

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 21

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

ADMINISTRATION, Department of, Title 2

2-59-421 Notice of Proposed Repeal - Residential Mortgage Lenders. No Public Hearing Contemplated. 2064-2066

2-59-422 Notice of Proposed Amendment and Repeal - Schedule of Charges - Change of Location - Application Procedure for Approval to Merge Affiliated Banks - Satellite Terminals. No Public Hearing Contemplated. 2067-2070

AGRICULTURE, Department of, Title 4

4-14-191 Notice of Public Hearing on Proposed Adoption and Repeal - Noxious Weeds. 2071-2076

ENVIRONMENTAL QUALITY, Department of, Title 17

17-296 (CECRA Remediation) Notice of Extension of Comment Period on Proposed Amendment, Adoption, and Repeal - Definitions - Facility Listing - Facility Ranking - Delisting a Facility on the CECRA Priority List - Incorporation by Reference - Proper and Expeditious Notice - Third-Party Remedial Actions at Order Sites - Additional Remedial Actions Not Precluded - Orphan Share Reimbursement - Purpose. 2077

JUSTICE, Department of, Title 23

23-16-214 Notice of Public Hearing on Proposed Amendment - Definitions - Transfer of Interest Among Licensees - Transfer of Interest to a New Owner - Loans and Other Forms of Financing - Change of Liquor License Type - Change of Location - Approved Variations of Keno - Quarterly Reporting Requirements - Reporting Frequency for Approved Automated Accounting Systems - Exceptions - General Requirements of Operators - Manufacturers - Manufacturers of Illegal Devices - Distributors - Route Operators of Video Gambling Machines or Producers of Associated Equipment - Live Keno and Bingo Record Keeping. 2078-2085

LABOR AND INDUSTRY, Department of, Title 24

24-29-240 Notice of Public Hearing on Proposed Amendment - Workers' Compensation Medical Fee Schedules. 2086-2090

24-138-66 (Board of Dentistry) Notice of Extension of Comment Period on Proposed Amendment - Dental Anesthetic Certification - Dental Permits - Exemptions - Continuing Education. 2091

LIVESTOCK, Department of, Title 32

32-9-198 Amended Notice of Proposed Amendment and Adoption - Trichomoniasis - Deputy State Veterinarians. 2092-2094

32-9-200 Notice of Public Hearing on Proposed Amendment and Notice of Opportunity to Participate in an Evidentiary Hearing - Grade A Pasteurized Milk - Time From Processing That Fluid Milk May Be Sold for Public Consumption. 2095-2098

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-492 Notice of Public Hearing on Proposed Amendment - Medicaid Reimbursement for Audiology Services - Hearing Aids - Durable Medical Equipment (DME). 2099-2105

37-493 Notice of Public Hearing on Proposed Amendment - Medicaid Reimbursement for Psychiatric Residential Treatment Facility (PRTF) Services. 2106-2113

37-494 Notice of Public Hearing on Proposed Amendment - Medicaid Eligibility. 2114-2119

37-495 Notice of Public Hearing on Proposed Adoption and Amendment - Medicaid Physician Administered Drug Reimbursement - Pharmacy Outpatient Drug Reimbursement. 2120-2125

SECRETARY OF STATE, Office of, Title 44

44-2-151 Notice of Proposed Amendment and Repeal - Elections.
No Public Hearing Contemplated. 2126-2142

44-2-162 Notice of Public Hearing on Proposed Amendment - Fees
Charged by the Business Services Division. 2143-2144

RULE ADOPTION SECTION

STATE AUDITOR AND COMMISSIONER OF INSURANCE, Title 6

6-185 Corrected Notice of Amendment, Adoption, and Repeal -
Surplus Lines Insurance Transactions. 2145

FISH, WILDLIFE AND PARKS, Department of, Title 12

12-356 (Fish, Wildlife and Parks Commission) Notice of Adoption
and Amendment - Emergency Closures of Department Lands and
Public Waters. 2146-2150

LABOR AND INDUSTRY, Department of, Title 24

24-114-30 (Board of Architects and Landscape Architects) Notice of
Amendment - Fee Schedule - Applications - Education and
Experience - Examinations. 2151

24-126-30 (Board of Chiropractors) Notice of Amendment -
Definitions - Applications - Display of License - Continuing Education -
Unprofessional Conduct. 2152

24-177-27 (Board of Physical Therapy Examiners) Notice of
Amendment - Physical Therapy Aides - Temporary Licenses - Out of
State Applicants - Foreign-Trained Applicants - Topical Medication
Protocols - Continuing Education - Physical Therapists. 2153-2157

24-219-21 (Board of Social Work Examiners and Professional
Counselors) Notice of Amendment - Definitions - Fees - Application -
Licensure - Status Conversion - Continuing Education -
Unprofessional Conduct - Social Work Examiners and Professional
Counselors. 2158-2164

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-22-135 (Board of Oil and Gas Conservation) Notice of
Amendment - Oil and Gas Provisions and Production. 2165

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-487 Notice of Adoption and Amendment - Medicaid Reimbursement
for Swing-Bed Hospital Services. 2166

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee. 2167-2168

How to Use ARM and MAR. 2169

Accumulative Table. 2170-2178

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM	)	NOTICE OF PROPOSED REPEAL
2.59.1801 through 2.59.1805)	
pertaining to residential mortgage	)	NO PUBLIC HEARING
lenders	)	CONTEMPLATED

TO: All Concerned Persons

1. On December 16, 2009, the Department of Administration proposes to repeal the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Montana Department of Administration no later than 5:00 p.m. on December 3, 2009, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to wjohnston@mt.gov.

3. The department proposes to repeal the following rules:

2.59.1801 MORTGAGE LENDER SURETY BOND, found on ARM page 2-6145.

AUTH: 32-10-303, 32-10-502, MCA
IMP: 32-10-203, 32-10-208, 32-10-303, MCA

2.59.1802 BRANCH OFFICE LICENSING, found on ARM page 2-6145.

AUTH: 32-10-203, 32-10-502, MCA
IMP: 32-10-202, 32-10-203, 32-10-208, MCA

2.59.1803 SUPERVISION OF OFFICES AND LOAN OFFICERS, found on ARM page 2-6146.

AUTH: 32-10-502, MCA
IMP: 32-10-202, 32-10-203, 32-10-208, MCA

2.59.1804 RESPONSIBILITY FOR ACTS OF AGENTS, found on ARM page 2-6147.

AUTH: 32-10-502, MCA
IMP: 32-10-207, 32-10-501, MCA

2.59.1805 WAIVER OF IN-STATE OFFICE REQUIREMENT, found on ARM page 2-6147.

AUTH: 32-10-309, 32-10-502, MCA
IMP: 32-10-309, MCA

STATEMENT OF REASONABLE NECESSITY: The Montana Residential Mortgage Lender Licensing Act (Act) was repealed by the Legislature in 2009 as part of Senate Bill 351. ARM 2.59.1801 through ARM 2.59.1805 were adopted under authority provided by the Act. Therefore, these rules are no longer applicable and should be repealed.

4. Concerned persons may present their data, views, or arguments, concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to kosullivan@mt.gov, and must be received no later than 5:00 p.m., December 10, 2009.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, MT 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to kosullivan@mt.gov, and must be received no later than 5:00 p.m., December 10, 2009.

6. If the Department of Administration's Division of Banking and Financial Institutions 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 ten persons based on the number of mortgage lender entity licensees which is currently 98 as of the publication of this notice.

7. An electronic copy of this Proposal Notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may

be unavailable during some periods, due to system maintenance or technical problems.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to wjohnston@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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

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

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State November 2, 2009.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 2.59.302, 2.59.901, and	)	AMENDMENT AND REPEAL
2.59.1001 pertaining to schedule of)	
charges, change of location, and)	
application procedure for approval to)	
merge affiliated banks and the repeal)	
of ARM 2.59.501 through 2.59.504	)	NO PUBLIC HEARING
pertaining to satellite terminals	)	CONTEMPLATED

TO: All Concerned Persons

1. On December 16, 2009, the Department of Administration proposes to amend and repeal the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Montana Department of Administration no later than 5:00 p.m. on December 3, 2009, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to wjohnston@mt.gov.

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

2.59.302 SCHEDULE OF CHARGES (1) through (8) remain the same.

(9) Licensees shall interpret ~~32-5-201(6)~~ 32-5-301(2), MCA, of the Act "~~once and no more~~ only once" to mean on the same default; i.e., a borrower who defaults in one or more payments may be subject to a penalty of 5% of each payment in default;

(10) remains the same.

AUTH: 32-5-401, MCA

IMP: 31-1-106, ~~32-5-301(6)~~ 32-5-301, MCA

STATEMENT OF REASONABLE NECESSITY: The language of 32-5-301(2), MCA, has changed. Instead of "once and no more" the statute currently reads "only once." In addition, the statute has been renumbered from 32-5-201(6), MCA, to 32-5-301, MCA. This rendered the citation to the statute in the existing rule and in the implementation section incorrect.

2.59.901 CHANGE OF LOCATION (1) remains the same.

AUTH: 32-1-203, MCA
IMP: 32-1-203 2, MCA

STATEMENT OF REASONABLE NECESSITY: This rule implements 32-1-202, MCA, not 32-1-203, MCA.

2.59.1001 APPLICATION PROCEDURE FOR APPROVAL TO MERGE AFFILIATED BANKS (1) through (5) remain the same.

(6) The application shall be in letter form addressed to the Commissioner of Banking and Financial Institutions, Department of Administration, 846 Front Street, P.O. Box 200546, Helena, MT 59620-0546.

