807 that provide for Medicaid reimbursement of durable medical equipment (DME) services. The changes to existing policy would include making DME useable in school and workplace settings, change procedures for transmitting DME prescriptions and orders, change the way providers are reimbursed for wheelchairs, allow reimbursement for positioning items in nursing facilities, adopt Medicare's method of reimbursement for rental equipment, update references to Medicare manuals, correct grammatical errors, and delete obsolete provisions. Specific descriptions of each proposed amendment are set forth below.

ARM 37.86.1801

This proposed change to ARM 37.86.1801(2) was recommended by the Montana House Joint Resolution 32 Workgroup. It adds school and workplace as places durable medical equipment can be used. Equipment needs to be usable in both schools and workplaces for children and adults. This amendment will ensure children and adults have equipment to be able to attend school and hold a job.

ARM 37.86.1802

The proposed change to ARM 37.86.1802(1) would make it clear that billing of durable equipment items is not allowed when patients are in the nursing facility. Nursing facility rules apply when the durable medical equipment provider is the

nursing facility. Nursing facilities reimbursement methodology is different than for durable medical equipment providers.

The proposed change to ARM 37.86.1802(2)(a) identifies the means by which a prescription can be transmitted to the durable medical equipment provider. It would allow the prescribing provider to keep the original in their records and the durable medical equipment provider to be able to take an oral prescription and reduce it to hard copy or accept a faxed copy of a prescription. This would ensure the provider has the correct documentation before delivering the equipment. It also would prevent delays in delivery. This amendment also incorporates the requirements for prescriptions to follow the Medicare guidelines in chapter 3 and 4 of the Medicare Supplier Manual. For items requiring prior authorization the documentation must include a prescription. This change to ARM 37.86.1802(2)(b) would also update the incorporation by reference of the current Medicare Supplier Manual, Medicare's local coverage determination and policy. Medicaid uses Medicare criteria to reimburse oxygen services.

The proposed change to ARM 37.86.1802(4) was recommended by the House Joint Resolution 32 Workgroup. It outlines exceptions to the Medicare criteria for medically necessary wheelchair equipment allowed for transportation to work or school and for equipment for out of home activities. Head rests and laterals support the patient in the wheelchair so no further injury can occur. Tie downs are used to safely transport recipients to school, work, and doctor appointments. Flat free inserts are tires that will enable a wheelchair's tires to last longer and withstand daily use outside the home. The wheelchair accessories are necessary for patient safety.

The proposed change to ARM 37.86.1802(5) was recommended by the House Joint Resolution 32 Workgroup. It allows Medicaid to reimburse durable medical equipment providers for custom positioning items for patients in a nursing facility. Custom positioning items are necessary for the patient's safety and well being. Positioning items for patients in the nursing facility are needed when a standard wheelchair does not fulfill the needs of a nursing facility patient.

The proposed change to ARM 37.86.1802(6)(b)(ii) would update the reference to the Medicare Supplier Manual adopted in ARM 37.86.1802(2)(b). Medicaid uses Medicare criteria for therapeutic shoes for diabetics.

Proposed new ARM 37.86.1802(6)(s) would add the condition that durable medical equipment items are noncovered if they are included in the nursing home per diem rate.

Proposed new ARM 37.86.1802(6)(t) clarifies that backup equipment is a noncovered item.

ARM 37.86.1806

The proposed change to ARM 37.86.1806(3) follows Medicare rental policy. It would

change the Medicaid 12-month capped rental to match the Medicare 13-month rental. This change adopts the Medicare 13-month rental cap and the maximum Medicare reimbursement amount.

The proposed change to ARM 37.86.1806(3)(b) would provide for the billing of supplies when Medicare allows reimbursement. Reimbursement for items that are rented includes the maintenance and repair of rented equipment. However, Medicare allows durable medical equipment providers to be separately reimbursed for certain supplies.

The proposed change to ARM 37.86.1806(3)(d) adds phototherapy (bilirubin) lights to the list of rentals that are billed on a daily basis. This item is used for newborn babies when their bilirubin levels are low. The average use of bilirubin lights is five days. The proposed change was approved by the House Joint Resolution 32 Work Group. The proposed amendment would also remove air fluidized beds as reimbursable on a daily rate because there is no daily fee from Medicare. Fluidized beds would still be reimbursable on a monthly rate.

ARM 37.86.1807

The proposed change to ARM 37.86.1807(2) updates for effective date of the department's latest fee schedule.

The proposed amendment to ARM 37.86.1807(3) removes wheelchairs from the "by report" reimbursement methodology. Wheelchairs would now be paid in accordance with the Medicare fee schedule. This amendment would also correct the reference that identifies the fee schedule.

The proposed definition of ARM 37.86.1807(3)(b)(ii) removed the reference to fee pricing clusters. The department no longer uses this methodology. Fees are now either Medicare fees or "by report" fees. Medicaid intends to adopt Medicare fees except for those items Medicare does not cover or items with no Medicare fees. These items will be paid at the "by report" percentage. The following subsections are renumbered but unchanged.

The proposed amendments to ARM 37.86.1807(4) reference the fee schedule rule and would remove wheelchairs from being paid by report. They will be paid at Medicare fees.

Fiscal Effects and Persons Affected

These proposed changes could potentially affect 116,659 Medicaid recipients, 381 enrolled Montana Durable Medical Equipment providers, and 257 enrolled out-of-state providers.

The financial impact of accepting Medicare fees for wheelchairs will save the department \$75,015.82.

5. The department intends the rule changes to be applied effective January 1, 2008.
6. Interested persons may submit comments orally or in writing at the hearing. Written comments may also be submitted to Rhonda Lesofski, 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 November 23, 2007. Comments may also be faxed to (406)444-1970 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.
7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of 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. The web site may be unavailable at times, due to system maintenance or technical problems.
8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.
9. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct the hearing.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State October 15, 2007.

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

In the matter of the proposed	)	NOTICE OF PUBLIC HEARING
amendment of ARM 38.5.2202 and	)	ON PROPOSED AMENDMENT
38.5.2302, pertaining to pipeline)	
safety)	

TO: All Concerned Persons

1. On November 27, 2007, at 1:30 p.m., a public hearing will be held in the Bollinger Room, Public Service Commission (PSC) offices, 1701 Prospect Avenue, Helena, Montana, to consider the amendment of the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the PSC no later than 5:00 p.m. on November 20, 2007, to advise us of the nature of the accommodation that you need. Please contact Connie Jones, PSC Secretary, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, telephone number (406) 444-6170, TTD number (406) 444-6199, fax number (406) 444-7618, e-mail conniej@mt.gov.

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

38.5.2202 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS (1) The commission adopts and incorporates by reference the U.S. Department of Transportation (DOT) Pipeline Safety Regulations, Code of Federal Regulations (CFR), Title 49, chapter 1, subchapter D, parts 191, 192, and 193, including all revisions and amendments enacted by DOT on or before ~~October 31, 2006~~ October 31, 2007. A copy of the referenced regulations may be obtained from United States Department of Transportation, Office of Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA
IMP: 69-3-207, MCA

38.5.2302 INCORPORATION BY REFERENCE OF FEDERAL PIPELINE SAFETY REGULATIONS -- DRUG AND ALCOHOL TESTING AND PREVENTION PROGRAMS (1) Except as otherwise provided in this subchapter, the commission adopts and incorporates by reference the DOT Pipeline Safety Regulations, Drug and Alcohol Testing, 49 CFR 199, including all revisions and amendments enacted by DOT on or before ~~October 31, 2006~~ October 31, 2007. A copy of the referenced

CFRs is available from the United States Department of Transportation, Office of Pipeline Safety, Western Region, 12300 West Dakota Avenue, Suite 110, Lakewood, Colorado 80228, or may be reviewed at the Public Service Commission Offices, 1701 Prospect Avenue, Helena, Montana 59620-2601.

AUTH: 69-3-207, MCA

IMP: 69-3-207, MCA

4. Amendment (annual update) of ARM 38.5.2202 and 38.5.2302 is necessary to allow the PSC to administer the most recent version of federal rules applicable in the PSC's administration of all federal aspects of Montana's pipeline safety programs.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments (original and ten copies) may also be submitted to Legal Division, Public Service Commission, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, and must be received no later than November 27, 2007, or may be submitted to the PSC through the PSC's web-based comment form at <http://psc.mt.gov> (go to "consumer assistance," "talk to us," "pending proceeding comments," then complete and submit the form) no later than November 27, 2007. (PLEASE NOTE: When filing comments pursuant to this notice please reference "Docket No. L-07.10.3-RUL.")

6. The PSC, a commissioner, or a duly appointed presiding officer may preside over and conduct the hearing.

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

8. The PSC maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the PSC. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines, motor carriers, and rail carriers; and administrative procedures. Such written request may be mailed or delivered to Public Service Commission, Legal Division, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601, faxed to Connie Jones at (406) 444-7618, e-mailed to conniej@mt.gov, or may be made by completing a request form at any rules hearing held by the PSC.

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

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

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

Certified to the Secretary of State, October 15, 2007.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of) NOTICE OF PUBLIC
ARM 42.18.128 and 42.19.501 relating to) HEARING ON PROPOSED
property taxes - appraisal plan definitions) AMENDMENT
and disabled veterans)

TO: All Concerned Persons

1. On November 15, 2007, at 9:00 a.m., a public hearing will be held in the 4 East Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., November 5, 2007, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.18.128 DEFINITIONS The following definitions apply to terms used in this subchapter:

(1) "CALP" means a computer assisted land pricing model system.

