

# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 8

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 Adoption 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 DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.85.212 and 37.86.205 ) PROPOSED AMENDMENT  
pertaining to resource based relative )  
value scale (RBRVS) Medicaid )  
provider rates and mid-level )  
practitioner's reimbursement for )  
services to Medicaid clients under )  
age 21 )

TO: All Concerned Persons

1. On May 20, 2009, at 1:30 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 North Sanders, 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 or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on May 11, 2009, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.85.212 RESOURCE BASED RELATIVE VALUE SCALE (RBRVS) REIMBURSEMENT FOR SPECIFIED PROVIDER TYPES (1) For purposes of this rule, the following definitions apply:

(a) remains the same.

(b) "Conversion factor" means a dollar amount by which the relative value units, or the base and time units for anesthesia services, are multiplied in order to ~~convert the relative value units to a~~ establish the RBRVS fee for a service. Effective July 1, 2008 there ~~will be~~ are four conversion factors factor categories. They are:

(i) physician services, which applies to the following health care professionals listed in (2): physicians, mid-levels, podiatrists, public health clinics, independent diagnostic testing facilities, nutrition providers, QMB and EPSDT chiropractors, and dentists rendering medical procedures; The conversion factor for physician services for state fiscal year 2010 is \$38.43;

(ii) allied services, which applies to the following health care professionals listed in (2): physical therapists, occupational therapists, speech therapists, optometrists, opticians, audiologists, and school-based services. The conversion factor for allied services for state fiscal year 2010 is \$30.49;

(iii) mental health services, which applies to the following health care professionals listed in (2): psychologists, licensed clinical social workers, and licensed professional counselors. The conversion factor for mental health services for state fiscal year 2010 is \$25.95; ~~or~~ and

(iv) anesthesia services, which applies to anesthesia services. The conversion factor for anesthesia services for state fiscal year 2010 is \$26.25.

(c) "Conversion factor category" means the four categories of providers for purposes of calculating Medicaid fees. The categories are physician services, allied services, mental health services, and anesthesia services.

~~(e)~~ (d) "Policy adjustor" means a factor by which the product of the relative value units and the conversion factor is multiplied to increase or decrease the fees paid by Medicaid for certain categories of services.

~~(d)~~ "Provider's invoice cost" means the actual dollar amount paid by a Medicaid provider for a specific item of durable medical equipment (DME) or supply. It does not include any markup added by the provider.

(e) "Provider rate of reimbursement adjustment" means the change to the RBRVS fee calculated for a procedure based on the health care professional delivering the service.

(f) "Rate variable" means a multiplier in the rate equation, such as a policy adjustor, a provider rate of reimbursement, or pricing modifier, that changes the RBRVS rate for a procedure or service.

(g) "RBRVS fee" for a covered procedure means the amount calculated by multiplying the relative value units (or the base and time units for anesthesia services) for the procedure by the appropriate conversion factor. If applicable, a rate variable may be applied to the RBRVS fee to calculate the Montana Medicaid fee for the procedure.

~~(e)~~ (h) "Relative value unit (RVU)" means a numerical value assigned in the resource based relative value scale to each procedure code used to bill for services provided by a health care provider. The relative value unit assigned to a particular code expresses the relative effort and expense expended by a provider in providing one service as compared with another service.

~~(f)~~ (i) "Resource based relative value scale (RBRVS)" means the most current version of the Medicare resource based relative value scale contained in the physicians' Medicare Physician Fee Schedule adopted by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services and published at 72 Federal Register 227 (November 27, 2007), effective January 1, 2008 73 Federal Register 224, 69726 (November 19, 2008), effective January 1, 2009 which is adopted and incorporated by reference. A copy of the Medicare Physician 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. The RBRVS reflects RVUs for estimates of the actual effort and expense involved in providing different health care services.

~~(g)~~ (j) "Subsequent surgical procedure" means any additional surgical procedure or service, except for add-ons and modifier 51 exempt codes, performed after a primary operation in the same operative session.

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

(3) Except as set forth in (8) through (12)(a)(vi), the RBRVS fee for a covered service ~~provided by any of the provider types specified in (2)(a) through (2)(t) is determined~~ is calculated by multiplying the RVUs determined in accordance with (7) through (7)(a)(ii)(C) (or the base and time units for anesthesia services) by the conversion factor, which is required to achieve the overall budget appropriation for provider services made by the Montana Legislature in the most recent legislative session and ~~then multiplying the product by a factor of one plus or minus the applicable policy adjustor as provided in (4), if any.~~ The RBRVS fee may also be multiplied by a rate variable to calculate the fee paid by Medicaid.

(4) The conversion factor for physician services is calculated as stated in sections 53-6-124 through 126, MCA. The conversion factor for allied services, mental health services, and anesthesia services is calculated as follows:

(a) The total RVUs for the prior period is calculated as the sum of the product of the RVUs for a procedure code multiplied by the number of times the procedure code was paid in a prior period.

(b) The total RVUs for the prior period is multiplied by the projected change in utilization to estimate utilization during the appropriation period.

(c) The Montana Legislature's appropriation for the period is divided by the estimated utilization for the period to calculate the conversion factor.

(d) The RVU assigned to each procedure code is multiplied by the appropriate conversion factor to calculate the RBRVS fee for a particular procedure code.

~~(4)~~ (5) For state fiscal year ~~2009~~ 2010, policy adjustors will be used to accomplish the targeted funding allocations. The department's list of services affected by policy adjustors through July 1, ~~2008~~ 2009 is adopted and incorporated by reference. The list is available from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

~~(5)~~ (6) The ~~60th~~ 61st Legislature appropriated additional funds for state fiscal year ~~2009~~ 2010. For all provider services identified in ~~(2)(a) through (2)(t)~~ there will be ~~4.67%~~ \$1,065,121 additional funds. ~~There was also an additional appropriation of \$2,043,234 for physician services only; it will be included in the physician conversion factor.~~

~~(6) The RVUs for most services are adopted from the resource based RBRVS.~~

(7) The RVUs for most services are adopted from the resource based RBRVS. For services for which the RBRVS does not specify RVUs, the department sets those RVUs as follows:

(a) through (7)(a)(ii)(C) remain the same.

(8) Except for physician administered drugs as provided in ARM 37.86.105(4), clinical, laboratory services, and anesthesia services, if neither Medicare nor Medicaid sets RVUs, then reimbursement is by report.

(a) remains the same.

(b) For state fiscal year ~~2009~~ 2010, the by report rate is ~~45%~~ 46% of the provider's usual and customary charges.

(9) through (9)(b)(iii) remain the same.

(10) For anesthesia services the department pays the lower of the following for procedure codes with fees:

(a) remains the same.

(b) a fee determined by multiplying the anesthesia conversion factor by the sum of the applicable base and time units, and then multiplying the product by a ~~factor of one plus or minus~~ the applicable policy adjustor, if any;

(c) the department pays the lower of the following for procedure codes without fees:

(i) the provider's usual and customary charges for the services; or

(ii) the by report rate.

~~(11) For equipment and supplies:~~

~~(a) the department pays the lower of the following for durable medical equipment (DME) items with fees:~~

~~(i) the provider's invoice cost for the DME; or~~

~~(ii) the Medicaid fee schedule as provided in ARM 37.86.1807.~~

~~(b) the department pays the lower of the following for DME items without fees:~~

~~(i) the provider's invoice cost for the DME; or~~

~~(ii) the by report rate provided in (8)(b).~~

~~(c) except for the bundled items as provided in (13), the department pays the lower of the following for supply items with fees:~~

~~(i) the provider's invoice cost for the supply item; or~~

~~(ii) the Medicaid fee schedule as provided in ARM 37.86.1807.~~

~~(d) except for bundled items as provided in (13), the department pays the lower of the following for supply items without fees:~~

~~(i) the provider's invoice cost for the supply item; or~~

~~(ii) the by report rate provided in (8)(a).~~

(11) For providers listed at ARM 37.85.212(2) billing for durable medical equipment, prosthetics, orthotics, and medical supplies (DMEPOS), except for the bundled items as provided in (13); the department pays:

(a) the fee listed on the Medicaid fee schedule as provided in ARM 37.86.1807; or

(b) if there is no fee in (11)(a), the amount determined by multiplying the by report rate provided in (8)(b) by the billed charges.

(12) Subject to the provisions of (12)(a), when billed with a modifier, payment for procedures established under the provisions of (7) is a percentage of the rate established for the procedures.

(a) The methodology to determine the specific percent for each modifier is as follows:

(i) and (ii) remain the same.

(iii) The department's list of the specific percents for the modifiers used by Medicaid as amended through ~~January 1, 2005~~ July 1, 2009 is adopted and incorporated by reference. A copy of the list is available on request from the

Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(iv) through (14) remain the same.

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

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

37.86.205 MID-LEVEL PRACTITIONER SERVICES, REQUIREMENTS AND REIMBURSEMENT (1) through (5)(b) remain the same.

(6) Reimbursement for immunizations, family planning services, administration of injectables, radiology, laboratory and pathology, cardiography and echocardiography services and for ~~early and periodic screening, diagnostic and treatment services (EPSDT)~~ clients under 21 years of age is the lower of:

(a) through (10) remain the same.

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

IMP: 53-6-101, MCA

4. The Department of Public Health and Human Services (department) is proposing amendments to ARM 37.85.212 and 37.86.205. Montana Medicaid is a program administered by the department that pays for medical assistance to qualified low income and disabled Montana residents. Montana and the federal government jointly fund the program. Montana pays providers for service delivered to eligible individuals enrolled in the Medicaid program. These rule amendments are necessary to give notice of the reimbursement rate changes for state fiscal year 2010. These changes are based on the state fiscal year 2010 and 2011 appropriations by the 61st Legislature.