~~(7) This rule will be effective January 1, 1990.~~

AUTH: 32-1-203, MCA
IMP: 32-1-371, MCA

STATEMENT OF REASONABLE NECESSITY: The rule is being amended to reflect the current address of the division. The effective date of the rule is no longer necessary.

4. The department proposes to repeal the following rules:

2.59.501 APPLICATION FOR SATELLITE TERMINAL AUTHORIZATION, found on ARM page 2-5995.

AUTH: 32-6-401, MCA
IMP: 32-6-401, MCA

2.59.502 CRITERIA FOR AUTHORIZATION, found on ARM page 2-5997.

AUTH: 32-6-401, MCA
IMP: 32-6-401, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-6-401, MCA, has been repealed so the department proposes to repeal the rules implementing it.

2.59.503 MAGNETIC ENCODING AND CARD STANDARDS, found on ARM page 2-5997.

AUTH: 32-6-401, MCA
IMP: 32-6-203, 32-6-308, MCA

STATEMENT OF REASONABLE NECESSITY: Sections 32-6-203, 32-6-308, and 32-6-401, MCA, have been repealed.

2.59.504 FEES FOR THE APPROVAL OF AUTOMATED TELLER MACHINES, found on ARM page 2-5998.

AUTH: 32-6-401, MCA

IMP: 32-6-304, MCA

STATEMENT OF REASONABLE NECESSITY: Sections 32-6-401, and 32-6-304, MCA, have been repealed.

5. Concerned persons may present their data, views, or arguments, concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to kosullivan@mt.gov, and must be received no later than 5:00 p.m., December 10, 2009.

6. 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 Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, MT 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to kosullivan@mt.gov, and must be received no later than 5:00 p.m., December 10, 2009.

7. If the Division of Banking and Financial Institutions 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 six persons based on the number of state chartered banks, which is currently 63 as of the publication of this notice.

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

9. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall

make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to wjohnston@mt.gov, or may be made by completing a request form at any rules hearing held by the department.

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

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

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State November 2, 2009.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of ARM)
New Rule I through V, and repeal of)
4.5.202, 4.5.203, 4.5.204, and 4.5.205)
relating to noxious weeds)

NOTICE OF PUBLIC HEARING ON
PROPOSED ADOPTION AND
REPEAL

TO: All Concerned Persons

1. On December 4, 2009, at 10:00 the Montana Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 303 N. Roberts at Helena, Montana, to consider the proposed adoption and repeal of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact Department of Agriculture no later than 5:00 p.m. on December 1, 2009, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; phone: (406) 444-3144; fax: (406) 444-5409; or e-mail: agr@mt.gov.

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

NEW RULE I PRIORITY 1A (1) These weeds are not present in Montana. Management criteria will require eradication if detected, education, and prevention:

(a) Yellow starthistle (*Centaurea solstitialis*).

AUTH: 80-7-802, MCA

IMP: 7-22-2101, MCA

Reason: The system of categorizing noxious weeds was determined to be inadequate to address invasive plants in Montana. Priority listing of noxious weeds was deemed more responsive to the state's weed listing needs.

Financial impact: This is the result of noxious weed reclassification and the shift of Yellow starthistle from the category system to a priority system and warrants no change financially.

NEW RULE II PRIORITY 1B (1) These weeds have limited presence in Montana. Management criteria will require eradication or containment and education:

(a) Dyer's woad (*Isatis tinctoria*);

(b) Flowering rush (*Butomus umbellatus*);

- (c) Japanese knotweed complex (*Polygonum spp.*);
- (d) Purple loosestrife (*Lythrum spp.*);
- (e) Rush skeletonweed (*Chondrilla juncea*);
- (f) Eurasian watermilfoil (*Myriophyllum spicatum*);
- (g) Scotch broom (*Cytisus scoparius*);
- (h) Curlyleaf pondweed (*Potamogeton crispus*).

AUTH: 80-7-802, MCA

IMP: 7-22-2101, MCA

REASON: The system of categorizing noxious weeds was determined to be inadequate to address invasive plants in Montana. Priority listing of noxious weeds was deemed more responsive to the state's weed listing needs. Seven invasive plants (dyer's woad, flowering rush, Japanese knotweed complex, purple loosestrife, rush skeletonweed, Eurasian watermilfoil and Scotch broom) previously declared noxious weeds under ARM 4.5.201 are being shifted to this priority description. The Montana Department of Agriculture received a petition from Sanders County to list curlyleaf pondweed as a noxious weed. The department sponsored Montana Noxious Weed List Advisory Committee has reviewed the biology of this plant and has determined it has the potential for rapid spread and invasion of noninfested water. This aquatic weed is capable of economically and biologically adversely affecting Montana's waterways, riparian areas, and other lands. This determination, resulting in the designation as a Priority 1B noxious weed, will increase public awareness and recognition of these weeds, encourage education or identification and control, improve monitoring for infestations, improve control and containment of existing infestations, and provide for eradication of new or small infestations. Curlyleaf pondweed is an extremely aggressive invasive aquatic plant that hinders use of waters for recreation, agriculture, and wildlife in 94% of the lower 48 states and five provinces. It has been declared noxious in six states.

Financial impact: The shift of dyer's woad, flowering rush, Japanese knotweed complex, purple loosestrife, rush skeletonweed, Eurasian watermilfoil, and Scotch broom from the category system to a priority system is the result of noxious weed reclassification and warrants no change financially. Aquatic vegetation management in irrigation systems routinely includes control of curlyleaf, and as it exponentially obstructs lakes and other state water-bodies, it represents a rising cost to Montanans. Conceivably, by listing the weed as noxious, the cost of control will gradually slow as further spread is prevented through education and awareness.

NEW RULE III PRIORITY 2A (1) These weeds are common in isolated areas of Montana. Management criteria will require eradication or containment where less abundant. Management shall be prioritized by local weed districts:

- (a) Tansy ragwort (*Senecio jacobaea*);
- (b) Meadow hawkweed complex (*Hieracium spp.*);
- (c) Orange hawkweed (*Hieracium aurantiacum*);
- (d) Tall buttercup (*Ranunculus acris*);
- (e) Perennial pepperweed (*Lepidium latifolium*);

- (f) Yellowflag iris (*Iris pseudacorus*);
- (g) Blueweed (*Echium vulgare*);
- (h) Hoary alyssum (*Berteroa incana*).

AUTH: 80-7-802, MCA
IMP: 7-22-2101, MCA

REASON: The system of categorizing noxious weeds was determined to be inadequate to address invasive plants in Montana. Priority listing of noxious weeds was deemed more responsive to the state's weed listing needs. Eight invasive plants, (tansy ragwort, meadow hawkweed complex, orange hawkweed, tall buttercup, perennial pepperweed, yellowflag iris, blueweed, and hoary alyssum) previously declared noxious weeds under ARM 4.5.201 are being shifted to this priority description.

Financial impact: The shift of tansy ragwort, meadow hawkweed complex, orange hawkweed, tall buttercup, perennial pepperweed, yellowflag iris, blueweed, and hoary alyssum from the category system to a priority system is the result of noxious weed reclassification and warrants no change financially.

NEW RULE IV PRIORITY 2B (1) These weeds are abundant in Montana and widespread in many counties. Management criteria will require eradication or containment where less abundant. Management shall be prioritized by local weed districts:

- (a) Canada thistle (*Cirsium arvense*);
- (b) Field bindweed (*Convolvulus arvensis*);
- (c) Leafy spurge (*Euphorbia esula*);
- (d) Whitetop (*Cardaria draba*);
- (e) Russian knapweed (*Centaurea repens*);
- (f) Spotted knapweed (*Centaurea stoebe* or *maculosa*);
- (g) Diffuse knapweed (*Centaurea diffusa*);
- (h) Dalmatian toadflax (*Linaria dalmatica*);
- (i) St. Johnswort (*Hypericum perforatum*);
- (j) Sulfur cinquefoil (*Potentilla recta*);
- (k) Common tansy (*Tanacetum vulgare*);
- (l) Oxeye daisy (*Leucanthemum vulgare*);
- (m) Houndstongue (*Cynoglossum officinale*);
- (n) Yellow toadflax (*Linaria vulgaris*);
- (o) Saltcedar (*Tamarix spp.*).

AUTH: 80-7-802, MCA
IMP: 7-22-2101, MCA

REASON: The system of categorizing noxious weeds was determined to be inadequate to address invasive plants in Montana. Priority listing of noxious weeds was deemed more responsive to the state's weed listing needs. Eight invasive plants, (Canada thistle, field bindweed, leafy spurge, whitetop, Russian knapweed,

spotted knapweed, diffuse knapweed, dalmatian toadflax, St. Johnswort, sulfur cinquefoil, common tansy, oxeye daisy, houndstongue, yellow toadflax, and saltcedar) previously declared noxious weeds under ARM 4.5.201 are being shifted to this priority description.

Financial impact: The shift of Canada thistle, field bindweed, leafy spurge, whitetop, Russian knapweed, spotted knapweed, diffuse knapweed, dalmatian toadflax, St. Johnswort, sulfur cinquefoil, common tansy, oxeye daisy, houndstongue, yellow toadflax, and saltcedar from the category system to a priority system is the result of noxious weed reclassification and warrants no change financially.

NEW RULE V PRIORITY 3 REGULATED PLANTS (NOT MONTANA LISTED NOXIOUS WEEDS) (1) These regulated plants have the potential to have significant negative impacts. The plant may not be intentionally spread or sold other than as a contaminant in agricultural products. The state recommends research, education, and prevention to minimize the spread of the regulated plant:

- (a) Cheatgrass (*Bromus tectorum*);
- (b) Russian olive (*Elaeagnus angustifolia*);
- (c) Hydrilla (*Hydrilla verticillata*).