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

AUTH: 15-7-111, MCA

IMP: 15-7-139, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.18.128 to add the definition of the department's computer assisted land pricing model system because this term is used in other rules in this chapter but was previously shown in the general definitions of rules for the department in Chapter 2.

42.19.501 PROPERTY TAX EXEMPTION FOR QUALIFIED DISABLED VETERANS (1) through (4) remain the same.

(5) A lot for purposes of the property tax exemption will be defined as the land beneath and immediately adjacent to the residence not to exceed one five acres. Land in excess of ~~one five~~ five acres will not be exempt.

(6) and (7) remain the same.

AUTH: 15-1-201, MCA

IMP: 15-6-191, 15-6-211, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.19.501 because the 60th Legislature amended 15-6-211, MCA through Senate Bill 403 to change the maximum number of acres from one to five for certain disabled or deceased veterans' residences.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than November 26, 2007.

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

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its 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.

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

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on August 10, 2007, by regular mail.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State October 15, 2007

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed adoption of	)	NOTICE OF PUBLIC
New Rule I through V and amendment of	)	HEARING ON PROPOSED
ARM 42.17.101 relating to Mineral Royalty	)	ADOPTION AND
Backup Withholding	)	AMENDMENT

TO: All Concerned Persons

1. On November 15, 2007, at 1:00 p.m., a public hearing will be held in the 4 East Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption and amendment of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., November 5, 2007, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

3. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I ADVANCE PAYMENTS AND FURTHER DISTRIBUTIONS

(1) Advance mineral royalty payments that relate to, refer to, or concern production are subject to the mineral royalty tax withholding requirements.

(2) Each remittor who disburses funds that are owed to any person owning a royalty interest, overriding royalty interest, production payment, or any other nonworking interest in minerals produced in this state, is subject to the withholding requirement of 15-30-261, MCA.

(3) If a mineral is taken in-kind by a royalty owner, the remittor must forward 6% of the net value of the mineral that was taken in-kind to the department on behalf of that royalty owner. The value of the mineral is calculated by multiplying the volume of the mineral that was taken in-kind with a market or going rate for the mineral. For instance, if a royalty owner takes in-kind 100 barrels of oil, the remittor will multiply the 100 barrels of oil to the sales price of the other barrels of oil sold from the lease to establish the net value of the mineral taken in-kind.

(4) If you are a remittor and you are providing accounting services, and these accounting services include fulfilling the requirements of 15-30-266, MCA, for more than one producer, you must remit separate withholding payments and submit a

separate Montana Mineral Royalty Withholding Tax Reconciliation Return (Form RW-3), for each producer.

AUTH: 15-30-272, MCA

IMP: 15-30-266, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I.

Section (1) to establish that advance mineral payments made to royalty interest owners that represent the royalty interest owner's future share of the receipts from the sale of the natural resource, are subject to the withholding requirements of 15-30-261, MCA.

Section (2) establishes that all nonworking royalties are subject to possible withholding.

Section (3) is proposed to establish that if minerals are taken in-kind, 6% of the value of those minerals is required to be remitted as withholding.

Section (4) establishes that if a remittor provides bookkeeping services, which includes distribution of royalty interest payments, for a number of producers the remittor must submit a separate RW-3 for each producer.

NEW RULE II CLAIMING THE CREDIT FOR TAX WITHHELD (1) Claiming credit for the tax withheld shall be accomplished as follows:

(a) Credit may be claimed for the tax withheld on a Montana Individual Income Tax Return or a Montana Corporation License Tax Return, with a copy of Form 1099-MISC attached to substantiate the amount claimed.

(b) Taxpayers who are shareholders in a corporation taxed under Subchapter S of the Internal Revenue Code and are Montana residents, members of a Montana limited liability company, or members of a partnership doing business in this state must attach a copy of federal form K-1 to their Montana individual income tax return. They may claim credit for the amount shown as their percentage share of the tax withheld from Montana net royalty payments by the corporation, limited liability company, or partnership.

(c) An estate or trust is entitled to credit for the tax withheld in proportion to its share of federal distributable net income. The remaining credit must be passed through to the beneficiaries in proportion to their respective shares of federal distributable net income of the estate or trust. To claim the credit, the beneficiaries must attach a copy of federal form K-1 to their Montana Individual Income Tax Return for Fiduciaries and Trusts (FID-3) and claim credit for the amount shown by the fiduciary as their percentage share of the tax withheld from Montana mineral production payments.

(d) Any person filing on a fiscal year ending other than December 31 must claim a credit for the withholding tax shown on the person income tax return required to be filed during the year following the December closing period of the Montana Mineral Royalty Withholding Tax Reconciliation Return (Form RW-3).

AUTH: 15-30-272, MCA

IMP: 15-30-264, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II to clarify the proper procedures and forms used by individuals, corporations, shareholders of S Corporations, members of limited liability companies (LLC), partners in partnerships, estates and trusts to claim amounts withheld from royalty payments.

- NEW RULE III APPLICABLE THRESHOLDS – CHANGE OF OWNERSHIP – PUBLICLY TRADED PARTNERSHIPS - NONPROFIT ORGANIZATIONS – EXEMPT ROYALTY OWNERS
- (1) An oil and gas remittor is not required to withhold from their royalty interest owners if the production does not exceed 100,000 barrels of oil and 500 million cubic feet of gas, based on the previous three calendar years' average production reported to the Montana Board of Oil and Gas Conservation. For example, the department will calculate whether an entity is required to withhold from their royalty interest owners for 2008 by averaging the production numbers for calendar years 2004, 2005, and 2006 and comparing this average to the production exemption limits.
- (2) If an entity does not have three years of recent oil and/or gas production records, the remittor may provide the department with information supporting the exemption from the withholding requirements of 15-30-261, MCA. The department shall review this information to determine if an exemption is warranted and notify the remittor of the determination.
- (3) On or before September 15 of each year, the department shall notify all oil and gas producers of their requirements as it relates to the provisions of 15-30-261 and 15-30-264, MCA.
- (4) If a person that is required to withhold on behalf of their royalty interest owners sells their mineral interests during the year and ceases to be the remittor, the person that acquired the mineral interests becomes the remittor and must continue to withhold 6% of the net royalty payments from the royalty interest owners subject to the withholding requirements of 15-30-261, MCA.
- (5) If a remittor produces both oil and gas and only one resource meets the requirements for withholding as provided in 15-30-264, MCA, the withholding provisions apply to both oil and gas regardless of the production volumes of the other resource that does not meet the requirements of 15-30-264, MCA.
- (6) If a person, not previously extracting resources in the state, begins extracting from new sources of natural resources in Montana (i.e., newly drilled oil or gas wells or a new mine), that person is required to withhold 6% of the net royalty payments from the royalty interest owners subject to the withholding requirements of 15-30-261, MCA.
- (7) The person described in (6) that extracts oil and/or gas only may not be required to withhold on net royalty payments from their royalty interest owners if the person can provide information that satisfies the department that the new producing property will not meet the threshold requirements established for oil and gas in 15-30-264, MCA.
- (8) All persons that extract minerals other than oil and gas must withhold 6% of the net royalty payments of all royalty interest owners subject to the withholding requirements of 15-30-261, MCA.

(9) The person described in (8) may not be required to withhold net royalty payments from their royalty interest owners if the person can provide information that satisfies the department that the net royalty payments are immaterial.

(10) Section 15-30-264, MCA allows for a publicly traded partnership to be exempt from the withholding requirements of 15-30-261, MCA, provided the publicly traded partnership, who is a royalty owner, submits a report to both the remittor and the Department of Revenue. The report, which can be in the form of a letter must contain the publicly traded partnership's letterhead and state that the partnership is publicly traded and the partnership requests exemption from 15-30-261, MCA. The request must be received by the remittor and the department prior to November 1 of the year prior to the calendar year in which the partnership requests exemption. Upon receipt of the report, the department will notify the partnership and the remittor of either acceptance or denial of the request within thirty days. The election does not need to be repeated annually unless requested by the department.

(11) Section 15-30-264, MCA, allows for an organization that is exempt from taxation under 15-31-102, MCA to be exempt from the withholding requirements of 15-30-261, MCA provided the exempt organization, who is a royalty owner, submits a report to both the remittor and the department. The report, which can be in the form of a letter, must contain the exempt organization's letterhead and requests exemption from 15-30-261, MCA. The request must be received by the remittor and the department prior to November 1 of the year prior to the calendar year in which the exempt organization requests exemption. Upon receipt of the report the department shall notify the exempt organization and the remittor of either acceptance or denial of the request within thirty days. The election does not need to be repeated annually unless requested by the department.

(12) According to 15-30-264, MCA, the department grants remittors the authority to forego withholding the tax from royalty owners who meet the following qualifications:

- (a) the amount of the royalty interest payment is less than \$2,000 per year; or
- (b) less than \$166 per month.

(13) The remittor that does not withhold from royalty interest owners pursuant to (12) may, upon request from the department, be required to provide a list of the royalty interest owners.

AUTH: 15-30-272, MCA

IMP: 15-30-264, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule III(1) to establish if an entity is required to withhold taxes from mineral royalty interest payments.