Medicaid reimbursement rates are calculated based on the Montana Legislature's appropriations and the department's estimates of service utilization during the appropriation period. Fee schedules are generated by multiplying the American Medical Association's and the Center for Medicare and Medicaid's (CMS) jointly determine relative value units (RVUs) for a covered procedure by the Montana Medicaid conversion factor established for the provider type.

#### ARM 37.85.212

The department is proposing to add definitions for clarity and provide more detail about how it calculates the four conversion factors used to set rates. It is also making its annual rule amendment to set the rate Montana Medicaid reimburses providers based on the Legislature's appropriation for state fiscal year 2010. The proposed amendments are necessary to update the Resource Based Relative Value Scale (RBRVS) fees paid to enrolled providers in accordance with the RVUs published in the Federal Register in November 2008.

The change in rates is effective July 1, 2009. The option of not updating RVUs and RBRVS fees was considered and rejected because the department wants to

continue to reimburse providers as accurately as possible using current RBRVS and RVUs.

The proposed amendments to state the details of the calculation of the four conversion factors is not a change in the method of calculating rates. The department is stating the detail in rule to comply with recent requests for additional information by the CMS, the federal agency that administers the federal Medicaid program.

ARM 37.85.212 is also being amended to change the "by report" reimbursement rate from 45% to 46%. This is also an annual change based on the information contained in 37.85.212(8). The "by report" reimbursement method is used for the relatively small number of procedures that do not have sufficient data to calculate a fee schedule rate. The by-report rate is a ratio of the previous years' reimbursement to the total amount billed.

ARM 37.85.212(11) is amended to replace the term "durable medical equipment and supplies" with the current term used by CMS "durable medical equipment, prosthetics, orthotics and medical supplies" (DMEPOS). This rule is also edited for clarity but not for a substantive change in policy. The department is clarifying rule language to more clearly state that the fees for DMEPOS set by this rule only apply to incidental billing for DMEPOS by the providers identified in ARM 37.85.212(2) if the equipment or supply is not bundled as part of the provider fee. The general requirements for DMEPOS coverage and billing are stated in ARM Title 37, chapter 86, part 18.

#### ARM 37.86.205

Most services that mid-level practitioners perform are reimbursed at the lower of usual and customary charges or 90% of the RBRVS rate for physicians. ARM 37.86.205(6), however, reimburses mid-level practitioners at the lower of usual and customary charges or 100% of the RBRVS rate for early and periodic screening, diagnostic and treatment (EPSDT) services. EPSDT services are a subset of services provided to individuals under the age of 21. It has been the practice of the department for several years to pay mid-level practitioners at 100% of the RBRVS rate for physicians for all services to individuals under 21 years of age, not just for EPSDT services. The department does this to improve access to services for Medicaid clients under 21. This rule amendment conforms the administrative rule to the current rate. The option of not amending the mid-level practitioner reimbursement language was considered and rejected because the department wants to match administrative rules to business practices.

Amendment of these rules impacts approximately 75,000 Medicaid clients and 6,000 providers.

#### Fiscal Impact:

The estimated cumulative fiscal impact of these rules is based on the Legislative Appropriation for ARM 37.85.212 Resource Based Relative Value Scale (RBRVS) provider type services in House Bill 2 as of April 15, 2009.

	<u>Total Cost</u>	<u>State General Fund</u>	<u>Federal Match</u>
SFY 2010	\$1,065,121	\$251,049	\$814,072

The Legislature is in session on the date this notice is filed with the Secretary of State. The final rule will reflect the final appropriation as determined by the Legislature.

5. The department intends to apply these rules effective July 1, 2009. In the event the rules are amended retroactively no negative impact is anticipated.

6. 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: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., May 28, 2009.

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

8. 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 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 6 above or may be made by completing a request form at any rules hearing held by the department.

9. 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 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.

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

/s/ Geralyn Driscoll  
Rule Reviewer

/s/ Anna Whiting Sorrell  
Anna Whiting Sorrell, Director  
Public Health and Human Services

Certified to the Secretary of State April 20, 2009.

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 ON  
ARM 37.86.1001, 37.86.1004, ) PROPOSED AMENDMENT  
37.86.1005, and 37.86.1006 )  
pertaining to Medicaid dental service )  
providers' reimbursement rates )

TO: All Concerned Persons

1. On May 20, 2009, at 3:00 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 North Sanders, 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 or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on May 11, 2009, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.86.1001 DENTAL SERVICES, DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) remains the same.

(2) "Conversion factor" means the multiplier used to convert the relative value unit or units of a procedure to a reimbursement rate a provider may receive in payment from Montana Medicaid. The dental conversion factor approximates the amount the Legislature has appropriated for one unit of value of dental services.

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

(6) "Policy adjustor" means a factor by which the product of the relative value units of a procedure or the conversion factor is multiplied to increase or decrease the fees paid by Montana Medicaid for certain categories of services.

(7) "Procedure code" means the number identifying a particular procedure. Montana Medicaid has adopted national uniform procedure codes.

(5) through (7) remain the same but are renumbered (8) through (10).

AUTH: 53-6-113, MCA  
IMP: 53-6-101, ~~53-6-144~~, MCA

37.86.1004 REIMBURSEMENT METHODOLOGY FOR SOURCE BASED RELATIVE VALUE FOR DENTISTS (RVD) (1) For procedures listed in the relative values for dentists scale, reimbursement rates shall be determined using the following methodology:

(a) The fee for a covered service shall be the amount determined by multiplying the relative value unit specified in the relative values for dentists scale by the conversion factor specified in ~~(1)(b)~~ (1)(c). The department adopts and incorporates by reference the ~~Relative Values for Dentists scale (RVDs)~~ Relative Values for Dentists scale (RVDs) published in ~~2007~~ 2009. ~~Copies of the relative values for dentists scale are~~ The RVDs scale is available upon request from for inspection at the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(b) The conversion factor and provider fees for dentists, dental hygienists, and denturists procedures are calculated as follows:

(i) The total units of each procedure code paid in a prior period is multiplied by the RVU as published in (1)(a) to equal the RVD for each procedure code. Typically, the prior period used is the prior state fiscal year.

(ii) The sum of all RVDs calculated in (1)(b)(i) equals the total units of dental service.

(iii) The Montana Legislature's appropriation for dental service during the appropriation period is divided by the total units of dental service calculated in (1)(b)(ii). The resulting dollar value is equal to one unit of dental value and is the dental conversion factor.

(iv) The RVU as published in (1)(a) for each dental procedure is multiplied by the dental conversion factor calculated in (1)(b)(iii) to calculate the Medicaid reimbursement for the procedure. When this calculation is made for all covered procedures the Montana Medicaid Dental, Dental Hygienist, and Denturist Fee Schedules are generated.

(v) A policy adjuster may be applied to some fees calculated in (1)(b)(iv) for certain categories of services or to the conversion factor to increase or decrease the fees paid by Medicaid.

~~(b) (c)~~ (c) The conversion factor used to determine the Medicaid payment amount for services provided to eligible individuals is ~~\$31.27~~ \$31.77.

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

IMP: 53-6-101, MCA

37.86.1005 DENTAL SERVICES, REIMBURSEMENT (1) through (6) remain the same.

(7) Payment for orthodontia will be as follows:

(a) Full band orthodontia for Medicaid recipients who have cleft lip/palate, craniofacial anomalies or malocclusions caused by traumatic injury and interceptive orthodontia for Medicaid recipients who have posterior crossbite with shift, anterior crossbite and/or anterior deep bite at 80% or greater vertical incisor overbite, will be reimbursed at 85% of the provider's usual and customary charge, subject to the

maximum allowable charge as published in the department's Dental and Denturist Program Provider Manual effective ~~October 2007~~ July 2009.

(b) and (c) remain the same.

(d) Maximum allowable charges for each phase of orthodontic treatment, time lines for orthodontic phases of care, and the services included in each phase of orthodontic care are listed in the department's Dental and Denturist Program Provider Manual. The department adopts and incorporates by reference the department's Dental and Denturist Program Provider Manual effective ~~October 2007~~ July 2009. The guidelines, issued by the department to all providers of orthodontic services, inform providers of the requirements applicable to the delivery of services. A copy of the department's Dental and Denturist Program Provider Manual is available from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

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

IMP: 53-6-101, 53-6-113, ~~53-6-144~~, MCA

37.86.1006 DENTAL SERVICES, COVERED PROCEDURES (1) For purposes of specifying coverage of dental services through the Medicaid program, the department adopts and incorporates by reference the Dental and Denturist Program Provider Manual effective ~~October 2007~~ July 2009. The Dental and Denturist Program Provider Manual informs the providers of the requirements applicable to the delivery of services. Copies of the manual are available on the Montana Medicaid provider web site at <http://medicaidprovider.hhs.mt.gov> and from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(2) through (8)(a) remain the same.

(9) Coverage of denture services are is subject to the following requirements and limitations:

(a) through (17) remain the same.

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

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

4. The Department of Public Health and Human Services (department) is proposing the amendment of ARM 37.86.1001, 37.86.1004, 37.86.1005, and 37.86.1006 pertaining to Medicaid dental services. Montana Medicaid is a program administered by the department that pays for medical assistance to qualified low income and disabled Montana residents. Montana and the federal government jointly fund the program.

The Medicaid provider reimbursement rate is calculated using the Montana Legislature's bi-annual appropriations for Medicaid dental services. Fee schedules are generated by multiplying the relative value units for covered dental services by the dental conversion factor. Montana pays providers for service delivered to eligible individuals enrolled in the Medicaid program based on the fee schedules. These rule amendments are necessary to give notice of Montana Medicaid's dental

reimbursement rate for state fiscal year 2010, which is based on the state fiscal year 2010 and 2011 appropriation for dental services by the 61st Legislative Session.

Rule amendments are also proposed to state Montana Medicaid's methodology for calculating the dental conversion factor. The department is not changing its method of calculating the dental conversion factor. The department is stating its methodology in rule to comply with requests for additional information by the Centers for Medicare and Medicaid Services, the federal agency that administers the Medicaid program.