AUTH: 80-7-802, MCA

IMP: 7-22-2101, MCA

REASON: The system of categorizing noxious weeds was determined to be inadequate to address invasive plants in Montana. Priority listing of noxious weeds was deemed more responsive to the state's weed listing needs. As regulated plants, Priority 3 listing provides an opportunity to prevent future sale of invasive plants and expand education efforts. This provides authority for control in specific sites while not burdening Montana citizens with enforcement in historically beneficial niches or imposing economic disadvantage on Montana producers. It was concluded that revision of the categories would allow recognition of plants as invasive and requiring management without listing as noxious. Priority 3 encompasses plants that currently infest Montana. Montana Department of Agriculture received a petition to list cheatgrass (*Bromus tectorum*) from the USDA Forest Service out of Missoula; in previous years, MDA had elected to not list cheatgrass as there was not a clear fit in the existing category system despite its aggressive invasiveness and destructive nature. MDA received a petition from the Montana Native Plant Society requesting that Russian olive (*Elaeagnus angustifolia*) be considered for listing as noxious. As with cheatgrass, MDA had received petitions for Russian olive in the past, but had no practical system by which to address a plant that was beneficial in one setting and highly invasive in another. Priority 3 will provide for special management areas to afford for the control of Russian olive in areas where it is a threat. Hydrilla (*Hydrilla verticillata*) is not known to be in Montana waters at this point, but due to the highly invasive behavior of the plant, its presence and expanding population in Idaho and the threat as an incidental in illegal aquarium releases, it is crucial to take

advantage of the sale restrictions and public education opportunities listing it as Priority 3.

Financial impact: Initially, prohibiting sale of Russian olive and hydrilla will result in a loss for the nursery and aquarium trade, but this will be short-lived as noninvasive plants are substituted. The cost to the state by uncontrolled aquatic and riparian invaders is estimated to be far more injurious than the loss of revenue for current trade, and the additional cost for mandated control of Russian olive in riparian areas. Listing cheatgrass as regulated will see little increased cost for control, and listing it may well provide external revenue sources to assist landowners who wish to control it. Montana's seed industry is protected from unreasonable negative financial impact by listing it as regulated instead of noxious. Conceivably, by listing the plants as regulated, the cost of control will gradually slow as further spread is prevented through education and awareness.

4. The department proposes to repeal the following rules:

4.5.202 CATEGORY 1

AUTH: 7-22-2101, MCA
IMP: 7-22-2101, 80-7-802, MCA

4.5.203 CATEGORY 2

AUTH: 7-22-2101, 80-7-802, MCA
IMP: 7-22-2101, MCA

4.5.204 CATEGORY 3

AUTH: 80-7-802, MCA
IMP: 7-22-2101, MCA

4.5.205 CATEGORY 4 - WATCH LIST

AUTH: 80-7-802, MCA
IMP: 7-22-2101, MCA

REASON: The system of categorizing noxious weeds was determined to be inadequate to invasive plants in Montana.

There will be no financial impact.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may be submitted to: Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; telephone (406) 444-3144; fax: (406) 444-5409; or e-mail: agr@mt.gov, and must be received no later than 5:00 p.m. on December 10, 2009.

6. Cort Jensen, Department of Agriculture, has been designated to preside over and conduct this hearing.

7. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail, and mailing address of the person and specifies 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 Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

8. An electronic copy of this Notice of Proposed Adoption is available through the department's web site at www.agr.mt.gov, under the Administrative Rules section. The department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department 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.

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

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, November 2, 2009.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF EXTENSION OF
17.55.102, 17.55.108, 17.55.111, and	)	COMMENT PERIOD ON
17.55.114 pertaining to definitions, facility	)	PROPOSED AMENDMENT,
listing, facility ranking, and delisting a	)	ADOPTION, AND REPEAL
facility on the CECRA priority list; adoption)	
of New Rules I through V pertaining to	)	(CECRA REMEDIATION)
incorporation by reference, proper and)	
expeditious notice, third-party remedial)	
actions at order sites, additional remedial)	
actions not precluded, and orphan share)	
reimbursement; and repeal of ARM)	
17.55.101 pertaining to purpose)	

TO: All Concerned Persons

1. On October 15, 2009, the Department of Environmental Quality published MAR Notice No. 17-296 regarding a notice of public hearing on the proposed amendment, adoption, and repeal of the above-stated rules at page 1730, 2009 Montana Administrative Register, issue number 19. The department is publishing this amended notice to extend the public comment period as provided in the next paragraph because a representative of a non-governmental organization requested additional time to comment.

2. Written data, views, or arguments may be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than November 20, 2009. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

3. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking action or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., November 17, 2009, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

<u>/s/ John F. North</u>	BY: <u>/s/ Richard H. Opper</u>
JOHN F. NORTH	Richard H. Opper, Director
Rule Reviewer	

Certified to the Secretary of State, November 2, 2009.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC HEARING
23.16.101, 23.16.116, 23.16.117,	)	ON PROPOSED AMENDMENT
23.16.120, 23.16.125, 23.16.126,)	
23.16.1304, 23.16.1826, 23.16.1826A,)	
23.16.1828, 23.16.2402, concerning)	
definitions, transfer of interest among)	
licensees, transfer of interest to a new)	
owner, loans and other forms of)	
financing, change of liquor license type,)	
change of location, approved variations)	
of keno, quarterly reporting)	
requirements, reporting frequency for)	
approved automated accounting)	
systems - exceptions, general)	
requirements of operators,)	
manufacturers, manufacturers of illegal)	
devices, distributors, and route)	
operators of video gambling machines or)	
producers of associated equipment, and)	
live keno and bingo record keeping)	

TO: All Concerned Persons

1. On December 3, 2009, at 9:00 a.m., the Montana Department of Justice will hold a public hearing in the conference room at the Gambling Control Division, 2550 Prospect Avenue, Helena, Montana, to consider the amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on November 24, 2009, to advise us of the nature of the accommodation that you need. Please contact Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; telephone (406) 444-1971; Fax (406) 444-9157; Montana Relay Service 711; or e-mail rask@mt.gov.

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

23.16.101 DEFINITIONS As used throughout this subchapter, the following definitions apply:

(1) through (14) remain the same.

- (a) a person other than an institutional lender as defined in ~~(6)~~(7) of this rule;
or
(b) through (20) remain the same.

AUTH: 23-5-115, 23-5-621, MCA
IMP: 23-5-112, 23-5-118, 23-5-176, 23-5-629, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: The department is proposing to amend ARM 23.16.101 because, due to a prior amendment to the definitions, the numbers assigned to the subsections were changed, and the internal reference to the definition of "institutional lender" requires correction. This is a clerical correction and is not intended to have a substantive effect on the rule itself.

23.16.116 TRANSFER OF INTEREST AMONG LICENSEES (1) Except as provided in ~~(5)~~(8), an ownership interest may not be transferred among existing owners without submitting an amended gambling license application to the department and obtaining department approval prior to the transfer.

(2) Gambling activity may continue pending the outcome of a license investigation for a proposed transfer of ownership due to the death of a licensee under joint tenancy with right of survivorship as long as the person to whom the interest is transferred is already listed as an owner in the licensed operation and joint tenancy had been documented and approved in the original license application. The transfers must be reported on Form 37 along with the following documents:

- (a) death certificate;
- (b) will of the deceased, if any; and
- (c) copy of the licensee's most recent financial statements or tax return.

(3) Gambling activity may continue pending the outcome of a license investigation for the proposed transfer of ownership in a licensed operation resulting from divorce as long as the spouse to whom an interest is transferred has already been approved and listed as an owner of that license. These types of proposed transfers must be reported on Form 37 along with the following documents:

- (a) court decree of dissolution of marriage;
- (b) source of funding documents, if any, if the transfer requires a buyout, e.g., bank statements supporting cash payments, loan and security agreements, installment payment agreement, etc.;

(c) copy of the licensee's most recent financial statements or tax return;
(d) if the transferring spouse will no longer be a licensee, copies of letters or other documents from lenders, landlords, or other parties to whom the licensee is obligated, which release the spouse from primary responsibility for the obligation, although the transferring spouse may still guarantee the obligation; and

- (e) if the transferring spouse is no longer a licensee, an updated bank signature card.

(4) Gambling activity may continue pending the outcome of a license investigation for a proposed transfer of ownership in a licensed operation by gift among licensees. This type of proposed transfer must be reported on Form 37 along with the following documents:

(a) gifting statement which provides the names of the parties, the intent of the parties, and the percentage ownership to be transferred through the gift; and

(b) copy of the licensee's most recent financial statements or tax return.

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

AUTH: 23-5-115, MCA

IMP: 23-5-115, 23-5-118, 23-5-176, MCA

RATIONALE AND JUSTIFICATION: This rule amendment is reasonable and necessary to implement a recommendation from the Gaming Advisory Council to create a streamlined process for licensees to report a change in ownership in certain limited circumstances. The Gaming Advisory Council noted special concern for licensees who, as the result of a death of a licensee, are otherwise required to complete and submit to the department a lengthy amended application form. These amendments, through the creation of a new application form (Form 37), will reduce the paperwork required to be filed with the department to report ownership changes brought about by: the death of a licensee where the ownership interests were held as joint tenants with right of survivorship; divorce where both spouses are identified as owners of the license; or gifting of an ownership interest where the beneficiary is already an owner of the license. For each of these ownership changes, the rule amendments identify the documents that are required to be filed with department in conjunction with Form 37, in order to establish the fact of ownership changes being reported. The amendments clarify that these licensees need not cease gambling activities pending department approval of the ownership changes reported on Form 37. As provided by these amendments, the abbreviated process utilizing Form 37 may not be used when a change in ownership brings a stranger into ownership of the license.