Section (2) is proposed to possibly allow withholding exemptions on producing properties that do not have three years of recent production.

Section (3) is intended to inform producers/remittors that they exceed the production levels and are required to withhold a portion of the royalty interest payments. This rule also requires the department to provide this information to the producers/remittors on or before September 15.

Section (4) clarifies that if you purchase leases from a producer that previously was required to withhold 6% of the net royalties, you are also required to continue to withhold 6% of the production from the royalty interest owners.

Section (5) states the withholding requirements for entities that produce both oil and gas.

Section (6) establishes that any new natural resource extraction venture in Montana by an entity that currently does not extract resources in Montana must withhold 6% of the net royalty payment.

Section (7) allows for an exemption from the withholding for oil and/or gas extraction entities described in part (6) if the entity can prove that the production will not meet the requirements for withholding.

Sections (8) and (9) are proposed to inform mineral extraction entities other than gas and oil that withholding is required unless the entity can prove the amount of the royalty interests are immaterial.

Section (10) explains the process a publicly traded partnership must complete to receive exemption from the withholding requirements of 15-30-261, MCA.

Section (11) explains the process a nonprofit organization must complete to receive exemption from the withholding requirements of 15-30-261, MCA.

Section (12) explains that a remittor can choose not to withhold from a royalty interest owner.

Section (13) explains that a remittor may be required to provide a list of the royalty interest owners not being withheld upon.

NEW RULE IV REGISTRATION FOR WITHHOLDING (1) Every entity that extracts natural resources within the boundaries of Montana must register and file an application for a state identification number on the form provided by the department.

(2) Any owner or operator who has acquired the business of another entity shall not use the predecessor's state identification number. The owner or operator must register before the due date of the first report. This applies to both new businesses and businesses which have been purchased.

(3) Each registration application must contain the applicable tax identification number assigned by the Internal Revenue Service.

(4) No registration is considered complete unless the federal identification number appears on the form.

(5) Not being registered does not relieve a remittor from the collection and reporting requirements.

AUTH: 15-30-272, MCA

IMP: 15-30-263, 15-30-266, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule IV to clarify the registration requirements for natural resource extraction companies. The rule also provides guidance for changes in remittors.

NEW RULE V FILING REQUIREMENTS (1) The following forms are to be completed and filed in accordance with instructions provided by the department:

(a) Form RW-1, Mineral Royalty Withholding Payment Coupon, must be filed quarterly unless the department establishes that the entity is exempt from the withholding requirements of 15-30-261, MCA. A remitter may request to file a form RW-1 on an accelerated basis. The remitter must receive approval from the department before remitting the withholding tax on a more frequent basis than quarterly;

(b) A remitter who has no withholding to remit for a remittance period shall on or before the due date, submit a payment coupon showing that a zero amount is being remitted;

(c) Montana Annual Mineral Royalty Withholding Tax Reconciliation (Form RW-3), must be filed on or before February 28 of each year. Form RW-3 must be accompanied by copies of each royalty owner's Withholding Statements on Federal Form 1099-MISC;

(d) Form 1099-MISC, Miscellaneous Income, shall be furnished by the remitter to each person who is entitled to a credit for taxes withheld each calendar year before January 31 of each year; and

(e) Each remitter that is exempt from withholding is still required to file with the department a copy of Forms 1099-MISC for every recipient of royalties. For ease of reporting the department will accept the comparable federal form, or submission of the form in electronic format as defined by the IRS. These reports are due on or before February 28 of each year.

(2) Electronic filing requirements for state purposes are the same as those mandated for federal purposes.

AUTH: 15-30-272, MCA

IMP: 15-30-266, 15-30-268, 15-30-269, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule V to clarify the forms that must be filed each year for the taxpayer to be in compliance with the 15-30-261, MCA.

Section (1) outlines the quarterly returns and annual returns that must be submitted to the department along with the forms that must be submitted to each royalty owner at the end of the year. In addition, this section details the information that must be submitted to the department by remitters exempt from the mineral withholding provisions.

Section (2) outlines the filing requirements for producers who are not subject to the withholding provisions. The rule makes it clear that the electronic filing requirements that the department requires will be the same as those required for federal electronic filing of Forms 1099, 1096, and other relevant federal forms.

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

42.17.101 DEFINITIONS The following terms pertain to this chapter:

(1) "Advanced mineral payments" are payments made to royalty interest owners that represent the royalty interest owner's future share of the receipts from the sale of the natural resource.

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

(3) "First purchaser" means the first person to pay for production after it is extracted from deposits in this state. Generally the first purchaser is an arms-length entity that pays a market price.

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

(5) "Mineral payments" are payments made to royalty interest owners that represent the royalty interest owner's future share of the receipts from the sale of the natural resource.

(6) "Net royalty amount payable" means the amount of mineral proceeds subject to withholding. This amount is equal to the gross royalty payments less any taxes and other expenses deducted pursuant to the royalty agreement in effect.

(7) "Overriding royalty interest" means ownership in a percentage of production or production revenues, free of the cost of production, created by the lessee, company and/or working interest owner and paid by the lessee, company and/or working interest owner out of revenue from the well.

(8) "Person" means any natural person, company, corporation, association, partnership, joint venture, cooperative, estate, trust, receiver, or any other party or entity that has a working interest, royalty interest, overriding royalty interest, production payment, production payment including in-kind exchanges, or any other ownership interest entitled to production proceeds from deposits in this State.

(9) "Producer" is the person that extracts natural resources from deposits in the State.

(10) "Remitter" means the individual, entity, or trust obligated under a mineral lease to pay royalties to the royalty owner or his assignee, to deliver minerals to a purchaser to the credit of such royalty owner or his assignee, or to pay a portion of the proceeds of the sale of such minerals to the royalty owner or his assignee.

(3) and (4) remain the same but are renumbered (11) and (12).

(13) "Take in kind" means someone other than the well operator takes their share of the production and does not sell it with the party(s) contracted with the operator. The operator might want to sell gas to one purchaser, but another company wants to sell or use their portion of the gas for another purpose. Thus, they "take in kind".

AUTH: 15-30-272, 15-30-305, MCA

IMP: 15-30-201, 15-30-256, 15-30-263, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.17.101 to add terms that will be used in this chapter as they pertain to the mineral royalty withholding requirements in Title 15, chapter 30, part 2, MCA.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than November 26, 2007.

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

7. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified on August 10, 2007, by regular mail and subsequently with the draft rules on August 15, 2007.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State October 15, 2007

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of)
42.31.501 relating to telecommunications)
license and telecommunication excise tax) NOTICE OF PUBLIC
HEARING ON PROPOSED
AMENDMENT

TO: All Concerned Persons

1. On November 14, 2007, at 1:00 p.m., a public hearing will be held in the 4 East Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rule.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., November 5, 2007, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov.

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

42.31.501 DEFINITIONS The following definitions apply to terms used in this subchapter:

(1) remains the same.

(2) "Lifted" means that the 110th Congress of the United States adjourns without reauthorizing the internet moratorium.

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

~~(5)~~ (6) "Two-way transmission" for telecommunications excise tax purposes, means all forms of telecommunications except those forms of telecommunications that are only capable of one-way transmission and are not related services as defined in ~~(2)~~ (3).

AUTH: 15-53-155, MCA

IMP: 15-53-129, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.31.501 because the 110th United States Congress is considering a retroactive extension of the internet moratorium to November 1, 2007. Administratively it is not wise for the department to use resources to collect a tax that may simply need to be refunded at a later date. Further, Montana recognizes this fact and will defer to the deliberations of the 110th Congress.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-3696; or e-mail canderson@mt.gov and must be received no later than November 26, 2007.

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

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its 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.

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

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State October 15, 2007

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF ADOPTION AND
Rule I and the amendment of ARM	)	AMENDMENT
2.5.120, 2.5.201, 2.5.202, 2.5.301)	
through 2.5.303, 2.5.401, 2.5.402,)	
2.5.404 through 2.5.408, 2.5.501)	
through 2.5.503, 2.5.601 through)	
2.5.604, 2.5.606 through 2.5.609,)	
2.5.701, 2.5.702, and 2.5.801 pertaining)	
to procurement of supplies and services)	
and surplus property)	

TO: All Concerned Persons

1. On August 23, 2007, the department published MAR Notice No. 2-5-381 regarding a public hearing on the proposed adoption and amendment of the above-stated rules at page 1116 of the 2007 Montana Administrative Register, Issue No. 16.

2. On September 12, 2007, the department held a public hearing on the proposed adoption and amendment.

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: One commenter requested that the exception noted for the Montana State Library in ARM 2.5.301(2)(o) be applicable to other libraries such as the State Law Library, Historical Society Library, Parmly Billings Public Library, university libraries, etc. Another commenter suggested that this provision apply to all state agencies.

RESPONSE #1: The department agrees with the comments and amends the rule accordingly.

COMMENT #2: A comment was received stating the wording of ARM 2.5.401(2) was confusing.

RESPONSE #2: The department agrees and is revising the language.

COMMENT #3: A comment was received suggesting alternative language in ARM 2.5.501.

RESPONSE #3: The department agrees that the text could be clearer and is making changes to (1), (2), and (7)(i).

COMMENT #4: A comment was received suggesting alternative language in ARM 2.5.502.