#### ARM 37.86.1001

The department is proposing to amend ARM 37.86.1001 to state in rule the definitions of the term "conversion factor", "policy adjuster", and "procedure code". ARM 37.86.1004 currently uses the term conversion factor and a definition is necessary for clarity. The term is commonly used to refer to the dollar factor by which the relative value of a medical procedure is multiplied to set a reimbursement rate. Montana Medicaid is adding the definition but it is not changing the method it uses to calculate the dental conversion factor.

Montana Medicaid is also adding the definition of policy adjuster. Policy adjusters are used to calculate some procedures' provider rates. Policy adjusters may be used to factor in forecasted utilization changes or errors in the reported RVUs. A definition of "procedure code" is added because this term is used throughout the dental rules. "Procedure code" means the numerical code identifying a dental procedure. Montana Medicaid adopted the uniform coding system used nationwide.

#### ARM 37.86.1004

The department is proposing an amendment to ARM 37.86.1004(1)(b) to state how it converts the relative value assigned to dental procedures into Montana Medicaid's dental fee schedules. The department has used fee schedules based on the relative value of dental services and an annual conversion factor for a number of years. This rule amendment is not a change in policy. The amendment is necessary to state in more detail the current rate setting process, which is similar to the method used by other health plans that reimburse on a fee for service basis.

Dental procedures are identified by uniform procedure codes. Montana does not create the coding system, it adopts the system used nationwide. The value of a particular procedure, identified by uniform code, is set relative to other dental procedures, based on factors such as work time, skill level, practice expense, and professional liability insurance. These values are expressed numerically as the relative value for dental services (RVD) referred to in rule. For example, if Procedure A has a RVU of 1 and procedure B has a RVU of 3, other factors being equal, procedure B will be reimbursed at three times the rate of procedure A. The department does not set RVDs, it adopts national RVDs.

Health plan fee schedules are calculated by multiplying RVDs by a conversion factor that represents the dollar value assigned by the payer, in this case Montana Medicaid, to one unit of dental service. Additionally, Montana Medicaid may use policy adjustors to calculate reimbursement rates for some procedures or the conversion factor to increase or decrease a fee for a particular service because of access or funding issues.

The conversion factor states the dollar value that Montana Medicaid assigns to one unit of dental care. Montana Medicaid calculates the conversion factor based on the Legislature's appropriation for the coming fiscal year divided by an estimate of total units of dental service that will be provided. Past year utilization and an estimate of increase in demand are used to estimate utilization. The department is proposing an amendment to ARM 37.86.1004(1)(c) to state the value it calculates for the dental conversion for state fiscal year (SFY) 2010.

These rules amendments are published prior to the end of the 61st Legislative Session in order to change rates by July 1, 2010. The final conversion factor may change based on the final appropriation of the Montana Legislature.

ARM 37.86.1005 and ARM 37.86.1006

These changes refer to a change in the Dental and Denturist Program Provider Manual. The change is intended to improve access to preventative dentistry services for babies and children through a new practice standard being developed by Montana dentists and the Montana Dental Association. The new practice standard is called Access to Baby and Child Dentistry (ABCD). This change allows dentists with the specialty training as an ABCD provider to utilize the new procedure codes D0145 and D0425 for children under age three and D1310 and D1330 for children under age six. Because the department is revising its Dental and Denturist Program Provider Manual effective July 1, 2009, it is amending the dates referenced in (7)(a) and (7)(d) of the rule from October 2007 to July 2009.

Fiscal Impact:

The estimated cumulative fiscal impact of these rules is based on the Legislative Appropriation for dental services in House Bill 2 as of April 15, 2009.

	<u>Total Cost</u>	<u>State General Fund</u>	<u>Federal Match</u>
SFY 2010	\$273,007	\$64,348	\$208,659

State General Fund and Federal Match based on the American Recovery and Reinvestment Act (ARRA) FMAP. At the time this proposed rule amendment was filed with the Secretary of State the 2009 Legislature had not finalized the biennial appropriation for dental services. When the appropriation is finalized, the amount of the conversion factor stated in this notice may change.

5. The department intends to apply these rules effective July 1, 2009. In the event the rules are amended retroactively no negative impact is anticipated.

6. 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: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., May 28, 2009.

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

8. 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 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 6 above or may be made by completing a request form at any rules hearing held by the department.

9. 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 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.

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

/s/ GERALYN DRISCOLL  
Rule Reviewer

/s/ ANNA WHITING SORRELL  
Anna Whiting Sorrell, Director  
Public Health and Human Services

Certified to the Secretary of State April 20, 2009.

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

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 37.108.507 pertaining to ) AMENDMENT  
components of quality assessment )  
activities ) NO PUBLIC HEARING  
) CONTEMPLATED

TO: All Concerned Persons

1. On May 30, 2009, the Department of Public Health and Human Services proposes to amend 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 or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on May 22, 2009, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.108.507 COMPONENTS OF QUALITY ASSESSMENT ACTIVITIES

(1) Annually, the health carrier shall evaluate its quality assessment activities by using the following HEDIS year ~~2008~~ 2009 measures:

(a) through (3) remain the same.

(4) The department adopts and incorporates by reference the HEDIS year ~~2008~~ 2009 measures for the categories listed in (1)(a) through (e). The HEDIS year ~~2008~~ 2009 measures are developed by the National Committee for Quality Assurance and provide a standardized mechanism for measuring and comparing the quality of services offered by managed care health plans. Copies of HEDIS ~~2008~~ 2009 measures are available from the National Committee for Quality Assurance, ~~2000 L Street NW, Suite 500, Washington, DC 20036~~ 1100 13th St. NW, Suite 1000, Washington, D.C. 20005 or on the internet at [www.ncqa.org](http://www.ncqa.org).

AUTH: 33-36-105, MCA

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

4. The Managed Care Plan Network Adequacy and Quality Assurance Act (Title 33, chapter 36, MCA) established standards for health carriers offering managed care plans and for the implementation of quality assurance standards in

administrative rules. ARM 37.108.501, et seq. were adopted in 2001 to establish mechanisms for the department to evaluate quality assurance activities of health carriers providing managed care plans in Montana. ARM 37.108.507 requires health carriers to report their quality assessment activities to the department using healthcare effectiveness data and information set (HEDIS) measures, nationally-utilized measures that are updated annually. Since the HEDIS standards change somewhat every year, the rule must also be updated annually to reflect the current year's measures and ensure that national comparisons are possible, since the other states will also be using the same updated measures. The changes from adopted 2008 measures to the proposed 2009 measures are quoted below:

"Changes to HEDIS 2009

Childhood Immunization Status

- a) Revised the required number of doses for the Hib vaccine, per ACIP recommendations to defer the third Hib booster during vaccine shortage.
- b) Deleted ICD-9-CM Procedure code 99.37 from Table CIS-A. Vaccine for acellular pertussis antigen only is no longer produced.
- c) Clarified medical record review requirements for immunizations documented using a generic header of "DTaP/DTP/DT."

Breast Cancer Screening

- a) Removed age stratifications.
- b) Added HCPCS codes G0204, G0206 to Table BCS-A.
- c) Added UB-04 Revenue code 0401 to Table BCS-A.
- d) Deleted CPT code 76083 from Table BCS-A.

Cervical Cancer Screening

- a) Added LOINC code 47528-5 to Table CCS-A.
- b) Added CPT codes 58570–58573 to Table CCS-B.

Comprehensive Diabetes Care

- a) Added amylin analogs category to Table CDC-A.
- b) Deleted CPT code 99499 from Table CDC-C.

- c) Removed the requirement that HCPCS S0625 (Table CDC-G) be billed by an optometrist or ophthalmologist for the eye exam indicator.
- d) Added CPT codes 67041-67043, 67113 to Table CDC-G.
- e) Clarified the use of CPT Category II code 3072F in Table CDC-G.
- f) Deleted CPT codes 83715, 83716 from Table CDC-H.
- g) Deleted DRGs from Tables CDC-B, CDC-K.
- h) Added UB Type of Bill code 72x to Table CDC-K.
- i) Added POS code 65 to Table CDC-K.

Note: Because of the anticipated publication of several new, relevant studies, NCQA will review the HbA1c good control (<7.0%) indicator during summer 2008. Modifications to the indicator will be announced in the Volume 2 Technical Update.

#### HEDIS/Consumer Assessment of Health Plan Survey (CAHPS) for Adults

- a) This measure is collected using survey methodology. Detailed specifications and summary of changes are contained in HEDIS 2009, Volume 3: Specifications for Survey Measures.

#### Corrections, policy changes and clarifications to HEDIS 2009

##### Updated Random Number Table for Measures Using the Hybrid Method

##### Childhood Immunization Status

- Table CIS-A

Delete CPT codes 90702, 90703, 90719.

Delete ICD-9-CM Procedure codes 99.36, 99.38.

Rationale: Because the member needs 4 DTaP for numerator compliance and because the vaccine for acellular pertussis antigen only is no longer produced, these codes cannot be used to demonstrate numerator compliance.

##### Cervical Cancer Screening

- Table CCS-A

Delete HCPCS code G0101.

## Comprehensive Diabetes Care

Throughout the measure specification

See specifications regarding the Comprehensive Diabetes Care-HbA1c specification. All changes are underlined.

- Table CDC-J

Add LOINC codes 47558-2, 49023-5, 50561-0, 50949-7, 53121-0, 53525-2, 53530-2, 53531-0, 53532-8.

- Table CDC-K

Add LOINC codes 50556-0, 50561-0, 50564-4 to the Urine macroalbumin test row."