23.16.117 TRANSFER OF INTEREST TO NEW OWNER (1) through (7) remain the same.

(8)~~(a)~~ Transfers of ownership in a gambling operator license resulting from foreclosure on a contract for deed or other instrument of transfer require an amended application.

(a) The gambling activity may continue pending the outcome of the a license investigation for a proposed transfer of ownership interest resulting from foreclosure under the following conditions:

(i) remains the same.

(ii) the foreclosure takes place within five years or half the term of the contract, whichever is less; an amended license application is required up to two years following the sale; after two years, a new license application is required including all applicable fees, but the business will be allowed to operate as long as the owner meets the criteria contained in (8)(a)(i), (iii), and (v);

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

(9) Transfers of ownership control of a licensed gambling operation into a receivership, trust, or an estate mandated by court order require an amended application to be filed. The transfer of ownership interest to an estate that results from the death of a licensee may be reported on Form 37.

- (a) remains the same.
 - (i) documentation of the event precipitating the transfer of the licensed gambling operation into a receivership, trust, or estate, ~~i.e.~~ e.g., death certificate;
 - (ii) documents naming/appointing a person to exercise ownership control, ~~i.e.~~ e.g., receiver, personal representative, trustee;
 - (iii) and (iv) remain the same.
 - (v) ~~the department determines the receiver is suitable to hold or own a license~~ a copy of the licensee's most recent financial statements or tax returns; and
 - (vi) the department determines the receiver is suitable to hold or own a license.
- (b) Upon the dissolution of a receivership, trust, or estate licensed under ~~this section (9)~~, if ownership interests are distributed to strangers to the license, a new license application must be filed and all applicable rules and procedures must be followed.
- (c) If ownership interests are transferred to existing owners following the dissolution of a receivership, trust, or estate, an amended license application must be filed.

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

RATIONALE AND JUSTIFICATION: This rule amendment is reasonable and necessary to implement a recommendation from the Gaming Advisory Council to create a streamlined process for licensees to report a change in ownership of a licensed gambling operation due to the death of a licensee. The Gaming Advisory Council noted special concern for licensees who, as the result of a death of a licensee, are required to complete and submit to the department a lengthy amended application form. These amendments, through the creation of a new application form (Form 37), will reduce the paperwork required to be filed with the department to report the transfer of ownership interests into an estate following the death of a licensee.

These rule amendments clarify the documents required to be filed with the department whenever an ownership interest is transferred into an estate, trust, or receivership. The amendments also clarify that a separate amended license application must be filed with the department where, upon the close or dissolution of an estate, trust, or receivership, ownership is transferred to an existing owner of the license.

23.16.120 LOANS AND OTHER FORMS OF FINANCING (1) through (8)(d) remain the same.

~~(e) (9) This rule~~ The provisions of (8) does do not apply to video gambling machine retail installment sale agreements or conversions from a "cash equivalent" sale to a retail installment sale agreement.

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

AUTH: 23-5-115, MCA
IMP: 23-5-115, 23-5-118, 23-5-176, MCA

RATIONALE AND JUSTIFICATION: The department is proposing a minor clerical correction to ARM 23.16.120 for clarification purposes, and is not intended to have a substantive effect on the rule itself.

23.16.125 CHANGE OF LIQUOR LICENSE TYPE (1) Except as ~~provided in ARM 23.16.115(10)~~ otherwise required by ARM 23.16.116 or ARM 23.16.117, when an owner of a gambling operator license changes the type of alcoholic beverage license, the owner must submit an amended gambling license application and obtain department approval.

(2) and (3) remain the same.

AUTH: 23-5-115, MCA

IMP: 23-5-115, MCA

RATIONALE AND JUSTIFICATION: The department is proposing a minor clerical correction to ARM 23.16.125 for clarification purposes, and is not intended to have a substantive effect on the rule itself.

23.16.126 CHANGE OF LOCATION (1) Except as ~~provided in ARM 23.16.115(10)~~ otherwise required by ARM 23.16.116 or ARM 23.16.117, when an owner of a gambling operator license changes the location of the alcoholic beverage license, the owner must submit an amended gambling license application and obtain department approval.

(2)(a) The department may conduct an investigation to determine whether the proposed change meets the licensure requirements in 23-5-176, MCA, and department rules;

(b)(3) ~~†~~The gambling operator may continue to operate at the current location pending review during the time the amended application is being processed.

AUTH: 23-5-115, MCA

IMP: 23-5-117, MCA

RATIONALE AND JUSTIFICATION: The department is proposing minor clerical corrections to ARM 23.16.126 for clarification purposes, and is not intended to have a substantive effect on the rule itself.

23.16.1304 APPROVED VARIATIONS OF KENO (1) through (1)(c) remain the same.

(d) A combination way ticket in which a player simultaneously combines any or all of the variations described in (1)(a), (b), and (c).

(e) and (2) remain the same.

AUTH: 23-5-115, MCA

IMP: 23-5-412, MCA

RATIONALE AND JUSTIFICATION: The department is proposing a minor clerical correction to ARM 23.16.1304 for clarification purposes, and is not intended to have a substantive effect on the rule itself.

23.16.1826 QUARTERLY REPORTING REQUIREMENTS (1) remains the same.

(2) If a machine owner shares machine ownership, or a machine's revenues with another person or business entity, the machine owner or his designated representative must provide upon the same quarterly tax form prescribed by the department in (1) ~~above~~, information for each machine as follows:

(a) through (6) remain the same.

AUTH: 23-5-115, 23-5-605, 23-5-621, MCA

IMP: 23-5-115, 23-5-136, 23-5-605, 23-5-610, 23-5-621, 23-5-637, MCA

RATIONALE AND JUSTIFICATION: The department is proposing a minor clerical correction to ARM 23.16.1826 for clarification purposes, and is not intended to have a substantive effect on the rule itself.

23.16.1826A REPORTING FREQUENCY FOR APPROVED AUTOMATED ACCOUNTING SYSTEMS – EXCEPTIONS (1) through (3) remain the same.

(4) When the explanation for the reporting failure does not demonstrate the inability of the machine owner or a designated representative to physically access the machine in order to meet the reporting interval, or when multiple reporting failures demonstrate an inability to physically access the machine, the department may require more frequent reporting intervals, require longer periods of record retention, or take any action authorized under ~~ARM 23.5.136(1)(b)~~ 23-5-136, MCA.

AUTH: 23-5-621, MCA

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

RATIONALE AND JUSTIFICATION: The department is proposing to amend ARM 23.16.1826A because the rule incorrectly identifies the statute, 23-5-136, MCA, as an administrative rule. This is a clerical correction and is not intended to have a substantive effect on the rule itself.

23.16.1828 GENERAL REQUIREMENTS OF OPERATORS, MANUFACTURERS, MANUFACTURERS OF ILLEGAL DEVICES, DISTRIBUTORS, AND ROUTE OPERATORS OF VIDEO GAMBLING MACHINES OR PRODUCERS OF ASSOCIATED EQUIPMENT (1) Every operator,

manufacturer, manufacturer of illegal devices, distributor, or route operator must retain for a period of three years all records relating to the possession, destruction, purchase, lease, rental, or sale of any gambling device. For purpose of this rule, three years means a minimum of 12 full quarters from the previous quarterly tax return due date. The information detailed in (2)(a), (b), (c), and (d) ~~below~~ must be retained on each individual machine.

(2) through (4) remain the same.

AUTH: 23-5-115, 23-5-605, MCA
IMP: 23-5-115, 23-5-605, 23-5-611, 23-5-614, 23-5-621, 23-5-625,
23-5-626, 23-5-631, MCA

RATIONALE AND JUSTIFICATION: The department is proposing a minor clerical correction to ARM 23.16.1828 for clarification purposes, and is not intended to have a substantive effect on the rule itself.

23.16.2402 LIVE KENO AND BINGO RECORD KEEPING (1) remains the same.

(2) ~~Live keno records.~~ In addition to the records required to be kept under part 1 of this rule, the live keno operator must maintain the following records:

(a) through (f) remain the same.

(g) the ending bank balance less the day's gross proceeds and any other adjustments must be used as the beginning balance for the next day; and

(h) remains the same.

(3) ~~Live bingo records.~~ In addition to the records required to be kept under part 1 of this rule, the live bingo operator must maintain the following records:

(a) and (b) remain the same.

(c) payout slips must be maintained by bingo callers for each work shift.

Prizes awarded for promotional games must be recorded on the payout slips but so designated for the purpose of calculating gross proceeds. The payout slips must be initialed by the caller at the end of his/her shift. The slips must also be maintained as part of the operator's records for a period of three months;

(d) the day's gross proceeds must be reconciled with the ending bank balance. If, in the bank reconciliation process, the operator experiences a net cash overage or shortage in excess of 1% of the gross game income for a one-month period, the overage or shortage must be investigated. A record detailing the findings of the investigation must be maintained with other required records. For the purposes of calculating gross proceeds, promotional game prizes must be subtracted from the total payouts;

(e) and (f) remain the same.

AUTH: 23-5-115, MCA
IMP: 23-5-409, MCA

RATIONALE AND JUSTIFICATION: The department is proposing minor clerical corrections to ARM 23.16.2402 for clarification purposes, and is not intended to have a substantive effect on the rule itself.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Rick Ask, Gambling Control Division, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; Fax (406) 444-9157; or e-mail rask@mt.gov, and must be received no later than December 10, 2009.

5. An electronic copy of this Notice of Proposed Amendment is available through the Department of Justice's web site at <http://doj.mt.gov/resources/administrativerules.asp>. The department strives to make the electronic copy of the Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department of Justice 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.

6. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices of rules regarding the Crime Control Division, the Central Services Division, the Forensic Sciences Division, the Gambling Control Division, the Highway Patrol Division, the Law Enforcement Academy, the Division of Criminal Investigation, the Legal Services Division, the Consumer Protection Division, the Motor Vehicle Division, the Justice Information Systems Division, or any combination thereof. Such written request may be mailed or delivered to Rick Ask, 2550 Prospect Avenue, P.O. Box 201424, Helena, MT 59620-1424; Fax (406) 444-9157; or e-mail rask@mt.gov, or may be made by completing a request form at any rules hearing held by the Department of Justice. A copy of the interested persons request form may be printed from the Department of Justice's web site at <http://www.doj.mt.gov/resources/forms/interestedperson.pdf>, and mailed to the rule reviewer.

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

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

By: /s/ Steve Bullock
STEVE BULLOCK
Attorney General, Department of Justice

/s/ J. Stuart Segrest
J. STUART SEGREST
Rule Reviewer

Certified to the Secretary of State November 2, 2009.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.29.1533 and 24.29.1538) PROPOSED AMENDMENT
related to the workers' compensation)
medical fee schedules)

TO: All Concerned Persons

1. On December 4, 2009, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the first floor conference room 104, Walt Sullivan Building, 1327 Lockey Avenue, Helena, Montana to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 30, 2009, to advise us of the nature of the accommodation that you need. Please contact the Employment Relations Division, Department of Labor and Industry, Attn: Keith Messmer, P.O. Box 8011, Helena, MT 59624-8011; telephone (406) 444-6541; fax (406) 444-3465; TDD (406) 444-5549; or e-mail kmessmer@mt.gov.

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

24.29.1533 NONFACILITY FEE SCHEDULE FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008 (1) The department adopts the fee schedule provided by this rule to determine the reimbursement amounts for medical services provided by an individual provider at a nonfacility or facility furnished on or after January 1, 2008. An insurer is not obligated to pay more than the fee provided by the fee schedule for a service provided within the state of Montana. The fee schedule is comprised of the following elements:

(a) the HCPCS codes, including CPT codes, which are incorporated by reference. Unless a special code or description is otherwise provided by rule, pursuant to 39-71-704, MCA, the edition of the CPT publication in effect at the time the medical service is furnished must be used to determine the proper procedure code and discussed in greater detail in (3);

(b) the RVU given in the ~~2008 edition of the RBRVS, which is~~ incorporated by reference, ~~unless a relative value is otherwise specified in these rules.~~ Unless a special code or description is otherwise provided by rule, pursuant to 39-71-704, MCA, the edition of the RBRVS in effect at the time the medical service is furnished must be used to determine the proper procedure code. For example, the 2010 version of the RBRVS applies to services provided from January 1, 2010, through December 31, 2010;

(i) ~~The~~ Because this rule was previously adopted before the 2008 and 2009 versions of the RBRVS were issued, the 2009 version of the RBRVS does not apply to services in any year. The 2008 version of the RBRVS applies to services provided from January 1, 2009, through December 31, 2009 and the 2007 edition of the RBRVS applies to services provided from January 1, 2008, through December 31, 2008;

(c) the publication "Montana Workers' Compensation Nonfacility Fee Schedule Instruction Set for Services Provided on or after January 1, 2010", November 2009 edition, incorporated by reference;

~~(e) (i) the~~ The publication "Montana Workers' Compensation Nonfacility Fee Schedule Instruction Set for 2009", applies to services provided from January 1, 2009, through December 31, 2009 which is incorporated by reference.

~~(i)~~ The "Montana Workers' Compensation Nonfacility Fee Schedule Instruction Set for 2008", September 2007 edition, applies to services provided from January 1, 2008, through December 31, 2008;

(d) the conversion factors established by the department in ARM 24.29.1538;

(e) modifiers, as found in the instructions; and

(f) the Montana unique code, MT001, described in greater detail in ~~(8)~~ (7).

(2) remains the same.

~~(3) Unless a special code or description is otherwise provided by rule, pursuant to 39-71-704, MCA, the edition of the CPT publication in effect at the time the medical service is furnished must be used to determine the proper procedure code.~~

(4) through (11) remain the same but are renumbered (3) through (10).

~~(12)~~ (11) Copies of the RBRVS are available from the publisher. Ordering information may be obtained from the department at the address listed in ~~(4)~~ (3).

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1533 because Chapter 112, Laws of 2009 (HB 119), amended section 39-71-704, MCA, to provide for the use of standards as adopted by the Centers for Medicare and Medicaid Services (CMS) in effect at the time the services are provided. This change removes the need to adopt CMS standards by administrative rule each year. The change is proposed in consultation with stakeholders, reduces workload, and increases efficiency. This change will allow medical providers to utilize the same coding for workers' compensation and medicare billing.

Because the references to the CMS standards no longer need to be adopted each year, the department proposes to no longer update its instruction set each year by removing year specific information from the instructions. A copy of the proposed 2010 publication identified as the "Montana Workers' Compensation Nonfacility Fee Schedule Instruction Set for Services Provided on or after January 1, 2010", November 2009 edition, is available and can be accessed on-line via the internet at: <http://mtwcfeschedule.ingenix.com/overview.aspx>.

24.29.1538 CONVERSION FACTORS FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008 -- METHODOLOGY (1) This rule applies to services, supplies, and equipment provided on or after January 1, 2008.

(2) The conversion factors are established annually by the department pursuant to 39-71-704, MCA. If the department determines that a conversion factor does not need to change from the previous year due to its analysis of the average in (5), the most current factor listed below applies. The conversion factor for goods and services, other than anesthesia services:

(a) provided from January 1, 2008, through December 31, 2008, is \$63.45;
and

(b) provided on or after January 1, 2009, is \$65.28.

(3) The conversion factors are established annually by the department pursuant to 39-71-704, MCA. If the department determines that a conversion factor does not need to change from the previous year due to its analysis of the average in (5), the most current factor listed below applies. The conversion factor for anesthesia services:

(a) provided from January 1, 2008, through December 31, 2008, is \$57.20;
and

(b) provided ~~on or after~~ from January 1, 2009, through December 31, 2009, is \$61.98; and

(c) provided on or after January 1, 2010, is \$60.97.

(4) Up to the ~~The~~ top five insurers or third-party administrators, ranked by premiums written in Montana providing group health insurance coverage through a group health plan as defined in 33-22-140, MCA, and who use the RBRVS to determine fees for covered services, must annually provide to the department their current standard conversion factors by July 1.

(5) The conversion factor amounts for nonfacility services are calculated using the average rates for medical services paid by up to the top five insurers or third-party administrators providing group health insurance via a group health plan in Montana, based upon the amount of premium for that category of insurance reported to the office of the Montana insurance commissioner. The term "group health plan" has the same meaning as provided by 33-22-140, MCA. To be included in the conversion factor determination, the insurer or third-party administrator must occupy at least one percent of the market share for group health insurance policies as reported annually to the insurance commissioner.

(a) The department annually surveys up to the top five insurers to collect information on the rates (the RBRVS conversion factors) paid during the current year for nonfacility health care services furnished in Montana.

(b) The department's conversion factors for the following year are set at no more than 110 percent of the surveyed average.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1538 as 39-71-704, MCA, requires the department to annually establish a schedule of fees for medical services that are necessary for the treatment of injured workers. The department

proposes to indicate in the rule that if the rate does not need to change after the department annually conducts its analysis to establish the rate, the most current rate will continue to apply.

There is also reasonable necessity to amend this rule to adopt a new conversion factor for anesthesia services. The average conversion factor of the three group health insurers having at least one percent of the market share decreased for anesthesia services, so maintaining the current rate would violate the statutory language that does not allow the rate to be set at a rate greater than ten percent above the average of the conversion factors used by up to the top five insurers or third-party administrators providing group health insurance coverage who use the resource-based relative value scale to determine fees for covered services. The conversion factor for goods and services, other than anesthesia services, is not being changed and is 9.07 percent above the average conversion factor of the three group health insurers as outlined above. The rate for the anesthesia conversion factor being proposed for adoption is 9.07 percent above the computed average conversion factor to be at the same percentage rate above the health care average as the general conversion factor rate. In 2009, the general and the anesthesia conversion factors had been set at ten percent above the average conversion factor of the group health insurance providers. The department intends to continue to evaluate data to determine what is an appropriate rate to pay above Medicare. This issue is being reviewed by the Labor Management Advisory Council and the Legislative Economic Affairs Interim Committee. The conversion factor is currently over 180 percent of Medicare.

Also, Chapter 112, Laws of 2009, made revisions to the number and type of insurance carriers required to report to the department and required that an insurer have at least a one percent market share in policies in Montana. The proposed amendments bring the rule into conformity with the statute.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Keith Messmer, Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59624-8011; by facsimile to (406) 444-3465; or by e-mail to kmessmer@mt.gov, and must be received no later than 5:00 p.m., December 11, 2009.

5. An electronic copy of this Notice of Public Hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical

problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was notified on October 29, 2009, by telephone, e-mail, and regular mail. The bill sponsor contacted the department on November 2, 2009.

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State November 2, 2009

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

In the matter of the amendment of)
ARM 24.138.508 dental anesthetic)
certification, 24.138.509 dental)
permits, and 24.138.2106)
exemptions - continuing education)

NOTICE OF EXTENSION OF
COMMENT PERIOD ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On July 16, 2009, the Board of Dentistry (board) published MAR Notice No. 24-138-66 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1068 of the 2009 Montana Administrative Register, issue no. 13.

2. In response to public request, the board has decided to extend the public comment period to 5:00 p.m., November 16, 2009.

3. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., on November 13, 2009, to advise us of the nature of the accommodation that you need. Please contact Dennis Clark, Board of Dentistry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdden@mt.gov.