RESPONSE #4: The department agrees that the rule could be clearer and is making changes to (1) and (2).

COMMENT #5: A comment was received regarding ARM 2.5.503(5) and the responsibility for posting of evaluation meetings on the General Services Division's (GSD) web site.

RESPONSE #5: Agencies will be given rights to post their meetings to the GSD web site. The rule is amended as proposed.

COMMENT #6: A comment received regarding ARM 2.5.601(12) stated that "product" and "supply" mean the same.

RESPONSE #6: The department will not change the rule as this is the language used in the statute upon which the amendment is based.

COMMENT #7: A commenter suggested that ARM 2.5.602(2)(e) specify that price must be weighted at a minimum of 20% of the evaluation points.

RESPONSE #7: While the department strongly recommends that agencies allocate at least 20% of the evaluation points to price for an RFP, this requirement will not be included in this rule.

COMMENT #8: A commenter questioned the approval of direct negotiation required by the department in ARM 2.5.608(2)(c) if an agency's solicitation was within its delegated authority.

RESPONSE #8: This is not a change in the requirements already established in this rule and the department amends the rule as proposed.

COMMENT #9: A commenter noted that in ARM 2.5.801(1) the use of "the Department of Administration" rather than simply "the department" was not necessary as "department" is defined in ARM 2.5.201.

RESPONSE #9: The department agrees and makes the suggested change.

4. The department has adopted New Rule I (ARM 2.5.304) as proposed.

5. The department has amended ARM 2.5.120, 2.5.201, 2.5.202, 2.5.302, 2.5.303, 2.5.402, 2.5.404, 2.5.405, 2.5.406, 2.5.407, 2.5.408, 2.5.503, 2.5.601, 2.5.602, 2.5.603, 2.5.604, 2.5.606, 2.5.607, 2.5.608, 2.5.609, 2.5.701, and 2.5.702, as proposed.

6. The department has amended ARM 2.5.301, 2.5.401, 2.5.501, 2.5.502, and 2.5.801 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

2.5.301 DELEGATION OF PURCHASING AUTHORITY (1) through (2)(n) remain as proposed.

(o) books and periodicals ~~purchased by the Montana State Library.~~

AUTH: 18-4-221, MCA

IMP: 18-4-132, 18-4-221, 18-4-222, 18-4-302, MCA

2.5.401 VENDORS LIST (1) remains as proposed.

(2) To be placed on the vendors list, a vendor must register with the division online at <http://www.vendor.mt.gov/>. Each vendor is responsible for keeping their information current, including selection of the categories, quote groups, and items ~~of which identify~~ the supplies or services the vendor wishes to provide.

AUTH: 18-4-221, MCA

IMP: 18-4-221, MCA

2.5.501 SPECIFICATIONS (1) Specifications shall clearly describe the state's requirements and allow for ~~obtaining the procurement of~~ a supply or service ~~which that~~ is adequate, suitable, and cost-effective for the state. Specifications may take into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs and shall permit maximum practicable competition consistent with this purpose.

(2) Specifications shall, to the extent practicable, emphasize functional or performance criteria and limit design or other detailed physical descriptions to those necessary to meet the needs of the state. ~~To facilitate the use of the criteria, an~~ An agency shall ~~attempt to include,~~ as a part of their requisitions, the principal functional or performance needs to be met, and any compatibility requirements.

(3) through (7)(h) remain as proposed.

(i) ~~receiving~~ acceptance procedures (if testing, sampling, or other evaluation will be performed when commodity is delivered to determine acceptability) must be described.

AUTH: 18-4-232, MCA

IMP: 18-4-231, 18-4-232, 18-4-233, 18-4-234, MCA

2.5.502 BID, PROPOSAL, AND CONTRACT PERFORMANCE SECURITY

(1) ~~If the state~~ an agency requires bid or proposal security and/or contract performance security, the types of security that may be used are those specified in 18-4-312, MCA.

(2) The department will supply bid and proposal security bond forms and contract performance security bond forms when security is required. These are the only acceptable forms for surety bond or irrevocable letter of credit submission.

(3) through (8) remain as proposed.

AUTH: 18-4-221, MCA
IMP: 18-1-201, 18-4-312, MCA

2.5.801 ADOPTION OF STATE PLAN OF OPERATION-FEDERAL
SURPLUS PROPERTY (1) As authorized by 18-5-202, MCA, the ~~D~~department of
~~Administration~~ adopts and incorporates by reference the "State of Montana, Federal
Surplus Property Plan of Operation in Compliance with 41 FR 101-44 and Public
Law 94-519" (State Plan of Operation) promulgated by the department and filed with
the General Services Administration of the United States government on July 1,
1977, and as revised March 19, 1984, pursuant to section 201(j)(4) of the Federal
Property and Administrative Services Act of 1949 (40 USC 484).

(2) and (3) remain as proposed.

AUTH: 18-5-202, MCA
IMP: 18-5-202, MCA

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

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

Certified to the Secretary of State October 15, 2007.

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

In the matter of the repeal of ARM) NOTICE OF REPEAL
12.6.401 pertaining to time zones)

TO: All Concerned Persons

1. On August 23, 2007, the Department of Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-333 regarding the proposed repeal of the above-stated rule at page 1142 of the 2007 Montana Administrative Register, Issue No. 16.

2. The commission has repealed ARM 12.6.401 as proposed.

3. The commission did not receive any public comments.

/s/ Steve Doherty
Steve Doherty, Chairman
Fish, Wildlife and Parks
Commission

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

Certified to the Secretary of State October 15, 2007

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT
17.8.102, 17.8.103, 17.8.201, 17.8.202,)	
17.8.302, 17.8.602, 17.8.767, 17.8.801,)	(AIR QUALITY)
17.8.802, 17.8.818, 17.8.901, 17.8.902,)	
17.8.1002, 17.8.1007, 17.8.1102,)	
17.8.1201, 17.8.1202, 17.8.1206,)	
17.8.1212, 17.8.1232, 17.8.1234,)	
17.8.1302, 17.8.1402, 17.8.1502, and)	
17.8.1509 pertaining to incorporation by)	
reference of current federal regulations)	
and other materials into air quality rules)	

TO: All Concerned Persons

1. On June 21, 2007, the Board of Environmental Review published MAR Notice No. 17-259 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 800, 2007 Montana Administrative Register, issue number 12.
2. The board has amended the rules exactly as proposed.
3. No public comments or testimony were received.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff
DAVID RUSOFF
Rule Reviewer

BY: /s/ Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.
Chairman

Certified to the Secretary of State, October 15, 2007.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT
17.8.501, 17.8.505, and 17.8.514)	
pertaining to definitions, air quality)	(AIR QUALITY)
operation fees, and open burning fees)	

TO: All Concerned Persons

1. On June 21, 2007, the Board of Environmental Review published MAR Notice No. 17-258 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 795, 2007 Montana Administrative Register, issue number 12.

2. The board has amended the rules exactly as proposed.

3. The following comments were received and appear with the board's responses:

COMMENT NO. 1: One comment was received expressing concern with the proposed per-ton increase when pollution decreased by 10,758 tons. Commentor stated that he assumed the department will use the increase to keep up with the permitting work load.

RESPONSE: The board understands the department will use the fees to perform air quality permitting work. Pursuant to 75-2-220, MCA, the department is required to use air quality permit application and annual operation fees to cover the costs to administer the permitting requirements, including application review, implementing and enforcing the terms of the permit, monitoring, developing rules and policy, performing modeling, compiling emission inventories, supporting the small business compliance assistance program, and administering Title V permits.

COMMENT NO. 2: Commentor also stated that the rationale for the proposed amendments refers to the legislative appropriation as one of the reasons for the increase in fees. He stated that the appropriation actually reflects the budget amount requested by the department with adjustments made by the Legislature. He indicated that the Legislature doesn't pick some number arbitrarily, but starts with the requested amount from the Department of Environmental Quality.

RESPONSE: The board agrees that the legislative appropriation is set in the context of the Governor's budget, which is established in part using information provided by the department. However, the Legislature establishes the final appropriation.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff

DAVID RUSOFF

Rule Reviewer

/s/ Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.

Chairman

Certified to the Secretary of State, October 15, 2007.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF AMENDMENT
17.38.101 and 17.38.106 pertaining to)	
plans for public water supply or)	(PUBLIC WATER AND SEWAGE
wastewater system and fees)	SYSTEMS)

TO: All Concerned Persons

1. On August 9, 2007, the Board of Environmental Review published MAR Notice No. 17-262 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1067, 2007 Montana Administrative Register, issue number 15.

2. The board has amended the rules exactly as proposed.

3. The following comments were received and appear with the board's responses:

COMMENT NO. 1: One commentor suggested that the department adopt a straight hourly rate for engineering review.

RESPONSE: While there is certainly some merit in going to a straight hourly rate for review time and the department considered this option, it would be difficult to ensure fee consistency between reviewers. The board and department believe it is more equitable to have a set fee for each review item and charge an hourly fee for review of additional information.

COMMENT NO. 2: One commentor questioned the requirement for plan and specification engineering review for water vending units as he does not believe they should be regulated as public water supplies.