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

5. The department intends the proposed rule amendments to be applied retroactively to January 1, 2009. There is no negative impact to the affected health insurance companies by applying the rule amendment retroactively.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing 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 May 28, 2009. Comments may also be faxed to (406) 444-1970 or e-mailed to [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

7. 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 written request for a hearing and submit this request along with any written comments to Rhonda Lesofski at the above address no later than 5:00 p.m., May 28, 2009.

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

9. 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 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 6 above or may be made by completing a request form at any rules hearing held by the department.

10. 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. 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.

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

/s/ Lisa Swanson  
Rule Reviewer

/s/ Anna Whiting Sorrell  
Anna Whiting Sorrell, Director  
Public Health and Human Services

Certified to the Secretary of State April 20, 2009.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 24.216.402 fees, and )  
24.216.2103 sanitarian in training )

TO: All Concerned Persons

1. On January 29, 2009, the Board of Sanitarians (board) published MAR Notice No. 24-216-19 regarding the public hearing on the proposed amendment of the above-stated rules, at page 75 of the 2009 Montana Administrative Register, issue no. 2.

2. On February 19, 2009, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the February 27, 2009, deadline.

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

COMMENT 1: Several commenters asserted that increasing fees will discourage potential licensees from joining the profession.

RESPONSE 1: When faced with the budgetary shortfall, the board considered several different scenarios for reducing costs and increasing revenue. The board chose to raise fees as proposed so as to not disproportionately impact either new or renewing licensees. The board rejected other proposals that would have placed a greater increase on new applicants.

COMMENT 2: Several commenters stated that the board did not sufficiently explain and justify the need for the fee increase.

RESPONSE 2: The department is required biennially to provide detailed information to the Montana Legislature on current and projected licensee numbers and board revenues, expenses, activities, goals, objectives, and complaints. The board also reviews a current financial report, including the board's fiscal year income and expenditures to date, at each full board meeting. This fiscal information is publicly available from the board office and is open to public inspection and scrutiny. The board and department fully complied with statutory requirements for the publication and public notice of the administrative rulemaking process.

The board is statutorily required to set and maintain fees that are commensurate with associated costs. Without the additional revenue generated by the proposed fee increase, the board's costs will exceed its revenue, and the board may not be permitted to continue operations.

COMMENT 3: Numerous commenters stated the proposed increase is too large and that sanitarians cannot afford licensing fees anymore.

RESPONSE 3: Because the board is required to set fees commensurate with costs, any lesser increase would have generated too little revenue to cover projected expenses for the biennium. The board notes that the proposed increase will generate only enough revenue to cover the board's actual costs and will not result in excess revenue.

COMMENT 4: Commenters stated this fee increase is proposed too soon after the last increase.

RESPONSE 4: The board last raised fees in response to legislation that increased costs by adding two members to the board. Due to changes in the department's method of allocating costs to boards, each board is now responsible for all expenses actually incurred by that board, rather than just sharing in total department costs.

COMMENT 5: Commenters suggested the board cut costs before raising fees.

RESPONSE 5: All licensing boards are statutorily mandated by 37-1-134, MCA, to set board fees commensurate with the costs of licensure and regulation. The board cannot set fees according to inflation, cost of living, or current salaries of licensees. A fairly constant number of licensees combined with inflationary increases in costs such as rent, supplies, and electricity and a change in the department's method of allocating costs to boards have resulted in the need to increase fees.

The board notes that both the department and the board continually seek and implement ways to reduce costs associated with board functions. Examples of this are the recent shift to using electronic board books instead of paper ones, having some board meetings by telephone conference instead of in-person attendance, and reducing examination expenses.

COMMENT 6: A few commenters stated the increase would make it harder to fill vacant positions, and it is already difficult to find qualified applicants.

RESPONSE 6: The board's purpose is to protect the Montana public by licensing and regulating sanitarians in the state and is required to set and maintain fees that are commensurate with the board's costs. The board notes that only a licensee can practice as a sanitarian in Montana. If cost is the only obstacle to filling vacancies, an agency may need to build the fee increase into the cost of filling the position.

COMMENT 7: A commenter requested that the board create an inactive or retired status license.

RESPONSE 7: The board will consider creating an inactive status license at a future meeting.

COMMENT 8: One commenter suggested disbanding the board and changing the law to require registration with the National Environmental Health Association (NEHA) instead.

RESPONSE 8: The board is an executive branch agency created by the Montana Legislature to protect the public by licensing and regulating sanitarians in the state. The Legislature also enacted the statute that mandates the board fund itself solely through its own licensure fees. Thus, the existence, function, or funding of the board can only be changed through the actions of the Montana Legislature.

If the law required only NEHA registration and the board was disbanded, the state would have no jurisdiction to enforce professional practice by sanitarians. Further, professional associations have entirely different functions than state regulatory agencies. Licensure boards exist to protect the public by licensing and regulating the individual members of a profession. Professional associations are created to promote and advance the professions themselves.

COMMENT 9: A commenter alleged that the services provided by the board are not commensurate with the fees charged.

RESPONSE 9: The department is required biennially to provide detailed information to the Montana Legislature on current and projected licensee numbers and board revenues, expenses, activities, goals, objectives, and complaints. This checks-and-balances system ensures that fees remain commensurate with costs.

The board also reviews a current financial report, including the board's fiscal year income and expenditures to date and budget projections, at each full board meeting. This fiscal information is publicly available from the board office and is open to public inspection and scrutiny.

COMMENT 10: A commenter stated that the board should do a better job holding sanitarians responsible for their actions.

RESPONSE 10: The board understands the importance of its role in upholding the professional practice of sanitarians. However, the board must rely on its licensees and the public to initiate complaints regarding unprofessional conduct, which the board will then address through the established complaint process.

COMMENT 11: A commenter stated that raising fees may increase the number of sanitarian retirements in Montana.

RESPONSE 11: The board acknowledges an increase in retirements as a possible consequence of higher fees, but is obligated to keep fees commensurate with increasing costs. The board notes that it will consider the possibility of a less costly inactive license status for those contemplating retirement.

4. The board has amended ARM 24.216.402 and 24.216.2103 exactly as proposed.

BOARD OF SANITARIANS  
JERRY CORMIER, RS, 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 April 20, 2009

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 42.4.118, 42.4.201, 42.4.203, )  
42.4.204, and 42.4.206 relating to )  
Individual Energy Conservation )  
Installation Credit )

TO: All Concerned Persons

1. On November 26, 2008, the department published MAR Notice No. 42-2-802 regarding the proposed amendment of the above-stated rules at page 2456 of the 2008 Montana Administrative Register, issue no. 22.

2. A public hearing was held on December 18, 2008, to consider the proposed amendment. Oral and written testimony was received at the hearing and is summarized below along with the response of the department:

COMMENT NO. 1: Guy Hanson, Missoula, Montana submitted written comments asking if the new language in ARM 42.4.204(1)(o) is intended to limit the credit to replacements of existing systems. Mr. Hanson further stated that the existing language specifically allows for replacement or new installations. The limit is implicit in the requirement that the new system must have an efficiency rating higher than the prior system. If there is no prior system it could not qualify. Mr. Hanson stated that replacements are not necessarily replacements. The installation of a solar heater in a guest house, shop, or garage would use no external power but deliver significant useable heat to the structure when in operation. Such a heater would not replace an existing heating system but would be a supplement to that system. The investment is not covered under 15-32-201, MCA, because it is not in the primary residence. Mr. Hanson asked if such a system would fit the criteria of the new language.

RESPONSE NO. 1: In answer to Mr. Hanson's first question, the amendments to ARM 42.4.204(1)(o) are not intended to necessarily limit the 15-32-109, MCA, credit to replacements of existing heating or cooling systems -- a credit is also allowed for installation of a new heating or cooling system as part of new construction based on the cost of exceeding the new construction standards in ARM 42.4.206. "New construction" means construction of, or additions to, buildings, living areas, or attached garages that comply with the established standards of new construction as determined by the building code statutes in Title 50, MCA.

The answer to the second question is no -- the credit under 15-32-109, MCA, is allowed only for the installation of a new "heating system" -- not the cost of supplementing an existing heating system with another system or component. The augmentation described, like purchase of a small space heater to avoid using an existing furnace, although resulting in less total energy consumption and laudable, does not qualify for the 15-32-109, MCA credit.

Also, the 15-32-109, MCA credit is limited to installation of a heating system in a qualifying "building" – a dwelling or an enclosed, insulated structure used for commercial, industrial, or agricultural purposes. A guesthouse may or may not be a dwelling, depending on how it is used. Installation of a heating system in a garage or shop does not qualify for the credit unless, in addition to the other requirements, the garage or shop is used for commercial, industrial, or agricultural purposes.

COMMENT NO. 2: Mr. Hanson; James Roach, Energy Technology Student at the University of Montana; and James Swanson, Swanson Distributing all asked if the new language was intended to exclude technologies like heat pump systems as replacements for electric resistance heating. Mr. Roach stated that electric heating has an efficiency rating of 100% whether used for space heating or hot water. Heat pump technology and other alternate technologies (like solar thermal) do not have efficiencies in excess of 100%. They do however provide radically more heat for the same energy input and as such greatly conserve energy. Those industries use a rating called coefficient of performance of show that they deliver far more heat than if the electricity they consumed had been used as resistance heating.

Coefficient of performance is used to measure the effectiveness of a system that uses input energy (like electricity) to collect environmental energy (like solar or ground source heat) and return more energy (heat) to the structure than was input. Heat pump systems commonly return four times the energy input and solar thermal return 700 times the energy input. Under the proposed language a taxpayer who installed a heat pump system would not qualify if they were already using conventional electric heat even though they would reduce their electric usage by 75 to 80%.

RESPONSE NO. 2: Air-source heat pumps installed as the primary heating and cooling system for a home qualify for the energy conservation credit in certain circumstances. If an air-source heat pump is installed in an existing home which used another type of system for heating and cooling, the requirements of ARM 42.4.204(2), which is not being amended in this notice, will apply and the installation will be considered new construction and only the extra amount spent to exceed the applicable federal minimum ratings will qualify as an investment in energy conserving measures.