4. Concerned persons may present their data, views, or arguments on the proposed action in writing to the board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdden@mt.gov.

BOARD OF DENTISTRY
PAUL SIMS, DDS, PRESIDENT

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

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

Certified to the Secretary of State November 2, 2009

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of) AMENDED NOTICE OF PROPOSED
ARM 32.3.104, 32.3.106, 32.3.212,) AMENDMENT AND ADOPTION
32.3.501 through 32.3.506, and)
adoption of NEW RULES I and II)
pertaining to Trichomoniasis and NEW)
RULES III through VI pertaining to)
Deputy State Veterinarians)

TO: All Concerned Persons

1. On October 29, 2009 the Department of Livestock published MAR Notice No. 32-9-198 pertaining to the proposed amendment and adoption of the above-stated rules at page 1852 of the 2009 Montana Administrative Register, Issue Number 20.

2. The Department of Livestock 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 Livestock no later than 5:00 p.m. on December 2, 2009, to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

3. The reason for this supplemental notice is to provide clarity and conformity throughout these rules.

4. ARM 32.3.104, 32.3.106, 32.3.504, and 32.3.506 remain exactly as proposed. The Department of Livestock proposes that the following rules be further amended as follows, new matter underlined, deleted matter interlined:

32.3.212 ADDITIONAL REQUIREMENTS FOR CATTLE (1) through (2)(b) remain as proposed.

(c) nonvaccinated cattle less than 11 months of age placed under a ~~hold order~~ quarantine for brucellosis vaccination or spaying within 30 days of arrival; and

(d) through (5) remain as proposed.

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

IMP: 81-2-102, 81-2-703, MCA

32.3.501 DEFINITIONS In this subchapter:

(1) through (16)(d) remain as proposed.

(17) "Official Trichomoniasis test" means the sampling procedure conducted by a deputy state Trichomoniasis certified veterinarian of the preputial content of a

sexually intact male bovine and submitted to an approved laboratory to identify *Trichomonas foetus* by in vitro cultivation, individual PCR testing test, or other test approved by the state veterinarian.

(18) through (31) remain as proposed.

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

IMP: 81-2-102, MCA

32.3.502 OFFICIAL TRICHOMONIASIS TESTING AND CERTIFICATION REQUIREMENTS (1) remains as proposed.

(a) Nonvirgin male cattle must be negative to one ~~official PCR test~~ Trichomoniasis test by PCR and originate from a herd not known to be infected with *T. foetus*, or to three official Trichomoniasis culture tests. For the culture tests:

(i) through (iii) remain as proposed.

(b) The following statement must be on the certificate of veterinary inspection: "The bull(s) identified on this certificate were negative to *T. foetus* in accordance with ARM 32.3.502. There was no breeding activity between the final test and time of import, sale, loan, or lease, or other acquisition in Montana."

(c) and (d) remain as proposed.

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

IMP: 81-2-102, 81-2-703, MCA

32.3.503 REPORTING TRICHOMONIASIS (1) All approved laboratories and all Trichomoniasis certified Montana veterinarians conducting ~~Trichomoniasis~~ testing of cattle in Montana shall report test positive animals to the department within one working day of such test or diagnosis.

(2) and (3) remain as proposed.

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

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

32.3.505 DISPOSITION OF TEST POSITIVE ANIMALS

(1) and (2) remain as proposed.

(a) consigned directly to a licensed slaughterhouse ~~slaughtering establishment~~;

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

(c) "V" branded and consigned directly to a licensed Trichomoniasis approved feedlot and then directly to a licensed slaughterhouse ~~slaughtering establishment~~.

(3) through (5) remain as proposed.

(6) Trichomoniasis test positive herds must have a negative whole herd bull test including virgin bulls 12 months of age and older, within 90 days prior to the following year's breeding season.

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

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

4. New rules I, III, IV, and VI remain exactly as proposed. The Department of Livestock proposes the following changes to the proposed new rules as follows, new matter underlined, deleted matter interlined:

NEW RULE II PENALTIES: (1) Persons in possession of a bull that has been sold, loaned, leased, or otherwise acquired shall have proof of current Trichomoniasis negative test or will be subject to all of the following:

(a) through (3) remain as proposed.

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

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

NEW RULE V DUTIES OF DEPUTY STATE VETERINARIAN (1) through (1)(d) remain as proposed.

(e) immediately report the loss, theft, deliberate or accidental misuse of any official document or materials as listed above in ~~[New Rule III]~~(1)(d), and must keep these materials in only his/her custody prior to official use;

(f) and (g) remain as proposed.

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

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

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Christian Mackay, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to cmackay@mt.gov to be received no later than 5:00 p.m., December 11, 2009.

/s/ George H. Harris
George H. Harris
Rule Reviewer

/s/ Christian Mackay
Christian Mackay
Executive Officer
Montana Department of Livestock

Certified to the Secretary of State November 2, 2009.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 32.8.101 and 32.8.202	)	PROPOSED AMENDMENT AND
pertaining to grade A pasteurized milk	)	NOTICE OF OPPORTUNITY TO
and time from processing that fluid	)	PARTICIPATE IN AN
milk may be sold for public	)	EVIDENTIARY HEARING
consumption)	

TO: All Concerned Persons

1. On March 3 through 5, 2010, at 9:00 a.m., the Department of Livestock will hold a public hearing in Room 319 of the Scott Hart Building, 301 N. Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will use a combined two-part hearing under the requirements of Mont. Code Ann. § 2-4-302 and 315. The first part of the combined hearing allows for submission of evidence by designated parties in a formal setting, presided over by a hearings examiner, and governed by rules of evidence. The hearing examiner will be presenting to the board, a proposed decision based on the testimony and evidence received at this first part of the hearing. The second part of the combined hearing, presided over by the board, will be an opportunity for members of the public to appear and present testimony regarding the proposed amendments as found in the petition submitted by Core-Mark. Both parts of the hearing are open to the public. The first part of the hearing will begin at 9:00 a.m. on March 3, 2010. The second part of the hearing will begin at 1:00 p.m. on March 4, 2010.

3. Notice is given that within 30 days of this publication in the Administrative Register, any organization or member of the public who wishes to appear as a party and present evidence in the first part of the hearing must apply for such designation by sending a written request to the designated hearing examiner, Mr. John Sullivan, 40 West Lawrence, Suite A, Helena, Mt, 59624-1166. The designated hearing examiner will make all decisions regarding the granting of such requests. Any person or organization that applies, but is not granted permission to appear in the first part of the hearing, retains all rights to appear at the second part of the hearing and to give public comment and testimony. Anyone who wishes to participate in the second part of the hearing is welcome to do so even if they did not apply for party status to appear at the first part of the hearing, and are not a party to the first part of the hearing. At this time, the parties that will appear at the first part of the hearing are the Montana Department of Livestock, Core-Mark International, Inc., The Montana Milk Producers Association, Country Classics Dairies, Inc., and Meadow Gold Dairies.

4. The Board of Livestock will consider equally all testimony and comment received in both parts of the hearing, and the official record will contain all testimony and comment received in both parts of the hearing.

5. If a person has questions regarding this opportunity, they may contact Steve Merritt, Public Information Officer, Department of Livestock, 301 N. Roberts St., Room 235, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9431; TTD number: 1 (800) 253-4091; fax: (406) 444-2877; e-mail: smerritt@mt.gov, during the hours of 8:00 a.m. to 5:00 p.m., MST.

6. The Department of Livestock 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 Livestock no later than 5:00 p.m. on February 24, 2010, to advise us of the nature of the accommodation that you need. Please contact Steve Merritt, Public Information Officer, Department of Livestock, 301 N. Roberts St., Room 235, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9431; TTD number: 1 (800) 253-4091; fax: (406) 444-2877; e-mail: smerritt@mt.gov

7. The rules as proposed to be amended in the petition presented by Core-Mark provide as follows, new matter underlined, deleted matter interlined:

32.8.101 DEFINITIONS AND ADOPTION OF GRADE A PASTEURIZED MILK ORDINANCE AND ASSOCIATED DOCUMENTS (1) through (1)(d) remain the same.

~~(e) A "sell-by" date is defined as the 12th consecutive day, never to exceed 288 hours, following pasteurization of a unit of milk.~~

(f) and (g) remain the same but are renumbered (e) and (f).

(2) through (4) remain the same.

AUTH: 81-2-102, MCA

IMP: 81-2-102, MCA

32.8.202 TIME FROM PROCESSING THAT FLUID MILK MAY BE SOLD FOR PUBLIC CONSUMPTION (1) ~~When 12 days or more have passed following pasteurization of the sell by date on a unit of grade A milk~~ has passed, there will be no quantities of that unit of milk sold or otherwise offered for public consumption.

(2) No grade A pasteurized milk may be put in any container marked with a sell-by date which ~~is more than 12 days after pasteurization of the milk for sale in Montana~~ does not reasonably protect the health and safety of Montana consumers.

(a) The Board of Livestock may, upon a finding that a specific processor's sell-by date has materially failed to protect the health and safety of Montana consumers, provide notice to the processor of the specific facts indicating such failure and require the processor to submit a written explanation in response to such facts, which shall include the processor's description of its sell-by date determination methodology.

(b) If the Board of Livestock reasonably determines that the processor's sell-by date determination methodology does not reasonably protect the health and safety of the consumer, the Board of Livestock may require said processor to engage in product testing to determine a reasonably protective sell-by date determination methodology, and to modify accordingly the sell-by date said processor uses on its containers.

(c) During any product testing period described under (2)(b), the processor shall be required to mark all containers of grade A pasteurized milk for sale in Montana by a sell-by date which is not more than 18 days after pasteurization of the milk until such time as the Board of Livestock determines that the processor has established (or modified its sell-by date determination process to ensure) that its sell-by date determination methodology and chosen sell-by date reasonably protects Montana consumers' health and safety.