RESPONSE: Because the water vending units in question treat the water after its purchase from an approved public water supply, they meet the definition of a public water supply and are, therefore, required to submit plans and specifications for department review.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

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

By: /s/ Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.
Chairman

Certified to the Secretary of State, October 15, 2007.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	CORRECTED NOTICE OF
17.56.101, 17.56.102, 17.56.104,)	AMENDMENT
17.56.105, 17.56.201 through)	
17.56.203, 17.56.301 through)	(UNDERGROUND STORAGE
17.56.304, 17.56.308 through)	TANKS)
17.56.310, 17.56.403, 17.56.407,)	
17.56.408, 17.56.701 through)	
17.56.705, 17.56.801 through)	
17.56.803, 17.56.805 through)	
17.56.811, 17.56.816, 17.56.817,)	
17.56.820 through 17.56.825,)	
17.56.827, 17.56.828, 17.56.901,)	
17.56.1002, 17.56.1003 through)	
17.56.1005, and 17.56.1422; the)	
adoption of new rule I; and the repeal of)	
ARM 17.56.120 and 17.56.121)	
pertaining to the management of)	
underground storage tanks,)	
incorporation by reference, and)	
assessment of administrative penalties)	

TO: All Concerned Persons

1. On July 5, 2007, the Department of Environmental Quality published MAR Notice No. 17-260 regarding a notice of proposed amendment, adoption, and repeal of the above-stated rules at page 915, 2007 Montana Administrative Register, issue number 13. On August 23, 2007, the department published the notice of amendment, adoption, and repeal at page 1189, 2007 Montana Administrative Register, issue number 16. The rules were amended, adopted, and repealed as proposed, but with a minor change to New Rule I (17.56.204).

2. This corrected notice of amendment is being published to correct internal references in ARM 17.56.308 and 17.56.802. The proposed notice added a new (2), and (3) through (9) remained the same, but were renumbered (4) through (10) in ARM 17.56.308. Section (6) contains an internal reference to (2) and (4), which should have been amended to (3) and (5) in the original notice. Section (8) contains an internal reference to (8) which should have been amended to (9) in the original notice. ARM 17.56.308(6) and (8) and 17.56.802(1)(d) should have been amended in the original notice as follows, new matter underlined, deleted matter interlined:

17.56.308 OPERATING PERMIT REQUIRED (1) through (5) remain as amended.

(6) The department shall issue an operating tag for each underground storage tank for which the department has issued an operating permit as described

in ~~(2)~~ (3) and ~~(4)~~ (5). The operating tag must be visibly affixed by the owner or operator to each tank's fill pipe or to another visible part of the tank if affixing the tag to the fill pipe is impracticable. If an operating permit is revoked, the owner or operator must remove each operating tag and return it to the department within 30 days of receipt of revocation.

(7) remains as amended.

(8) Except as provided in ~~(8)~~ (9), the department shall suspend or revoke an operating permit and tag issued under this rule according to the provisions of 75-11-512, MCA.

(9) and (10) remain as amended.

17.56.802 COMPLIANCE DATES (1) through (1)(c) remain as amended.

(d) All petroleum UST owners not described in ~~(4)~~ (a), ~~(2)~~ (b), or ~~(3)~~ (c) of this rule, including all local government entities; October 26, 1990.

3. Replacement pages for this corrected notice were submitted to the Secretary of State on September 28, 2007.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ James M. Madden

JAMES M. MADDEN

Rule Reviewer

By: /s/ Richard H. Oppen

RICHARD H. OPPER

Director

Certified to the Secretary of State, October 15, 2007.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 24.11.445, 24.11.452A, 24.11.457,)
24.11.2201, 24.11.2221, and 24.11.2511,)
related to unemployment insurance matters)

TO: All Concerned Persons

1. On September 6, 2007, the Department of Labor and Industry (department) published MAR Notice No. 24-11-224 regarding the public hearing on the proposed amendment of the above-stated rules at page 1258 of the 2007 Montana Administrative Register, issue no. 17.
2. On October 2, 2007, the department held a public hearing in Helena regarding the proposed amendments. No comments were received by the closing of the comment period on October 9, 2007.
3. The department has amended the rules as proposed.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State October 15, 2007

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment	)	NOTICE OF AMENDMENT
of ARM 24.29.207, 24.29.1404,	)	AND ADOPTION
24.29.1426, 24.29.1504, 24.29.1521,)	
24.29.1532, 24.29.1536, 24.29.1541,)	
24.29.1551, 24.29.1561, 24.29.1566,)	
24.29.1572, 24.29.1573, 24.29.1582,)	
24.29.1583, and 24.29.1584, and the)	
adoption of NEW RULES I)	
through VIII, related to the workers')	
compensation medical fee schedule for)	
nonfacilities, the workers' compensation)	
medical treatment and utilization guidelines)	
for occupational therapists, physical)	
therapists, and chiropractors, and other)	
matters related to workers' compensation)	
claims)	

TO: All Concerned Persons

1. On September 6, 2007, the department published MAR Notice No. 24-29-225 regarding the public hearing on the proposed amendment and adoption of the above-stated rules at page 1265 of the 2007 Montana Administrative Register, issue no. 17.

2. On September 28, 2007, a public hearing was held in Helena concerning the proposed rules at which oral and written comments were received. Additional comments were received prior to the closing date of October 5, 2007.

3. The department has thoroughly considered the comments and testimony received on the proposed amendments and new rules. The following is a summary of the comments received, along with the department's response to those comments:

Comment 1: Regarding ARM 24.29.207, the Montana State Fund requested the department properly coordinate one of the amendments to this rule with the insurance commissioner's rules. Specifically, the State Fund requested the department modify (3) to add the words "or Plan 3" to clarify that decisions made by the classification review committee on employment classifications in contested cases apply to the State Fund. The State Fund believes this modification is necessitated by the provisions of 33-16-1011 and 33-16-1012, MCA, and by ARM 6.6.8201 to 6.6.8206.

Response 1: The department agrees this clarification is appropriate and has amended the rule accordingly.

Comment 2: The Montana State Fund noticed an error in the proposed amendments to ARM 24.29.1566 in that the catchphrase applies the rule through December 31, 2007, but the amendment to the text applies the rule through December 30, 2007.

Response 2: The department agrees there was a typographic error in the text of the rule and has amended the rule accordingly.

Comment 3: Regarding New Rule III, the nonfacility fee schedule, the State Fund commented that in (1), the term "medical service" is used prior to the term "provider". The State Fund recommends deleting "medical service" before "provider" so as to not confuse the definition of "provider" in proposed Rule 24.29.1504(12). The State Fund also notes the term "medical services" is used in 39-71-704, MCA. The State Fund recommends modifying the sentence to read as follows: "(1) The department adopts the fee schedule provided by this rule to determine the reimbursement amounts for medical services provided by an individual ~~medical service~~ provider at a nonfacility or facility furnished on or after January 1, 2008."

Response 3: The department agrees and has amended the rule accordingly.

Comment 4: The State Fund requests that the new rules be numbered to be included in subchapter 15 of the department's rules so that the definitions in 24.29.1504 will apply to the new rules, as the use of the definitions is currently applicable to subchapter 15.

Response 4: As this was the intent of the department, the department agrees and is numbering New Rules II through VII to be included in ARM Title 24, chapter 29, subchapter 15. The department believes that New Rule I is most logically numbered as part of subchapter 14, however, following a similar rule related to hospital services.

Comment 5: The State Fund requests that in New Rule III, (6) be amended to clarify the status of "nonlicensed providers". The State Fund believes that not using the term "provider" in addressing nonlicensed services would avoid confusion. In addition, the State Fund requests language be added to indicate that an insurer's prior approval is required for payment for nonlicensed services. The State Fund proposes the following amendment: "(6) Each provider is to limit services to those which can be performed within the limits and restriction of the provider's professional licensure. For nonlicensed providers, if an individual provides non licensed medical services, and the services are approved by the insurer, the insurer is not required to reimburse above the related CPT codes for appropriate services."

Response 5: While the department understands the State Funds' desire for more clarity, the department believes that the requested changes are outside the scope of the proposed rule notice because notice to the public was not given regarding these suggested changes. Accordingly, the department concludes that it would not be

appropriate to make the requested change at this time. Further, the department notes that the definition of provider does not require licensure. The department will consider clarifying this issue in the future.

Comment 6: The Montana Chapter of the American Physical Therapy Association requested clarification as to why New Rule III(6) addresses reimbursement to nonlicensed providers under the RBRVS.

Response 6: As an example, currently in Montana, massage therapists are not licensed by the state. It is the department's understanding that some treating physicians reasonably prescribe massage as an appropriate therapy for treatment of certain conditions. Therefore the department believes that the rule is necessary to indicate the reimbursement rates for those providers.

Comment 7: The State Fund and the Montana Chapter of the American Physical Therapy Association requested the department clarify that under New Rule III(8), which provides for the new Montana unique code MT001, providers will be reimbursed for conferences with vocational rehabilitation counselors.

Response 7: The department agrees that providers should be reimbursed by insurers for activities required by vocational rehabilitation counselors. However, the department does not believe clarification in the rule is required because it considers vocational rehabilitation counselors to be payor representatives and as such are already included in the rule. Accordingly, any face to face conferences, nonphysician conferences, or completion of a job description or job analysis form requested by a vocational rehabilitation counselor would be reimbursed under MT001. This response shall serve as the clarification requested.

Comment 8: The Montana Chapter of the American Physical Therapy Association commented that the department should add a requirement that insurers shall make payments to providers within 30 days, similar to the requirement that insurers pay hospitals within 30 days as provided by ARM 24.29.1426 and New Rule I.