ARM 42.4.204(2) states: "If the new system described in (1)(o) differs in style or type from the previous system, such as, if one or more window air-conditioning units is replaced with a central air system, the new system must exceed the requirement in ARM 42.4.206(1)(c). If the replacement system exceeds the established standards, only the additional cost shall be considered when computing the credit."

An air-source heat pump installed while constructing a new home would also qualify as long as the conditions in 42.4.205(3) and 42.4.206 are met. The department has further amended ARM 42.4.206 as shown below to reflect the complete ratings for air-source heat pumps. The current ENERGY STAR ratings are slightly higher than what is shown in the existing rule but slightly lower than what qualifies for the federal credit.

Regarding the suggestion that coefficient of performance should be used to

determine whether a replacement system should qualify for the credit, further analysis is necessary to determine whether implementing this method would be appropriate. The department would like to confirm with the Department of Environmental Quality in order to clarify the potential benefit these systems may provide for energy conservation. The review would occur as required by ARM 42.4.208 in September 2009.

COMMENT NO. 3: Mary Whittinghill, Montana Taxpayers Association, Helena, commented that the reference in ARM 42.4.118(1)(a), which is part of the energy rules but not addressed in this notice is incorrect and should be corrected. The rule refers to the form "ENRG B" and it should be "ENRG A".

Ms. Whittinghill stated that the implementing cite of 15-32-109, MCA should be deleted from ARM 42.4.118 because that statute more appropriately applies to energy-conserving expenditures which are addressed in the rules found in chapter 4, subchapter 2 rather than this rule.

Ms. Whittinghill further suggested the department change the title of chapter 4, subchapter 1 from "Tax Credits for Alternative Energy Systems" to "Tax Credits for Alternative Energy Systems and Credit for Geothermal" because the rules apply to both of these credits.

RESPONSE NO. 3: The department agrees with Ms. Whittinghill's observations and amends ARM 42.4.118 as shown below. The title to subchapter 1 will be amended when the replacement pages are prepared the end of June 2009.

3. As a result of the comments received and further review the department amends ARM 42.4.118, 42.4.203, 42.4.204, and 42.4.206 with the following changes:

42.4.118 ENERGY AND CONSERVATION INDIVIDUAL INCOME TAX CREDITS (1) A Montana individual income tax credit is allowed by filing an Individual Income Tax Return and the appropriate supplemental forms developed by the department. The return and supplemental forms must be filed by the 15th day of the fourth month following the close of the taxpayer's tax year and mailed to the Department of Revenue, P.O. Box 5805, Helena, Montana 59604-5805.

(a) To qualify for the geothermal energy system credit allowed under 15-32-115, MCA, a taxpayer must file form ~~ENRG-B~~ ENRG A providing information as prescribed on the form at the time the Montana Individual Income Tax Return is filed.

(b) and (c) remain the same.

AUTH: 15-1-201, 15-32-203, MCA

IMP: ~~15-32-109~~, 15-32-115, 15-32-201, MCA

42.4.203 CREDIT FOR ENERGY CONSERVATION INVESTMENT

(1) Eligible investments for the energy conservation credit in new construction are the investments that meet or exceed the requirements of the IECG ~~with Montana amendments as~~ described in ARM 42.4.206. The amount of credit can be calculated using one of the following provisions:

(a) through (1)(c) remain as proposed.

(2) For investments in existing buildings, a credit will be given for capital investments listed in ARM 42.4.204 that are recognized to substantially reduce the waste or dissipation of energy, or reduce the amount of energy required for proper utilization of the building.

(3) through (6) remain as proposed.

AUTH: 15-1-201, MCA

IMP: 15-32-106, 15-32-109, MCA

42.4.204 CAPITAL INVESTMENTS FOR QUALIFYING ENERGY

CONSERVATION CREDIT (1) The following capital investments are those that exclusively qualify for the conservation of energy credit for tax year ~~2008~~ 2009:

(b) through (1)(m) remain as proposed.

(n) programmable thermostats; and

(o) ~~installation~~ replacement of new ~~an existing~~ domestic water heaters, or heating or cooling systems, ~~so long as the replacement or installation of the new system reduces the waste or dissipation of energy, or reduces the amount of energy required with:~~

(i) a new one of the same style or type that has a higher efficiency rating, whether or not the new water heater or heating or cooling system meets or exceeds the established standards for new construction provided in ARM 42.4.205; and

(ii) a new one that is of a different style or type that exceeds the requirements for new construction provided in ARM 42.4.206, but only for the additional cost of exceeding the standard; and

(p) installation as part of new construction of a water heater or heating or cooling system that exceeds established standards for new construction provided in ARM 42.4.206(1)(c), but only for the additional cost of exceeding the standard.

(2) remains as proposed.

AUTH: 15-1-201, 15-32-105, MCA

IMP: 15-32-102, 15-32-105, 15-32-106, 15-32-109, MCA

42.4.206 NEW CONSTRUCTION STANDARDS (1) For new construction, the energy-conserving expenditure must meet or exceed the following equipment standards:

(a) air-source heat pumps - specification (split systems - greater than or equal to ~~8.0 HSPF~~ SEER 14.5, EER 12 and HSPF 8.2 or single package system - greater than or equal to ~~7.6 HSPF~~ SEER 14, EER 11 and HSPF 8) - reference (ENERGY STAR qualified);

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

AUTH: 15-32-105, MCA

IMP: 15-32-105, 15-32-109, MCA

4. Therefore, the department amends ARM 42.4.118, 42.4.203, 42.4.204, and 42.4.206 with the amendments listed above and amends ARM 42.4.201 as

proposed.

5. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at [www.mt.gov/revenue](http://www.mt.gov/revenue), under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

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

Certified to Secretary of State April 20, 2009

## **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 December 31, 2008. This table includes those rules adopted during the period January 1, 2009, through March 31, 2009, 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 December 31, 2008, 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 2008 and 2009 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 March 2009 appear. Vacancies scheduled to appear from May 1, 2009, through July 31, 2009, 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 April 1, 2009.

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 MARCH 2009

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Architects and Landscape Architects</b> (Labor and Industry)			
Mr. James G. Shepard Billings	Governor	reappointed	3/27/2009 3/27/2012
Qualifications (if required): registered architect with three years continuous practice			
<b>Board of Barbers and Cosmetologists</b> (Labor and Industry)			
Mr. Thayne Orton Florence	Governor	Burton-Blize	3/20/2009 10/1/2012
Qualifications (if required): barber			
<b>Board of Crime Control</b> (Justice)			
Rep. Angela Russell Lodge Grass	Governor	Small	3/23/2009 1/1/2011
Qualifications (if required): tribal court representative			
<b>Board of Dentistry</b> (Labor and Industry)			
Dr. Dale R. Chamberlain Lewistown	Governor	Jestrab	3/29/2009 3/29/2014
Qualifications (if required): dentist			
Ms. Jennifer Porter Bozeman	Governor	reappointed	3/29/2009 3/29/2014
Qualifications (if required): dental hygienist			
<b>Board of Horseracing</b> (Livestock)			
Rep. Carol Lambert Broadus	Governor	Ogdahl	3/6/2009 1/20/2012
Qualifications (if required): resident of district 1			

**BOARD AND COUNCIL APPOINTEES FROM MARCH 2009**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Horseracing (Livestock) cont.</b>			
Mr. Mike Tatsey Valier Qualifications (if required): resident of District 3	Governor	reappointed	3/6/2009 1/20/2012
<b>Board of Housing (Commerce)</b>			
Ms. Audrey Black Eagle Lodge Grass Qualifications (if required): public representative	Governor	reappointed	3/6/2009 1/1/2013
Mr. J.P. Crowley Helena Qualifications (if required): public representative	Governor	reappointed	3/6/2009 1/1/2013
Mr. Jeff Rupp Bozeman Qualifications (if required): public representative	Governor	reappointed	3/6/2009 1/1/2013
Ms. Elizabeth Scanlin Red Lodge Qualifications (if required): an attorney	Governor	reappointed	3/6/2009 1/1/2013
<b>Board of Livestock (Livestock)</b>			
Mr. Brett DeBruycker Dutton Qualifications (if required): cattle producer	Governor	reappointed	3/12/2009 3/1/2015

**BOARD AND COUNCIL APPOINTEES FROM MARCH 2009**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Livestock (Livestock) cont.</b>			
Ms. Janice French Hobson Qualifications (if required): cattle producer	Governor	reappointed	3/12/2009 3/1/2015
Mr. John Lehfeldt Lavina Qualifications (if required): sheep producer	Governor	Weed	3/12/2009 3/1/2013
Mr. Jeffery Lewis Corvallis Qualifications (if required): dairy producer	Governor	Hedstrom	3/12/2009 3/1/2011
<b>Board of Pardons and Parole (Corrections)</b>			
Mr. Samuel Lemaich Missoula Qualifications (if required): auxiliary member	Governor	Curtiss	3/10/2009 1/1/2013
Ms. Teresa McCann O'Connor Billings Qualifications (if required): an attorney	Governor	reappointed	3/10/2009 1/1/2013
Rep. John Ward Helena Qualifications (if required): education/experience in criminology, education, psychiatry, law, social work or sociology	Governor	Eaglefeathers	3/10/2009 1/1/2013