(3) Unless otherwise agreed upon, the person who offers the milk for sale to the public is responsible for removing the milk at or before the expiration of ~~the 12 days~~ the sell-by date marked on the container.

(4) No grade A pasteurized milk may be put in any container marked with more than one sell-by date unless the sell-by date for use by Montana retailers and consumers is marked as the Montana sell-by date in a manner that is reasonably clear to Montana retailers and consumers.

AUTH: 81-2-102, MCA

IMP: 81-2-102, MCA

REASONS: In the fall of 2008, the Montana Department of Livestock (department) and Core-Mark, a Washington State corporation, entered into a settlement agreement regarding an action in U.S. District Court. That action concerned the sale of out-of-state milk in Montana by Core-Mark Distributors and Montana retail sellers. Such sales were subject to ARM 32.8.202 known as the 12-day pull date rule. Core-Mark challenged the constitutionality of the Montana 12-day pull date rule.

Pursuant to the above mentioned agreement and Mont. Code Ann. § 2-4-315, Core-Mark presented a petition to the department that proposes new administrative rules and the repeal or amendment of present rules regarding the Montana 12-day pull date rule. The Core-Mark proposal is presented in paragraph 7 above.

The Montana Board of Livestock, as director of the department, does not propose the adoption of this proposal by Core-Mark, but pursuant to Mont. Code Ann. § 2-4-315, has agreed to present the proposal for public comment and testimony.

The parties have agreed to proceed with the consideration of Core-Mark's Petition through the use of a combined two-part hearing under the requirements of Mont. Code Ann. § 2-4-302 and 315. The Montana Board of Livestock (board) as the director of the department is the decision maker on all matters. By agreement, the proposals will be given to the board for decision following the conclusion of the two-part hearing process.

8. 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: Steve Merritt, Public Information Officer, Department of Livestock, 301 N. Roberts St., Room 235, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9431; TTD number: 1 (800) 253-4091; fax: (406) 444-2877; e-mail: smerritt@mt.gov, and must be received no later than 5:00 p.m., March 26, 2010.

9. Presiding Person: The Board of Livestock is the final decision maker, but Mr. John F. Sullivan, attorney and partner in the Helena law firm of Hughes, Kellner, Sullivan & Alke, PLLP has been designated to preside over and conduct the first part of the hearing. The hearing examiner will be presenting to the board, a proposed decision based on the testimony and evidence received at this first part of the hearing.

10. 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 5 above or may be made by completing a request form at any rules hearing held by the department.

11. 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.

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

/s/ George H. Harris
George H. Harris
Rule Reviewer

/s/ Christian Mackay
Christian Mackay
Executive Officer
Department of Livestock

Certified to the Secretary of State November 2, 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 37.86.705, 37.86.802,	)	PROPOSED AMENDMENT
37.86.805, 37.86.1802, and)	
37.86.1807 pertaining to Medicaid)	
reimbursement for audiology)	
services, hearing aids, and durable)	
medical equipment (DME))	

TO: All Concerned Persons

1. On December 3, 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 November 24, 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:

37.86.705 AUDIOLOGY SERVICES, REIMBURSEMENT (1) Providers must bill for services using the procedure codes and modifiers set forth, and according to the definitions contained in the Health Care Financing Administration's Common Procedure Coding System (HCPCS). Information regarding billing codes, modifiers, and HCPCS is available upon request from the Department of Public Health and Human Services, Health Resources Division, ~~4400 Broadway~~ 1401 East Lockey, P.O. Box 202951, Helena, MT 59620-2951.

(2) Subject to the requirements of this rule, the Montana Medicaid program pays the following for audiology services:

(a) For patients who are eligible for Medicaid, the ~~lower~~ lowest of:

(i) the provider's usual and customary charge for the service; ~~or~~

(ii) the reimbursement provided in accordance with the methodologies

described in ARM 37.85.212-; ~~or~~

(iii) 100% of the Medicare Region D allowable fee.

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

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

37.86.802 HEARING AID SERVICES, REQUIREMENTS, AND LIMITATIONS (1) remains the same.

(2) Medicaid payment for purchase ~~or rental~~ of hearing aids will be made only to a licensed hearing aid dispenser for Medicaid covered services provided in accordance with all applicable Medicaid requirements and within the scope of practice permitted under the dispenser's license.

(3) through (7)(c) remain the same.

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

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

37.86.805 HEARING AID SERVICES, REIMBURSEMENT (1) The department will pay the ~~lower~~ lowest of the following for covered hearing aid services and items:

(a) remains the same.

(b) the amount specified for the particular service or item in the department's fee schedule. The department adopts and incorporates by reference the department's Hearing Aid Fee Schedule dated July 2009. A copy of the department's fee schedule is posted at <http://medicaidprovider.hhs.mt.gov>. ~~A copy of the department's fee schedule and~~ may be obtained from the Department of Public Health and Human Services, Health Resources Division, 4400 Broadway 1401 East Lockety, P.O. Box 202951, Helena, MT 59620-2951; or

(c) 100% of the Medicare Region D allowable fee.

(2) The provider may bill Medicaid for a dispensing fee, as specified in the fee schedule adopted in (1)(b), ~~in addition to the invoice price for the purchase of a hearing aid or aids.~~ The dispensing fee covers and includes the initial ordering, fitting, orientation, counseling, two return visits for the services listed, and the insurance for loss or damages covered under a one-year warranty.

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

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

37.86.1802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS (1) remains the same.

(2) Reimbursement for prosthetic devices, durable medical equipment, and medical supplies shall be limited to items delivered in the most appropriate and cost effective manner. Montana Medicaid adopts Medicare coverage criteria for Medicare covered durable medical equipment as outlined in the Region D Supplier Manual, local coverage determinations (LCDs) and national coverage determinations (NCDs) dated January 2010. For prosthetic devices, durable medical equipment, and medical supplies not covered by Medicare coverage will be determined by the department. The items must be medically necessary and prescribed in accordance with (2)(a) by a physician or other licensed practitioner of the healing arts within the scope of his practice as defined by state law.

(a) The prescription must indicate the diagnosis, the medical necessity, and projected length of need for prosthetic devices, durable medical equipment, and medical supplies. The original prescription must be retained in accordance with the requirements of ARM 37.85.414. Prescriptions may be transmitted by an authorized provider to the durable medical equipment provider by electronic means or pursuant to an oral prescription made by an individual practitioner and promptly reduced to hard copy by the durable medical equipment provider containing all information required. Prescriptions for durable medical equipment, prosthetics, and orthotics (DMEPOS) shall follow the Medicare criteria outlined in chapters 3 and 4 of the Region D Medicare Supplier Manual (January 1, ~~2009~~ 2010), which is adopted and incorporated by reference. A copy of the Region D Medicare Supplier Manual may be obtained from the Department of Public Health and Human Services, Health Resources Division, ~~4400 Broadway~~ 1401 East Lockey, P.O. Box 202951, Helena, MT 59620-2951. For items requiring prior authorization the provider must include a copy of the prescription when submitting the prior authorization request.

(i) remains the same.

(b) Subject to the provisions of (3), medical necessity for oxygen is determined in accordance with the Medicare criteria outlined in the Medicare Durable Medical Equipment Regional Carrier (DMERC) Region D Supplier Manual, (January 1, ~~2009~~ 2010), Local Coverage Determination (LCD) and policy articles (January 1, ~~2009~~ 2010), and National Coverage Determination (NCD) (January 1, ~~2009~~ 2010), which are adopted and incorporated by reference. The Medicare criteria specify the health conditions and levels of hypoxemia in terms of blood gas values for which oxygen will be considered medically necessary. The Medicare criteria also specify the medical documentation and laboratory evidence required to support medical necessity. A copy of the Medicare criteria may be obtained from the Department of Public Health and Human Services, Health Resources Division, ~~4400 Broadway~~ 1401 East Lockey, P.O. Box 202951, Helena, MT 59620-2951.

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

(5) Reimbursement for nursing home residents includes:

(a) medically necessary custom molded wheelchair positioning equipment used by nursing home residents not covered under nursing home per diem (see department nursing home rules). A copy of the Medicaid criteria may be obtained from the Department of Public Health and Human Services, Health Resources Division, ~~4400 Broadway~~ 1401 East Lockey, P.O. Box 202951, Helena, MT 59620-2951.

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

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

(ii) the shoes are covered under Medicare criteria for therapeutic shoes for diabetics under the same conditions the Medicare program will cover therapeutic shoes for diabetics. A copy of the Medicare criteria is available upon request from the Department of Public Health and Human Services, Health Resources Division, ~~4400 Broadway~~ 1401 East Lockey, P.O. Box 202951, Helena, MT 59620-2951;

(c) through (7) remain the same.

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

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

37.86.1807 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, FEE SCHEDULE (1) Providers must bill for prosthetic devices, durable medical equipment, medical supplies and related maintenance, repair and services using the procedure codes and modifiers set forth and according to the definitions contained in the Centers for Medicare and Medicaid Services' (CMS) Healthcare Common Procedure Coding System (HCPCS). Information regarding billing codes, modifiers and HCPCS is available upon request from the Department of Public Health and Human Services, Health Resources Division, ~~1400 Broadway~~ 1401 East Lockey, P.O. Box 202951, Helena, MT 59620-2951.