Response 8: The department agrees that insurers should make timely payments to providers, as this is required by the reasonableness standard in 39-71-704, MCA. However, a specific administrative rule to that effect is outside the scope of this rules proposal and therefore cannot be addressed in this notice. The department will consider proposing such a requirement in the future.

Comment 9: Numerous commentors expressed support for the proposed amendments and new rules and indicated general support for switching to the RBRVS system. In addition, the State Fund and the Montana Chapter of the American Physical Therapy Association expressed support for using MT001 to clarify payment for payor conferences. Specifically, the Montana Chapter of the American Physical Therapy Association noted that this code allows for the additional administrative costs of handling a workers' compensation claim.

Response 9: The department acknowledges the comments.

Comment 10: Regarding New Rule V, the chiropractic fee schedule, and New Rule VII, the occupational and physical therapy fee schedule, the State Fund requested that code 99070 be deleted from the proposed rules and replaced with instructions to bill supplies using the appropriate HCPCS code for these items per ARM 24.29.1521. The State Fund noted that report code 99070 is a by report code for supplies and materials beyond the normal office visit.

Response 10: The department agrees in part and has amended the rule accordingly. The department believes that changing from code 99070 to the HCPCS codes does not constitute a substantive change. The department notes however that chiropractors and occupational and physical therapists do not bill under ARM 24.29.1521 or New Rule II. Rather, they are restricted to billing under the codes allowed by ARM 24.29.1572, 24.29.1582, 24.29.1584, New Rule V and New Rule VII. Therefore, the amendments add the HCPCS requirement to New Rules V and VII. Similarly, the department notes that HCPCS codes also provide reimbursement amounts for any medication used in conjunction with iontophoresis. Therefore, this clarification is made within New Rule VII, rather than in the prescription drug fee schedule.

4. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

24.29.207 CONTESTED CASES (1) and (2) remain as proposed.

(3) A contested case concerning employment classifications assigned to an employer by a Plan 2 or Plan 3 insurer is administered by the classification review committee in accordance with 33-16-1012, MCA.

(4) remains as proposed.

AUTH: 2-4-201, 39-71-203, MCA

IMP: Title 2, chapter 4, part 6, 33-16-1012, 39-71-204, 39-71-415, 39-71-704, 39-71-2401, 39-71-2905, MCA

24.29.1566 PHYSICIAN FEES -- ANESTHESIA SPECIALTY AREA FOR SERVICES PROVIDED FROM APRIL 1, 1993, THROUGH DECEMBER 31, 2007

(1) For services provided from April 1, 1993, through December ~~30~~ 31, 2007, except as otherwise provided by this rule, fees for the anesthesia medical specialty area are payable according to the values listed in Relative Values for Physicians. Special unit value rules listed in (4) and (5) are established for anesthesia. Those special unit value rules supersede the corresponding unit values listed in Relative Values for Physicians, and apply to all providers. A physician who furnishes other medical services in addition to anesthesia must use the fee schedule that applies to the services rendered.

(2) through (5) remain as proposed.

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

5. The following rules have been amended as proposed: 24.29.1404, 24.29.1426, 24.29.1504, 24.29.1521, 24.29.1532, 24.29.1536, 24.29.1541, 24.29.1551, 24.29.1561, 24.29.1572, 24.29.1573, 24.29.1582, 24.29.1583, and 24.29.1584.

6. The department has adopted the following rules as proposed:

NEW RULE I (24.29.1427) HOSPITAL SERVICE RULES FOR CLAIMS ARISING ON OR AFTER JANUARY 1, 2008

NEW RULE II (24.29.1522) MEDICAL EQUIPMENT AND SUPPLIES FOR DATES OF SERVICE ON OR AFTER JANUARY 1, 2008

NEW RULE IV (24.29.1538) CONVERSION FACTORS FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008 – METHODOLOGY

NEW RULE VI (24.29.1575) CHIROPRACTIC -- PRIOR AUTHORIZATION AND BILLING LIMITATIONS FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008

NEW RULE VIII (24.29.1586) OCCUPATIONAL AND PHYSICAL THERAPISTS -- PRIOR AUTHORIZATION AND BILLING LIMITATIONS FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008

7. The department has adopted the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE III (24.29.1533) NONFACILITY FEE SCHEDULE FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008 (1) The department adopts the fee schedule provided by this rule to determine the reimbursement amounts for medical services provided by an individual ~~medical service~~ provider at a nonfacility or facility furnished on or after January 1, 2008. An insurer is not obligated to pay more than the fee provided by the fee schedule for a service provided within the state of Montana. The fee schedule is comprised of the following elements:

(a) through (12) remain as proposed.

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

NEW RULE V (24.29.1574) CHIROPRACTIC FEE SCHEDULE FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008 (1) and (2) remain as proposed.

- (3) Only the following codes may be billed for chiropractic services:
 - (a) remains as proposed.
 - (b) special services, procedures, and report codes ~~99070~~, 99080, and MT001, and HCPCS codes for supplies and materials. Code MT001 is described in ARM 24.29.1533. A separate written report must be submitted describing the service provided when billing for the codes identified in this subsection;
 - (c) through (7) remain as proposed.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

NEW RULE VII (24.29.1585) OCCUPATIONAL AND PHYSICAL THERAPY
FEE SCHEDULE FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008

- (1) and (2) remain as proposed.
- (3) Only the following codes found in the nonfacility fee schedule may be billed for services provided by occupational therapists and physical therapists:
 - (a) remains as proposed.
 - (b) special services, procedures, and report codes ~~99070~~, 99080, and MT001, and HCPCS codes for supplies and materials. Code MT001 is described in ARM 24.29.1533. A separate written report must be submitted describing the service provided when billing for the codes identified in this subsection.
 - (4) remains as proposed.
 - (5) When billing code 97033 (iontophoresis), medication charges and electrode charges must each be billed separately for each visit using ~~code 99070~~ HCPCS codes.
 - (6) and (7) remain as proposed.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

/s/ MARK CADWALLADER

Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 15, 2007

/s/ MARK CADWALLADER

Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 15, 2007

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 37.85.207, 37.86.2820,)	
37.86.2907, 37.86.2932, 37.86.3001,)	
37.86.3020, and 37.86.4406 pertaining)	
to inpatient hospital, outpatient)	
hospital, and Rural Health Clinic (RHC))	
services)	

TO: All Interested Persons

1. On July 5, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-409 pertaining to the public hearing on the proposed amendment of the above-stated rules, at page 957 of the 2007 Montana Administrative Register, issue number 13.

2. The department has amended ARM 37.85.207, 37.86.2820, 37.86.2907, 37.86.2932, 37.86.3001, 37.86.3020, and 37.86.4406 as proposed.

3. No comments or testimony were received.

4. The department intends these amendments to be applied retroactively to October 1, 2007.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State October 15, 2007.

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

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT
37.86.3607 pertaining to case)	
management services for persons with)	
developmental disabilities,)	
reimbursement)	

TO: All Interested Persons

1. On July 26, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-410 pertaining to the public hearing on the proposed amendment of the above-stated rule, at page 1015 of the 2007 Montana Administrative Register, issue number 14.
2. The department has amended ARM 37.86.3607 as proposed.
3. No comments or testimony were received.

/s/ Cary B. Lund
Rule Reviewer

/s/ John Chappuis for
Director, Public Health and
Human Services

Certified to the Secretary of State October 15, 2007.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment)
of ARM 1.2.419 regarding the)
scheduled dates for the 2008 Montana)
Administrative Register)

NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On September 6, 2007, the Secretary of State published MAR Notice No. 44-2-140 regarding the public hearing on the proposed amendment of the above-stated rule at page 1310 of the 2007 Montana Administrative Register, Issue Number 17.

2. No comments or testimony were received.

3. The rule is amended exactly as proposed and appears in its entirety below:

1.2.419 FILING AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadline, and publication dates for material to be published in the Montana Administrative Register are listed below:

2008 Schedule

<u>Filing</u>	<u>Publication</u>
January 7	January 17
January 22	January 31
February 4	February 14
February 19	February 28
March 3	March 13
March 17	March 27
March 31	April 10
April 14	April 24
April 28	May 8
May 12	May 22
June 2	June 12
June 16	June 26
July 7	July 17
July 21	July 31
August 4	August 14
August 18	August 28
September 2	September 11
September 15	September 25

September 29
October 14
October 27
November 17
December 1
December 15

October 9
October 23
November 6
November 26
December 11
December 24

(2) All material to be published must be submitted by noon on the scheduled filing date. All material submitted after the scheduled filing deadline will not be published until the next scheduled publication date.

/s/ W. Ralph Peck for
W. RALPH PECK for
BRAD JOHNSON
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 15th day of October 2007.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF AMENDMENT
amendment of ARM 44.10.331)	
relating to limitations on)	
receipts from political)	
committees to legislative)	
candidates)	

TO: All Concerned Persons

1. On August 23, 2007 the Commissioner of Political Practices published MAR Notice No. 44-2-138 pertaining to the proposed amendment of the above-stated rule at page 1172 of the 2007 Montana Administrative Register, Issue Number 16.