## BOARD AND COUNCIL APPOINTEES FROM MARCH 2009

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Physical Therapy Examiners</b> (Labor and Industry)			
Ms. Patti Jo Lane Great Falls	Governor	reappointed	3/23/2009 7/1/2012
Qualifications (if required): physical therapy			
Ms. Kim Miller Virginia City	Governor	reappointed	3/23/2009 7/1/2012
Qualifications (if required): public member			
<b>Board of Private Security</b> (Labor and Industry)			
Mr. Daniel Taylor Glasgow	Governor	Foster	3/20/2009 8/1/2009
Qualifications (if required): contract security company representative			
<b>Hard Rock Mining Impact Board</b> (Commerce)			
Ms. Mary Ellen Cremer Big Timber	Governor	reappointed	3/12/2009 1/1/2013
Qualifications (if required): representative of major financial institution in Montana and a resident of District 1			
Mr. Joe Michaletz Helena	Governor	Koss	3/12/2009 1/1/2013
Qualifications (if required): representative of the hard-rock mining industry and a resident of District 2			
Commissioner Ed Tinsley Helena	Governor	reappointed	3/12/2009 1/1/2013
Qualifications (if required): public representative and a resident of District 2			

**BOARD AND COUNCIL APPOINTEES FROM MARCH 2009**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Historical Society Board of Trustees</b> (Historical Society)			
Mr. Steve Carney Scobey	Governor	Lee	3/23/2009 7/1/2012
Qualifications (if required): public member			
<b>Milk Control Board</b> (Livestock)			
Mr. Gary Parker Fort Shaw	Governor	reappointed	3/6/2009 1/1/2013
Qualifications (if required): public representative and a Democrat			
Mr. James Prinkki Roberts	Governor	reappointed	3/6/2009 1/1/2013
Qualifications (if required): public representative and a Democrat			
Mr. Larry Van Dyke Bozeman	Governor	reappointed	3/6/2009 1/1/2013
Qualifications (if required): public representative and a Republican			
Mr. Jerrold A. Weissman Great Falls	Governor	Greer	3/6/2009 1/1/2011
Qualifications (if required): public representative and a Republican			
<b>Montana Arts Council</b> (Arts Council)			
Mr. Mark Kuipers Missoula	Governor	Holmes	3/23/2009 2/1/2010
Qualifications (if required): public representative			

**VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2009 THROUGH JULY 31, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>9-1-1 Advisory Council</b> (Administration) Mr. Chuck Winn, Bozeman Qualifications (if required): none specified	Director	5/1/2009
Mr. Joe Calnan, Montana City Qualifications (if required): none specified	Director	5/1/2009
Sheriff Cheryl Liedle, Helena Qualifications (if required): none specified	Director	5/1/2009
Mr. Fred Leistiko, Kalispell Qualifications (if required): none specified	Director	5/1/2009
Mr. Kevin Myhre, Lewistown Qualifications (if required): none specified	Director	5/1/2009
Ms. Kim Burdick, Fort Benton Qualifications (if required): none specified	Director	5/1/2009
Mr. Gary MacDonald, Wolf Point Qualifications (if required): none specified	Director	5/1/2009
Mr. Kerry O'Connell, Big Timber Qualifications (if required): none specified	Director	5/15/2009
Ms. Leah Erickson, Glasgow Qualifications (if required): none specified	Director	5/15/2009

**VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2009 THROUGH JULY 31, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>9-1-1 Advisory Council</b> (Administration) cont. Commissioner Gary A. Macdonald, Wolf Point Qualifications (if required): none specified	Director	5/15/2009
Ms. Janet Boisvert, Harlem Qualifications (if required): Montana Emergency Medical Service Association representative	Director	5/1/2009
<b>Agging Advisory Council</b> (Public Health and Human Services) Ms. Gladys Considine, Missoula Qualifications (if required): public representative	Governor	7/18/2009
Ms. Mary Mumby, Kalispell Qualifications (if required): public representative	Governor	7/18/2009
Ms. Mary Lou Miller, Wolf Point Qualifications (if required): public representative	Governor	7/18/2009
<b>Board of Banking</b> (Administration) Mr. Russ Ritter, Helena Qualifications (if required): public representative	Governor	7/1/2009
Mr. Jon Redlin, Lambert Qualifications (if required): state bank officer of a large size bank	Governor	7/1/2009
<b>Board of Hearing Aid Dispensers</b> (Labor and Industry) Mr. Steve Wilson, Helena Qualifications (if required): hearing aid dispenser (no masters)	Governor	7/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2009 THROUGH JULY 31, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Board of Hearing Aid Dispensers</b> (Labor and Industry) cont.                      Ms. Jill Davis, Great Falls                      Qualifications (if required): public representative</p>	Governor	7/1/2009
<p>Mr. Brian Bolenbaugh, Missoula                      Qualifications (if required): hearing aid dispenser (no masters)</p>	Governor	7/1/2009
<p><b>Board of Nursing</b> (Labor and Industry)                      Ms. Connie Reichelt, Havre                      Qualifications (if required): advanced practice registered nurse</p>	Governor	7/1/2009
<p><b>Board of Physical Therapy Examiners</b> (Labor and Industry)                      Ms. Kim Miller, Virginia City                      Qualifications (if required): public member</p>	Governor	7/1/2009
<p>Ms. Patti Jo Lane, Great Falls                      Qualifications (if required): physical therapist</p>	Governor	7/1/2009
<p>Dr. Ron Peterson, Cascade                      Qualifications (if required): doctor of medicine</p>	Governor	7/1/2009
<p><b>Board of Plumbers</b> (Labor and Industry)                      Ms. Marlene Jackson, Glasgow                      Qualifications (if required): public representative</p>	Governor	5/4/2009
<p><b>Board of Radiologic Technologists</b> (Labor and Industry)                      Ms. Kelli Bush, Butte                      Qualifications (if required): radiologic technician</p>	Governor	7/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2009 THROUGH JULY 31, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Board of Real Estate Appraisers</b> (Labor and Industry)            Ms. Kathleen Susan Gallaher, Bozeman            Qualifications (if required): public representative</p>	Governor	5/1/2009
<p>Mr. Darwin Ernst, Hamilton            Qualifications (if required): real estate appraiser</p>	Governor	5/1/2009
<p><b>Board of Realty Regulation</b> (Labor and Industry)            Mr. Dudley L. Tyler, Livingston            Qualifications (if required): real estate salesperson</p>	Governor	5/9/2009
<p>Ms. Lucinda Willis, Polson            Qualifications (if required): real estate salesperson</p>	Governor	5/9/2009
<p><b>Board of Regents</b> (Higher Education)            Mr. Mitchell Jessen, Dillon            Qualifications (if required): student</p>	Governor	6/30/2009
<p><b>Board of Sanitarians</b> (Governor)            Ms. Denise Moldroski, East Helena            Qualifications (if required): sanitarian</p>	Governor	7/1/2009
<p><b>Board of Water Well Contractors</b> (Natural Resources and Conservation)            Mr. Kevin Haggerty, Bozeman            Qualifications (if required): water well contractor</p>	Governor	7/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2009 THROUGH JULY 31, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Chief Water Judge</b> (not listed)            Mr. C. Bruce Loble, Bozeman            Qualifications (if required): none specified</p>	Chief Justice	6/30/2009
<p><b>Community Health Center Advisory Group</b> (Public Health and Human Services)            Mr. Larry Putman, Malta            Qualifications (if required): public representative</p>	Governor	7/1/2009
<p>Ms. Kathy Kenyon, Billings            Qualifications (if required): public representative</p>	Governor	7/1/2009
<p>Mr. Perry Howell, Billings            Qualifications (if required): chief financial officer of a community health center</p>	Governor	7/1/2009
<p>Ms. Maria Clemons, Libby            Qualifications (if required): executive employee of a community health center</p>	Governor	7/1/2009
<p>Ms. Marge Levine, Helena            Qualifications (if required): Montana Primary Care Association's designee</p>	Governor	7/1/2009
<p><b>Community Service Commission</b> (Labor and Industry)            Mr. George Dennison, Missoula            Qualifications (if required): representative of higher education</p>	Governor	7/1/2009
<p>Mr. Chris Kolstad, Ledger            Qualifications (if required): public representative</p>	Governor	7/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2009 THROUGH JULY 31, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Community Service Commission</b> (Labor and Industry) cont. Mr. Gary Pfister, Helena Qualifications (if required): agency representative	Governor	7/1/2009
Mr. Jim Murphy, Helena Qualifications (if required): agency representative	Governor	7/1/2009
<b>Economic Development Advisory Council</b> (Commerce) Mr. Jim Atchison, Colstrip Qualifications (if required): public representative	Governor	7/23/2009
Ms. Elizabeth Marchi, Whitefish Qualifications (if required): public representative	Governor	7/23/2009
Mr. Jim Lee, Glendive Qualifications (if required): public representative	Governor	7/23/2009
Mr. Joe Menicucci, Belgrade Qualifications (if required): public representative	Governor	7/23/2009
Mr. Richard Sangray, Box Elder Qualifications (if required): public representative	Governor	7/23/2009
<b>Electronic Government Advisory Council</b> (Administration) Director Mary Sexton, Helena Qualifications (if required): agency representative	Governor	6/18/2009

**VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2009 THROUGH JULY 31, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Electronic Government Advisory Council</b> (Administration) cont. Commissioner Ed Tinsley, Helena Qualifications (if required): local government official	Governor	6/18/2009
Mr. Shannon Hanson, Whitefish Qualifications (if required): public representative	Governor	6/18/2009
Mr. Tim Christensen, Missoula Qualifications (if required): public representative	Governor	6/18/2009
Mr. Christian Mackay, Helena Qualifications (if required): agency representative	Governor	6/18/2009
<b>Family Education Savings Oversight Committee</b> (Commissioner of Higher Education) Mr. Todd Buchanan, Billings Qualifications (if required): investment manager	Governor	7/1/2009
Mr. Jon Satre, Helena Qualifications (if required): public representative	Governor	7/1/2009
<b>Grant Review Committee</b> (Commerce) Mr. Andy Poole, Helena Qualifications (if required): representative of the Department of Commerce	Governor	6/30/2009
Ms. Ingrid Childress, Helena Qualifications (if required): representative of the Department of Labor and Industry	Governor	6/30/2009

**VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2009 THROUGH JULY 31, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Grant Review Committee</b> (Commerce) cont.                      Ms. Joni Stewart, Cut Bank                      Qualifications (if required): representative of private sector</p>	Governor	6/30/2009
<p>Ms. Linda Beck, Billings                      Qualifications (if required): representative of private sector</p>	Governor	6/30/2009
<p>Mr. John Cech, Billings                      Qualifications (if required): representative of a two-year postsecondary institution</p>	Governor	6/30/2009
<p><b>Judicial Standards Commission</b> (Justice)                      Judge Gary L. Day, Miles City                      Qualifications (if required): none specified</p>	District Court	6/30/2009
<p>Mr. John Murphy, Great Falls                      Qualifications (if required): public representative</p>	Governor	7/1/2009
<p><b>Land Information Advisory Council</b> (Administration)                      Director Dan R. Bucks, Helena                      Qualifications (if required): Department of Revenue representative</p>	Governor	6/30/2009
<p>Commissioner Connie Eissinger, Brockway                      Qualifications (if required): local government representative</p>	Governor	6/30/2009
<p>Mr. Lance Clampitt, Bozeman                      Qualifications (if required): United States Interior Department representative</p>	Governor	6/30/2009

**VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2009 THROUGH JULY 31, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Land Information Advisory Council</b> (Administration) cont. Mr. Art Pembroke, Helena Qualifications (if required): local government representative	Governor	6/30/2009
Director Jeff Hagener, Helena Qualifications (if required): Department of Fish, Wildlife and Parks representative	Governor	6/30/2009
Director Mary Sexton, Helena Qualifications (if required): Department of Natural Resources and Conservation representative	Governor	6/30/2009
Mr. Alex Philip, Missoula Qualifications (if required): private sector representative	Governor	6/30/2009
Director Jim Lynch, Helena Qualifications (if required): Department of Transportation representative	Governor	6/30/2009
Mr. Mike Birtles, Billings Qualifications (if required): United States Interior Department representative	Governor	6/30/2009
Ms. Catherine Maynard, Bozeman Qualifications (if required): United States Agriculture Department representative	Governor	6/30/2009
Mr. Don Patterson, Missoula Qualifications (if required): United States Agriculture Department representative	Governor	6/30/2009
Mr. Lorin Peterson, Pablo Qualifications (if required): tribal government representative	Governor	6/30/2009

**VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2009 THROUGH JULY 31, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Land Information Advisory Council</b> (Administration) cont. Mr. Ed Madej, Helena Qualifications (if required): private sector representative	Governor	6/30/2009
Mr. Ken Wall, Missoula Qualifications (if required): GIS professional	Governor	6/30/2009
Mr. Michael Sweet, Missoula Qualifications (if required): GIS professional	Governor	6/30/2009
Ms. Annette Cabrera, Billings Qualifications (if required): local government representative	Governor	6/30/2009
Ms. Christiane von Reichert, Missoula Qualifications (if required): university representative	Governor	6/30/2009
Mr. Rudy Cicon, Chester Qualifications (if required): land surveyor	Governor	6/30/2009
<b>Library Commission</b> (State Library) Mr. Donald Allen, Billings Qualifications (if required): public representative	Governor	5/22/2009
Mr. Ron Moody, Lewistown Qualifications (if required): public representative	Governor	5/22/2009

**VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2009 THROUGH JULY 31, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Mental Disabilities Board of Visitors</b> (Governor)                      Rep. Holly Raser, Missoula                      Qualifications (if required): consumer of developmental disability services</p>	Governor	7/1/2009
<p>Mrs Suzanne Hopkins, Lewistown                      Qualifications (if required): consumer of mental health services</p>	Governor	7/1/2009
<p>Ms. Teresa Lewis, Harlem                      Qualifications (if required): consumer of mental health services</p>	Governor	7/1/2009
<p><b>Mint Committee</b> (Agriculture)                      Mr. Kenneth W. Smith, Kalispell                      Qualifications (if required): mint grower</p>	Governor	7/1/2009
<p>Mr. Larry Brosten, Kalispell                      Qualifications (if required): mint grower</p>	Governor	7/1/2009
<p><b>Montana Campaign Finance Reform Advisory Council</b> (Secretary of State)                      Ms. Linda Vaughey, Helena                      Qualifications (if required): none specified</p>	Secretary of State	7/10/2009
<p>Sen. Lorents Grosfield, Big Timber                      Qualifications (if required): none specified</p>	Secretary of State	7/10/2009
<p>General Joseph P. Mazurek, Helena                      Qualifications (if required): none specified</p>	Secretary of State	7/10/2009

**VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2009 THROUGH JULY 31, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Campaign Finance Reform Advisory Council</b> (Secretary of State) cont. Sen. Duane Grimes, Clancy Qualifications (if required): none specified	Secretary of State	7/10/2009
Sen. Debbie Shea, Butte Qualifications (if required): none specified	Secretary of State	7/10/2009
Rep. Cindy Younkin, Bozeman Qualifications (if required): none specified	Secretary of State	7/10/2009
Mr. Steve Brown, Helena Qualifications (if required): none specified	Secretary of State	7/10/2009
<b>Montana Cherry Commodity Advisory Committee</b> (Agriculture) Mr. Jan Tusick, Ronan Qualifications (if required): reappointed	Governor	5/3/2009
<b>Montana Consensus Council</b> (Administration) Sen. Lorents Grosfield, Big Timber Qualifications (if required): public representative	Governor	7/1/2009
Mr. Van Wolverton, Alberton Qualifications (if required): public representative	Governor	7/1/2009
Ms. Eleanor Yellowrobe, Havre Qualifications (if required): public representative	Governor	7/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2009 THROUGH JULY 31, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Montana Consensus Council</b> (Administration) cont.            Mr. Nickolas C. Murnion, Jordan            Qualifications (if required): public representative</p>	Governor	7/1/2009
<p><b>Montana Heritage Preservation and Development Commission</b> (Commerce)            Mr. F.W. Bill Howell, West Yellowstone            Qualifications (if required): tourist facility manager</p>	Governor	5/23/2009
<p>Ms. Mary Oliver, Ennis            Qualifications (if required): business person</p>	Governor	5/23/2009
<p><b>Montana Historical Society Board of Trustees</b> (Historical Society)            Mr. Jim Court, Billings            Qualifications (if required): public member</p>	Governor	7/1/2009
<p><b>Montana Noxious Weed Management Advisory Council</b> (Agriculture)            Mr. Terry Turner, Havre            Qualifications (if required): representative of the Montana Weed Control Association</p>	Director	6/30/2009
<p>Ms. Pachy Burns, Big Timber            Qualifications (if required): representative of a consumer group</p>	Director	6/30/2009
<p>Mr. Gary Olsen, Harlowton            Qualifications (if required): representative of eastern counties</p>	Director	6/30/2009
<p>Mr. Todd Wagner, Glasgow            Qualifications (if required): representative of agriculture crop production</p>	Director	6/30/2009

**VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2009 THROUGH JULY 31, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Noxious Weed Management Advisory Council</b> (Agriculture) cont.		
Mr. Jim Story, Corvallis Qualifications (if required): representative of biological research and control	Director	6/30/2009
Mr. Jim Gordon, Huntley Qualifications (if required): representative of herbicide dealers and applicators	Director	6/30/2009
Ms. Margie Edsall, Sheridan Qualifications (if required): representative of western counties	Director	6/30/2009
<b>Montana Potato Advisory Committee</b> (Agriculture)		
Mr. Bill Buyan, Sheridan Qualifications (if required): none specified	Director	5/20/2009
Mr. Art Mangels, Dillon Qualifications (if required): none specified	Director	5/20/2009
<b>Motorcycle Safety Advisory Commission</b> (Commissioner of Higher Education)		
Mr. Steve Hofland, Helena Qualifications (if required): cycle group member	Governor	7/1/2009
<b>Noxious Weed Summit Advisory Council</b> (Agriculture)		
Mr. Kevin Chappell, Helena Qualifications (if required): representative of a state agency	Governor	7/26/2009
Mr. Jerry Marks, Missoula Qualifications (if required): representative of the MSU Extension Agency	Governor	7/26/2009

**VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2009 THROUGH JULY 31, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Noxious Weed Summit Advisory Council</b> (Agriculture) cont. Mr. Scott Bockness, Billings Qualifications (if required): representative of a weed control association	Governor	7/26/2009
Mr. Jim Ghekiere, Chester Qualifications (if required): representative of a county weed district	Governor	7/26/2009
Mr. Dave Burch, Helena Qualifications (if required): representative of the Department of Agriculture	Governor	7/26/2009
Mr. Jim Olivarez, Missoula Qualifications (if required): representative of a federal agency	Governor	7/26/2009
Commissioner Dave Schulz, Virginia City Qualifications (if required): representative of the Montana Association of Counties	Governor	7/26/2009
Mr. Jon Wraith, Bozeman Qualifications (if required): representative of the MSU Agricultural Experiment Station	Governor	7/26/2009
Mr. Darrell Briese, Havre Qualifications (if required): representative of an irrigation district	Governor	7/26/2009
Director Ron de Yong, Helena Qualifications (if required): Governor's representative	Governor	7/26/2009
Mr. Doug Dupuis, Pablo Qualifications (if required): Tribal representative	Governor	7/26/2009

**VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2009 THROUGH JULY 31, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Noxious Weed Summit Advisory Council</b> (Agriculture) cont.                      Ms. Celestine Duncan, Helena                      Qualifications (if required): Crop Protection Product Industry representative</p>	Governor	7/26/2009
<p><b>Petroleum Tank Release Compensation Board</b> (Environmental Quality)                      Mr. Steve Michels, Raynseford                      Qualifications (if required): service station dealer</p>	Governor	6/30/2009
<p>Ms. Adele J. Michels, Plentywood                      Qualifications (if required): public member</p>	Governor	6/30/2009
<p><b>Poet Laureate</b> (Arts Council)                      Mr. Greg Pape, Stevensville                      Qualifications (if required): Montana poet</p>	Governor	7/13/2009
<p><b>Postsecondary Scholarship Advisory Council</b> (Higher Education)                      Mr. LeRoy Schramm, Helena                      Qualifications (if required): experience in postsecondary education</p>	Governor	6/20/2009
<p><b>Private Lands/Public Wildlife Council</b> (Fish, Wildlife and Parks)                      Mr. Rick Miller, Colstrip                      Qualifications (if required): sportsperson</p>	Governor	6/30/2009
<p>Ms. Kathy Hadley, Deer Lodge                      Qualifications (if required): landowner</p>	Governor	6/30/2009
<p>Mr. Mike Penfold, Billings                      Qualifications (if required): sportsperson</p>	Governor	6/30/2009

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Private Lands/Public Wildlife Council</b> (Fish, Wildlife and Parks) cont.		
Mr. Jamie Byrne, Ekalaka Qualifications (if required): outfitter	Governor	6/30/2009
Ms. Donna McDonald, Alder Qualifications (if required): outfitter	Governor	6/30/2009
Rep. John Ward, Helena Qualifications (if required): legislator	Governor	6/30/2009
Sen. Lane Larson, Billings Qualifications (if required): legislator	Governor	6/30/2009
Mr. Dan Vermillion, Livingston Qualifications (if required): Fish, Wildlife and Parks commissioner	Governor	6/30/2009
Mr. Gordon Haugen, Bozeman Qualifications (if required): sportsman	Governor	6/30/2009
Mr. Max McDonald, Vaughn Qualifications (if required): landowner	Governor	6/30/2009
Mr. Doug Schott, Stevensville Qualifications (if required): outfitter	Governor	6/30/2009
Mr. Land Tawney, Missoula Qualifications (if required): sportsman	Governor	6/30/2009

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Private Lands/Public Wildlife Council</b> (Fish, Wildlife and Parks) cont.		
Mr. Richard Iverson, Culbertson Qualifications (if required): landowner	Governor	6/30/2009
Ms. Lindsay Giem, Twin Bridges Qualifications (if required): landowner	Governor	6/30/2009
Mr. Brett Todd, Big Timber Qualifications (if required): outfitter	Governor	6/30/2009
<b>Professional Engineers and Land Surveyors</b> (Labor and Industry)		
Mr. John Neil, Great Falls Qualifications (if required): licensed civil engineer	Governor	7/1/2009
Mr. Tom Heinecke, Kalispell Qualifications (if required): licensed mechanical engineer	Governor	7/1/2009
<b>Public Defender Commission</b> (Administration)		
Mr. Stephen Nardi, Kalispell Qualifications (if required): attorney nominated by State Bar	Governor	7/1/2009
Commissioner Vic Miller, Harlem Qualifications (if required): public representative nominated by Senate President Mike Cooney	Governor	7/1/2009
Ms. Majel Russell, Billings Qualifications (if required): member of organization advocating on behalf of racial minorities	Governor	7/1/2009

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Research and Commercialization Technology Board</b> (Commerce) Mr. Jim Davison, Anaconda Qualifications (if required): public representative	Governor	7/1/2009
<b>Reserved Water Rights Compact Commission</b> (Natural Resources and Conservation) Mr. Chris D. Tweeten, Helena Qualifications (if required): none specified	Attorney General	6/1/2009
<b>State Workforce Investment Board</b> (Labor and Industry) Mr. Michael Grove, White Sulphur Springs Qualifications (if required): private sector representative	Governor	7/1/2009
Director Keith Kelly, Helena Qualifications (if required): veteran and a public sector representative	Governor	7/1/2009
Commissioner Connie Eissinger, Brockway Qualifications (if required): private sector representative	Governor	7/1/2009
Superintendent Linda McCulloch, Helena Qualifications (if required): public sector representative	Governor	7/1/2009
Director Joan Miles, Helena Qualifications (if required): public sector representative	Governor	7/1/2009
Mr. Michael O'Neill, Butte Qualifications (if required): private sector representative	Governor	7/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2009 THROUGH JULY 31, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>State Workforce Investment Board</b> (Labor and Industry) cont. Mr. Evan Barrett, Butte Qualifications (if required): Governor's representative	Governor	7/1/2009
Mr. Michael McGinley, Dillon Qualifications (if required): county commissioner	Governor	7/1/2009
Ms. Linda Woods, Darby Qualifications (if required): public sector representative	Governor	7/1/2009
Director Anthony Preite, Helena Qualifications (if required): public sector representative	Governor	7/1/2009
Mr. Jeff Rupp, Bozeman Qualifications (if required): public sector representative	Governor	7/1/2009
Mr. Dave Crum, Great Falls Qualifications (if required): private sector representative	Governor	7/1/2009
Ms. Martina Copps, Broadus Qualifications (if required): private sector representative	Governor	7/1/2009
Mr. Thomas Curry, Billings Qualifications (if required): labor representative	Governor	7/1/2009
Mr. Michael DesRosier, Browning Qualifications (if required): county commissioner	Governor	7/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2009 THROUGH JULY 31, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>State Workforce Investment Board</b> (Labor and Industry) cont. Mr. Kirk Hammerquist, Kalispell Qualifications (if required): private sector representative	Governor	7/1/2009
Ms. Jacquie Helt, Missoula Qualifications (if required): labor representative	Governor	7/1/2009
Ms. Maureen Kenneally, Butte Qualifications (if required): private sector representative	Governor	7/1/2009
Mr. Robbe Lindsay, Missoula Qualifications (if required): private sector representative	Governor	7/1/2009
Mr. Dan Miles, Butte Qualifications (if required): private sector representative	Governor	7/1/2009
Mr. Rodney Miller, Wolf Point Qualifications (if required): Sector 166 representative	Governor	7/1/2009
Ms. Gail Richardson, Bozeman Qualifications (if required): private sector representative	Governor	7/1/2009
Mr. Alan Skari, Chester Qualifications (if required): private sector representative	Governor	7/1/2009
Ms. Karen Sullivan, Missoula Qualifications (if required): private sector representative	Governor	7/1/2009

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>State Workforce Investment Board</b> (Labor and Industry) cont. Mrs. Sandi Miller, Helena Qualifications (if required): private sector representative	Governor	7/1/2009
Ms. Georgia Gibbs-Atkinson, Poplar Qualifications (if required): private sector representative	Governor	7/1/2009
Mr. Thomas McKenna, Lewistown Qualifications (if required): private sector representative	Governor	7/1/2009
Mr. George Kipp, Browning Qualifications (if required): Section 166 representative	Governor	7/1/2009
Mr. Jeff Tochihara, Columbus Qualifications (if required): private sector representative	Governor	7/1/2009
Mr. Tyler Trevor, Helena Qualifications (if required): public sector representative (Higher Education)	Governor	7/1/2009
Mr. Brad Eldridge, Helena Qualifications (if required): public sector representative	Governor	7/1/2009
<b>State-Tribal Economic Development Commission</b> (Governor) Ms. Caroline Brown, Harlem Qualifications (if required): representative of the Fort Belknap Community	Governor	6/30/2009
Mr. Shawn Real Bird, Garryowen Qualifications (if required): representative of the Crow Tribe	Governor	6/30/2009

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>State-Tribal Economic Development Commission</b> (Governor) cont.		
Mr. Russell Boham, Great Falls Qualifications (if required): representative of the Little Shell Band of Chippewa	Governor	6/30/2009
Mr. Ronald Doney, Great Falls Qualifications (if required): representative of the Little Shell Band of Chippewa (alternate)	Governor	6/30/2009
<b>Telecommunications Advisory Council Services for Persons with Disabilities</b> (Public Health and Human Services)		
Ms. Cheryl Gillespie, Helena Qualifications (if required): representative of the largest local exchange company	Governor	7/1/2009
Mr. Eric Eck, Helena Qualifications (if required): representative of the Public Service Commission	Governor	7/1/2009
Ms. Christy Keto, Havre Qualifications (if required): representative of an interLATA interexchange carrier	Governor	7/1/2009
Ms. Julia Saylor, Helena Qualifications (if required): having a hearing disability	Governor	7/1/2009
<b>Tourism Advisory Council</b> (Commerce)		
Mr. Mark Browning, Miles City Qualifications (if required): representative of Custer Country	Governor	7/1/2009
Ms. Cyndy Andrus, Bozeman Qualifications (if required): representative of Yellowstone Country	Governor	7/1/2009

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Tourism Advisory Council</b> (Commerce) cont. Ms. Dyani Bingham, Billings Qualifications (if required): Tribal Government representative	Governor	7/1/2009
Ms. Marilyn Polich, Butte Qualifications (if required): representative of Goldwest Country	Governor	7/1/2009
Ms. Beverly Harbaugh, Jordan Qualifications (if required): Missouri River Country representative	Governor	7/1/2009
<b>Water Judge of the Clark Fork River Basin Water Division</b> (District Court) Judge Ted Mizner, Anaconda Qualifications (if required): elected	District Court	6/30/2009
<b>Water Judge of the Lower Missouri River Basin Water Division</b> (District Court) Judge David Cybulski, Plentywood Qualifications (if required): elected	District Court	6/30/2009
<b>Water Judge of the Upper Missouri River Basin Water Division</b> (District Court) Judge Jeffrey Sherlock, Helena Qualifications (if required): elected	District Court	6/30/2009
<b>Water Judge of the Yellowstone River Basin Water Division</b> (District Court) Judge Joe L. Hegel, Forsyth Qualifications (if required): elected	District Court	6/30/2009

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Western Interstate Commission for Higher Education</b> (Higher Education) Ms. Mary Sheehy Moe, Great Falls Qualifications (if required): higher education representative	Governor	6/19/2009