2. The department has amended ARM 44.10.331 as proposed.

3. No comments or testimony were received.

/s/ Jim Scheier
Jim Scheier
Rule Reviewer

/s/ Dennis Unsworth
Dennis Unsworth
Commissioner
Political Practices

Certified to the Secretary of State October 15, 2007.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 44.14.301, 44.14.302, and	)	REPEAL
44.14.304 through 44.14.312, and)	
the repeal of ARM 44.14.303)	
pertaining to records and)	
information management fees)	

TO: All Concerned Persons

1. On August 23, 2007 the Secretary of State published MAR Notice No. 44-2-139 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1175 of the 2007 Montana Administrative Register, Issue Number 16.
2. The department has amended and repealed the above-stated rules as proposed.
3. No comments or testimony were received.
4. The rule amendments and repeal will be applied effective November 1, 2007.

/s/ W. Ralph Peck for
W. RALPH PECK for
BRAD JOHNSON
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 15th day of October 2007.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2007. This table includes those rules adopted during the period July 1 through September 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 June 30, 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 September 2007 appear. Vacancies scheduled to appear from November 1, 2007, through January 31, 2008, 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 October 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 SEPTEMBER 2007

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Investments (Commerce)			
Sen. Dan Weinberg Whitefish	President of the Senate	not listed	9/12/2007 0/0/0
Qualifications (if required): none specified			
Board of Veterans' Affairs (Military Affairs)			
Mr. C. E. Crookshanks Missoula	Governor	reappointed	9/12/2007 8/1/2011
Qualifications (if required): individual with experience with veterans' issues			
Mr. James Heffernan Helena	Governor	reappointed	9/12/2007 8/1/2011
Qualifications (if required): individual with experience with veterans' issues			
Mr. Lloyd Jackson Pablo	Governor	reappointed	9/12/2007 8/1/2011
Qualifications (if required): representative of tribal councils			
Mr. Bill Lombardi Helena	Governor	Converse	9/12/2007 8/1/2008
Qualifications (if required): nonvoting member and a representative of Senator Jon Tester			
Rep. Robert J. "Bob" Pavlovich Butte	Governor	reappointed	9/12/2007 8/1/2011
Qualifications (if required): individual with experience with veterans' issues			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2007

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Veterans' Affairs (Military Affairs) cont.			
Mr. Harvey Rattey Glendive	Governor	reappointed	9/12/2007 8/1/2011
Qualifications (if required): veteran and tribal member			
Mr. Don Slavens Billings	Governor	Luck	9/12/2007 8/1/2008
Qualifications (if required): nonvoting member and a representative of Senator Max Baucus			
Mr. Mike Waite Helena	Governor	Gerard	9/12/2007 8/1/2008
Qualifications (if required): nonvoting member and a representative of Congressman Dennis Rehberg			
Community Health Center Advisory Group (Public Health and Human Services)			
Ms. Maria Clemons Libby	Governor	not listed	9/12/2007 7/1/2009
Qualifications (if required): executive employee of a community health center			
Mr. Perry Howell Billings	Governor	not listed	9/12/2007 7/1/2009
Qualifications (if required): chief financial officer of a community health center			
Ms. Kathy Kenyon Billings	Governor	not listed	9/12/2007 7/1/2009
Qualifications (if required): public representative			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2007

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Community Health Center Advisory Group (Public Health and Human Services) cont.			
Ms. Marge Levine	Governor	not listed	9/12/2007
Helena			7/1/2009
Qualifications (if required): Montana Primary Care Association's designee			
Mr. Larry Putman	Governor	not listed	9/12/2007
Malta			7/1/2009
Qualifications (if required): public representative			
Director of the Department of Agriculture (Agriculture)			
Director Ron de Yong	Governor	Peterson	9/4/2007
Helena			0/0/0
Qualifications (if required): none specified			
Flathead Basin Commission (Natural Resources and Conservation)			
Mr. Ed Heger	Governor	Hunt	9/18/2007
Kalispell			6/30/2011
Qualifications (if required): public representative			
Mr. Donald Loranger	Governor	Wicks	9/18/2007
Bigfork			6/30/2011
Qualifications (if required): public representative			
Mr. Clinton Whitney	Governor	reappointed	9/18/2007
Polson			6/30/2011
Qualifications (if required): public representative			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2007

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Land Information Advisory Council (Administration)			
Mr. Mike Birtles Billings	Governor	reappointed	9/7/2007 6/30/2009
Qualifications (if required): United States Interior Department representative			
Director Dan R. Bucks Helena	Governor	reappointed	9/7/2007 6/30/2009
Qualifications (if required): Department of Revenue representative			
Ms. Annette Cabrera Billings	Governor	Sesso	9/7/2007 6/30/2009
Qualifications (if required): local government representative			
Mr. Lance Clampitt Bozeman	Governor	reappointed	9/7/2007 6/30/2009
Qualifications (if required): United States Interior Department representative			
Director Jeff Hagener Helena	Governor	reappointed	9/7/2007 6/30/2009
Qualifications (if required): Department of Fish Wildlife and Parks representative			
Ms. Lisa Kimmet Terry	Governor	reappointed	9/7/2007 6/30/2009
Qualifications (if required): local government representative			
Director Jim Lynch Helena	Governor	Opper	9/7/2007 6/30/2009
Qualifications (if required): Department of Transportation representative			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2007

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Land Information Advisory Council (Administration) cont.			
Mr. Ed Madej Helena	Governor	reappointed	9/7/2007 6/30/2009
Qualifications (if required): private sector representative			
Ms. Catherine Maynard Bozeman	Governor	reappointed	9/7/2007 6/30/2009
Qualifications (if required): United States Agriculture Department representative			
Mr. Don Patterson Missoula	Governor	reappointed	9/7/2007 6/30/2009
Qualifications (if required): United States Agriculture Department representative			
Mr. Art Pembroke Helena	Governor	reappointed	9/7/2007 6/30/2009
Qualifications (if required): local government representative			
Mr. Lorin Peterson Pablo	Governor	reappointed	9/7/2007 6/30/2009
Qualifications (if required): tribal government representative			
Mr. Alex Philip Missoula	Governor	Shannon	9/7/2007 6/30/2009
Qualifications (if required): private sector representative			
Director Mary Sexton Helena	Governor	reappointed	9/7/2007 6/30/2009
Qualifications (if required): Department of Natural Resources and Conservation representative			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2007

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Land Information Advisory Council (Administration) cont.			
Mr. Michael Sweet Missoula Qualifications (if required): GIS professional	Governor	reappointed	9/7/2007 6/30/2009
Mr. Ken Wall Missoula Qualifications (if required): GIS professional	Governor	reappointed	9/7/2007 6/30/2009
Ms. Christiane von Reichert Missoula Qualifications (if required): university representative	Governor	Lawrence	9/7/2007 6/30/2009
State-Tribal Economic Development Commission (Commerce)			
Mr. Jerry Lamb Helena Qualifications (if required): representative of the Governor's Office of Economic Development	Governor	not listed	9/12/2007 6/30/2010
Mr. Rodney Miller Wolf Point Qualifications (if required): representative of the Fort Peck Assiniboine and Sioux Tribes	Governor	reappointed	9/12/2007 6/30/2010
Youth Justice Council (Justice)			
Rep. Rosalie Buzzas Missoula Qualifications (if required): competency in addressing problems facing youth	Governor	McLaughlin	9/7/2007 9/7/2009

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2007

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Youth Justice Council (Justice) cont.			
Mr. Dennis Dronen Belt Qualifications (if required): juvenile probation officer	Governor	reappointed	9/7/2007 9/7/2009
Ms. Donna Falls Down Hardin Qualifications (if required): tribal court system representative	Governor	Robinson	9/7/2007 9/7/2009
Mr. Dale Four Bear Poplar Qualifications (if required): competency in addressing problems facing youth	Governor	reappointed	9/7/2007 9/7/2009
Ms. Chantelle Gournay Helena Qualifications (if required): youth representative	Governor	Strangeowl	9/7/2007 9/7/2009
Judge Pedro Hernandez Billings Qualifications (if required): representative of the local court system	Governor	reappointed	9/7/2007 9/7/2009
Ms. Tara Houde Missoula Qualifications (if required): youth representative	Governor	Royston	9/7/2007 9/7/2009
Mayor Pam Kennedy Kalispell Qualifications (if required): local elected official	Governor	reappointed	9/7/2007 9/7/2009

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2007

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Youth Justice Council (Justice) cont.			
Ms. Penny Kipp Pablo	Governor	reappointed	9/7/2007 9/7/2009
Qualifications (if required): competency in addressing problems facing youth			
Ms. Jennifer Kistler Missoula	Governor	reappointed	9/7/2007 9/7/2009
Qualifications (if required): youth representative			
Mr. Ted Lechner Billings	Governor	reappointed	9/7/2007 9/7/2009
Qualifications (if required): competency in addressing problems facing youth			
Father Jerry Lowney Helena	Governor	reappointed	9/7/2007 9/7/2009
Qualifications (if required): competency in addressing problems facing youth			
Ms. Joy Mariska Billings	Governor	Wallem	9/7/2007 9/7/2009
Qualifications (if required): competency in addressing problems facing youth			
Ms. Kim Miller Virginia City	Governor	not listed	9/7/2007 9/7/2009
Qualifications (if required): competency in addressing problems facing youth			
Mr. Wayne Stanford Stevensville	Governor	reappointed	9/7/2007 9/7/2009
Qualifications (if required): competency in addressing problems facing youth			

BOARD AND COUNCIL APPOINTEES FROM SEPTEMBER 2007

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Youth Justice Council (Justice) cont.			
Ms. Katie Yother Bozeman	Governor	reappointed	9/7/2007 9/7/2009
Qualifications (if required): youth representative			
Ms. Teri Young Miles City	Governor	reappointed	9/7/2007 9/7/2009
Qualifications (if required): competency in addressing problems facing youth			

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2007 through JANUARY 31, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Alternative Livestock Advisory Council (Governor) Mr. Don E. Woerner, Laurel Qualifications (if required): veterinarian	Governor	1/1/2008
Mr. Stan Frasier, Helena Qualifications (if required): sportsperson	Governor	1/1/2008
Mr. James Bouma, Choteau Qualifications (if required): alternative livestock industry representative	Governor	1/1/2008
Board of Horse Racing (Livestock) Mr. Robert G. Brastrup, Townsend Qualifications (if required): resident of District 4	Governor	1/20/2008
Capital Finance Advisory Council (Governor) Attorney Mike McGrath, Helena Qualifications (if required): Attorney General	Governor	11/22/2007
Rep. David Ewer, Helena Qualifications (if required): Budget Director	Governor	11/22/2007
Director Janet Kelly, Helena Qualifications (if required): Department of Administration Director	Governor	11/22/2007
Sen. Rick Laible, Victor Qualifications (if required): state senator	Governor	11/22/2007

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2007 through JANUARY 31, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Capital Finance Advisory Council (Governor) cont.		
Director Mary Sexton, Helena Qualifications (if required): Department of Natural Resources and Conservation	Governor	11/22/2007
Ms. Karen B. Fagg, Billings Qualifications (if required): Board of Investments representative	Governor	11/22/2007
Rep. Kevin Furey, Milltown Qualifications (if required): state representative	Governor	11/22/2007
Director Tony Preite, Helena Qualifications (if required): Department of Commerce Director	Governor	11/22/2007
Director Richard Opper, Helena Qualifications (if required): Department of Environmental Quality Director	Governor	11/22/2007
Director Jim Lynch, Helena Qualifications (if required): Department of Transportation Director	Governor	11/22/2007
Mr. J. P. Crowley, Helena Qualifications (if required): Board of Housing representative	Governor	11/22/2007
Secretary Brad Johnson, Helena Qualifications (if required): Secretary of State	Governor	11/22/2007
Mr. Bill Kearns, Townsend Qualifications (if required): Facility Finance Authority representative	Governor	11/22/2007

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2007 through JANUARY 31, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Capital Finance Advisory Council (Governor) cont. Mr. Mark Semmons, Great Falls Qualifications (if required): Board of Regents representative	Governor	11/22/2007
Lewis and Clark Bicentennial Commission (Historical Society) Mr. Darrell Kipp, Browning Qualifications (if required): Tribal representative	Governor	12/31/2007
Ms. Betty Stone, Glasgow Qualifications (if required): public representative	Governor	12/31/2007
Mr. Homer Staves, Billings Qualifications (if required): public representative	Governor	12/31/2007
Montana Council on Developmental Disabilities (Commerce) Rep. Carol Lambert, Broadus Qualifications (if required): legislator	Governor	1/1/2008
Dr. R. Timm Vogelsberg, Missoula Qualifications (if required): advocacy program representative	Governor	1/1/2008
Director Joan Miles, Helena Qualifications (if required): agency representative	Governor	1/1/2008
Ms. Sarah Casey, Helena Qualifications (if required): agency representative	Governor	1/1/2008

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2007 through JANUARY 31, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Council on Developmental Disabilities (Commerce) cont. Sen. Carol Williams, Missoula Qualifications (if required): legislator	Governor	1/1/2008
Ms. Diana Tavary, Helena Qualifications (if required): advocacy program representative	Governor	1/1/2008
Mr. Jeff Sturm, Helena Qualifications (if required): agency representative	Governor	1/1/2008
Mr. Roger Holt, Billings Qualifications (if required): advocacy program representative	Governor	1/1/2008
Montana Licensed Addiction Counselors' Program Advisory Council (Labor and Industry) Ms. Karen Workman, Great Falls Qualifications (if required): Licensed Addiction Counselor	Director	12/27/2007
Ms. Kim McNamara, Billings Qualifications (if required): Private Practitioner	Director	12/27/2007
Ms. Vanessa Sexson, Bozeman Qualifications (if required): Montana Association of Alcoholism and Drug Abuse Counselor	Director	12/27/2007
Ms. Marlene O'Connell, Great Falls Qualifications (if required): University Member	Director	12/27/2007
Ms. Linda Carpenter, Whitefish Qualifications (if required): Public Member	Director	12/27/2007

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2007 through JANUARY 31, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Organic Commodity Advisory Council (Agriculture)		
Ms. Laura Garber, Hamilton Qualifications (if required): organic producer	Director	11/7/2007
Ms. Andre Giles, Fort Benton Qualifications (if required): organic handler	Director	11/7/2007
Mr. Mark Bruckner, Malta Qualifications (if required): organic producer	Director	11/7/2007
Montana's Advisory Council on Civil Rights Honoring Martin Luther King Jr. (Office of Community Service)		
Sen. Dorothy Eck, Bozeman Qualifications (if required): Public Representative	Governor	1/13/2008
Ms. June Hermanson, Billings Qualifications (if required): Public Representative	Governor	1/13/2008
Sen. Christine Kaufmann, Helena Qualifications (if required): Public Representative	Governor	1/13/2008
Ms. Jessie James-Hawley, Harlem Qualifications (if required): Public Representative	Governor	1/13/2008
Ms. Marilyn Kramer, Billings Qualifications (if required): Public Representative	Governor	1/13/2008
Mr. Murray Pierce, Turah Qualifications (if required): Public Representative	Governor	1/13/2008

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2007 through JANUARY 31, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana's Advisory Council on Civil Rights Honoring Martin Luther King Jr. (Office of Community Service) cont. Ms. Katie Stevens, Great Falls Qualifications (if required): Public Representative	Governor	1/13/2008
Small Business Health Insurance Pool Board (Auditor) Mr. Bob Marsenich, Polson Qualifications (if required): consumer representing small business	Governor	1/1/2008
Trauma Care Committee (Public Health and Human Services) Mr. Joseph D. Hansen, Big Timber Qualifications (if required): representative of the Eastern Region Trauma Advisory Committee	Governor	11/2/2007
Dr. Gregory J. Moore, Missoula Qualifications (if required): representative of the Western Region Trauma Advisory Committee	Governor	11/2/2007
Mr. Michael P. McGree, Butte Qualifications (if required): representative of private ambulance operators	Governor	11/2/2007
Dr. Kirby Peden, Big Timber Qualifications (if required): representative of the Eastern Region Trauma Advisory Committee	Governor	11/2/2007
Mr. Tim Sinton, Choteau Qualifications (if required): representative of the Central Region Trauma Advisory Committee	Governor	11/2/2007
Mr. John Bleicher, Missoula Qualifications (if required): representative of Montana Trauma Coordinators	Governor	11/2/2007

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2007 through JANUARY 31, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Trauma Care Committee (Public Health and Human Services) cont.		
Ms. Pauline Linnell, Bigfork Qualifications (if required): representative of Montana Emergency Medical Services Association	Governor	11/2/2007
Mr. William Taylor, Bigfork Qualifications (if required): representative of Montana Emergency Nurses Association	Governor	11/2/2007
Mr. Randall Combs, Lame Deer Qualifications (if required): representative of Indian Health Service	Governor	11/2/2007
Dr. James Bentler, Billings Qualifications (if required): American College of Emergency Physicians representative	Governor	11/2/2007
Dr. Dennis Maier, Billings Qualifications (if required): American College of Surgeons/Trauma Committee representative	Governor	11/2/2007
Upper Clark Fork River Basin Remediation and Restoration Advisory Council (Justice)		
Mr. Larry Curran, Butte Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008
Mr. John Hollenback, Gold Creek Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008
Ms. Sally Johnson, Missoula Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008
Ms. Barbara Evans, Missoula Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2007 through JANUARY 31, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Upper Clark Fork River Basin Remediation and Restoration Advisory Council (Justice) cont. Ms. Kathy Hadley, Deer Lodge Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008
Director Jeff Hagener, Helena Qualifications (if required): Director of the Department of Fish Wildlife and Parks	Governor	1/19/2008
Director Mary Sexton, Helena Qualifications (if required): Director of the Department of Natural Resources and Conservation	Governor	1/19/2008
Mr. James Dinsmore, Hall Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008
Director Richard Opper, Helena Qualifications (if required): Director of the Department of Environmental Quality	Governor	1/19/2008
Mr. Dennis Daneke, Missoula Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008
Mr. Paul Babb, Butte Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008
Mr. Milo Manning, Anaconda Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008
Ms. Robbie Taylor, Butte Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008

VACANCIES ON BOARDS AND COUNCILS -- NOVEMBER 1, 2007 through JANUARY 31, 2008

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Upper Clark Fork River Basin Remediation and Restoration Advisory Council (Justice) cont. Mr. James Yeoman, Anaconda Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008
Ms. Rebecca Guay, Anaconda Qualifications (if required): resident of Upper Clark Fork River Basin	Governor	1/19/2008