(2) Prosthetic devices, durable medical equipment, and medical supplies shall be reimbursed in accordance with the department's Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Fee Schedule, effective January ~~2009~~ 2010, which is adopted and incorporated by reference. A copy of the department's fee schedule is posted at the Montana Medicaid provider web site at <http://medicaidprovider.hhs.mt.gov>. A copy of the department's Prosthetic Devices, Durable Medical Equipment, and Medical Supplies Fee Schedule may also be obtained from the Department of Public Health and Human Services, Health Resources Division, ~~1400 Broadway~~ 1401 East Lockey, P.O. Box 202951, Helena, MT 59620-2951.

(3) through (4) remain the same.

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

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

4. The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.86.705, 37.86.802, 37.86.805, 37.86.1802, and 37.86.1807 pertaining to Medicaid reimbursement for audiology services, hearing aids, and durable medical equipment reimbursable under the Montana Medicaid program. The amendments are necessary to conform Montana Medicaid reimbursement rules for those items reimbursed by Medicare to Medicare standards and to adopt the Medicaid fee based reimbursement methodology.

The department's proposed amendments would include adoption of the U.S. Department of Health and Human Services (HHS), Centers for Medicare and Medicaid Services (CMS), Durable Medical Equipment Reimbursement Center (DMERC) Region D Medicare Fee Schedule, referred to in the proposed rule amendments as the "Medicare Region D allowable fee". Provisions for rental of hearing aids and references to invoice pricing would be deleted. The department's proposed amendments would adopt Medicare criteria for approval of Medicare covered durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). The department would make its own determinations for prosthetic devices, durable medical equipment, and medical supplies not covered by Medicare. The department's Hearing Aid Fee Schedule would be updated to January 1, 2010. The department intends that all proposed amendments be applied effective January 1, 2010. Retroactive application would not adversely affect Medicaid providers or consumers. More detailed descriptions of the proposed amendments are set out

below.

ARM 37.86.705

The department proposes amending this rule governing audiology services to include "100% of the Medicare Region D allowable fee" in the reimbursement methodology. This would conform this rule to current department practice for audiology services. The proposed reimbursement method simplifies billing for providers because Medicare and Medicaid fees would be the same. The Medicare reimbursement methodology is a nationally recognized reimbursement standard that fairly reflects the cost of providing audiology services. The department believes adoption of the existing Medicaid Fee Schedule would be more efficient and could potentially be more accurate than one developed by the department.

ARM 37.86.802

The proposed amendment to this rule governing hearing aid services, requirements, and limitations would remove the reference to hearing aid rental. Medicare does not rent hearing aids and this amendment is necessary to conform the Montana rule to Medicaid policy. Since the Medicare Fee Schedule does not contain a provision for hearing aid rental, this reference would be unnecessary, inaccurate, and could potentially be misleading.

ARM 37.86.805

The proposed amendments to ARM 37.86.805 would add "100% of the Medicare Region D allowable fee" to the reimbursement methodology. The department believes Medicare reimbursement methodology and policies are the best way to optimize Montana's utilization of limited resources while providing a basic level of services to eligible persons.

A reference to invoice pricing would also be removed because it would no longer be necessary under a fee schedule reimbursement method. The proposal to adopt Medicare fees reflects current reimbursement practices used by the department for hearing aid services. Under this methodology, items covered by Medicare would be reimbursed at the Medicare fee rate established by the CMS and items not covered by Medicare would be reimbursed at the rate proposed in the department's Hearing Aid Fee Schedule.

The proposed amendments are necessary because ARM 37.86.805 does not specifically state that Medicare fees should be used as part of the reimbursement methodology for hearing aid services.

ARM 37.86.1802

The proposed amendment to ARM 37.86.1802 would specifically state that Montana follows the Medicare coverage criteria for all Medicare covered durable medical

equipment. This would be accomplished by adopting the Medicare Region D Supplier Manual, local coverage determinations (LCDs) and national coverage determinations (NCDs) dated January 2010. For durable medical equipment not covered by Medicare, Medicaid criteria would be followed.

The amendment to ARM 37.86.1802(2)(b) would update the reference to the most recent Medicare Supplier Manual, Medicare's local coverage determination and policy dated January 1, 2010. Montana Medicaid already uses Medicare criteria to determine medical necessity for oxygen.

ARM 37.86.1807

The proposed amendment to ARM 37.86.1807 would update the reference to the department's fee proposed schedule dated January 1, 2010.

Alternative considered

The department considered and rejected the alternative to adopting Medicare fees for audiology services, hearing aids, and Medicare fees and policies for durable medical equipment which would have required the department to develop a set of Montana-specific policies and fees. This would have incurred considerable cost for staff time and would have required cost reports from providers. The proposed method provides consistent fees for providers. This would keep billing procedures simple because Medicare and Medicaid fees would be the same in most instances. Furthermore, the Medicare Fee Schedule is a nationally recognized reimbursement standard. This should assure adequate reimbursement to providers and adequate availability of services and equipment to consumers.

Financial effects

Three new procedure codes for durable medical equipment were added on January 1, 2009 and were reimbursed by report because fees had not yet been set by Medicare. On July 1, 2009 Medicare set fees for the three codes. At the time of publication of this notice, there has been no utilization of the codes in Montana. The projected effect of the proposed amendments on durable medical equipment providers could be \$3,302 (total funds).

The financial effect of the proposed amendments on hearing aid providers will be approximately \$940 (total funds). Medicaid has set fees for standard hearing aids. With this rule clarification Medicaid will no longer be paying invoice cost on those standard hearing aids.

Persons and entities effected

The proposed changes described in this notice could affect an estimated 81,920 Medicaid recipients and 637 DME providers, 48 audiology providers, and 45 hearing aid dispensers.

5. The department intends the proposed rule changes to be applied effective January 1, 2010. A retroactive application of the proposed rules would not adversely affect Medicaid providers or consumers.

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, and must be received no later than 5:00 p.m., December 10, 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/ John Koch
Rule Reviewer

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

Certified to the Secretary of State November 2, 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 37.87.1217, 37.87.1222, and) PROPOSED AMENDMENT
37.87.1223 pertaining to Medicaid)
reimbursement for psychiatric)
residential treatment facility (PRTF))
services)

TO: All Concerned Persons

1. On December 2, 2009, at 10:30 a.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 November 23, 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:

37.87.1217 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY (PRTF) SERVICES, TREATMENT REQUIREMENTS (1) and (2) remain the same.

(3) The PRTF plan of care must be comprehensive and address all psychiatric, medical, educational, psychological, social, behavioral, developmental, and chemical dependency treatment needs.

(4) remains the same.

(5) In addition to the requirements in (4) that pertain to discharge planning the following activities are required. The PRTF must:

(a) develop a discharge plan within 30 days of admission that identifies the youth and family's needed services and supports upon discharge:

(i) the discharge plan must be comprehensive; and

(ii) the discharge plan must address all psychiatric, medical, educational, psychological, social, behavioral, developmental, and chemical dependency treatment needs.

(b) identify the community to which the youth will discharge;

(c) make referrals for needed services and supports upon discharge, no less than 30 days before discharge; and

(d) work with the youth's parent or legal guardian in making agreed upon discharge plans and referrals for needed services.

(6) If comprehensive and adequate arrangements for services upon discharge are not made as required in (5) the PRTF may be at risk of losing its enrollment in the Montana Medicaid program.

~~(5)~~ (7) As part of the discharge planning requirements, PRTFs shall services include, at a minimum, discharge planning to ensure the youth has a seven-day supply of medication or and a written prescription for medication to last through the first outpatient visit in the community with a prescribing provider. Prior to discharge, the PRTF must identify a prescribing provider in the community and schedule an outpatient visit. Documentation of the medication plan and arrangements for the outpatient visit must be included in the youth's medical record. If medication has been used during the youth's PRTF treatment but is not needed upon discharge, the reason the medication is being discontinued must be documented in the youth's medical record.

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

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

37.87.1222 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY (PRTF) SERVICES, INTERIM RATE AND COST SETTLEMENT PROCESS (1) The

interim rate for services provided to youths as the term "youth" is defined at ARM 37.87.102 for PRTF providers located in the state of Montana is composed of:

(a) remains the same.

(b) a direct care wage add-on through a contract with the department, ~~if or in the psychiatric service rate in (1)(a), as applicable; and~~

(c) a facility specific ancillary add-on rate for ~~medical and authorized ancillary costs~~ Medicaid services provided in and by the PRTF, not already included in the base psychiatric service rate in (1)(a) for psychiatric care at the facility.

(2) Medicaid services included in the ancillary add-on rate in (1)(c) must be provided by individuals employed by or under contract with the PRTF who have appropriate credentials and who will be subject to the Montana Medicaid program's prevailing payment methodology and/or fee schedule for reimbursement. At a minimum, covered ancillary services include:

(a) the professional component of physician, psychiatrist, and mid-level practitioner services;

(b) licensed addiction counselor services;

(c) lab and pharmacy services not related to the youth's psychiatric condition;
and

(d) other Medicaid services approved by the department to address the youth's treatment needs in the facility.

~~(2)~~ (3) The ancillary add-on rate in (1)(c) will be adjusted retrospectively when:

(a) allowable ancillary costs are reported using auditable data, standardized forms, instructions, definitions, and timelines supplied by the department; and

(b) ancillary costs in the facility-specific aggregate for all discharges, for Montana Medicaid paid youth, in a state fiscal year exceed or are less than 5% of the reimbursement that the facility received as an interim rate. ~~If the costs exceed the aggregate by more than 5%:~~

(i) the department will reimburse the facility for costs exceeding ~~105%~~ 100% of the aggregate; and

(ii) the facility will reimburse the department for costs less than ~~95%~~ 100% of the aggregate; and

~~(iii) no adjustments to reimbursement will be made by either the department or the facility for costs within 5% of the aggregate ancillary rate payment.~~

~~(3)~~ (4) The psychiatric service rate in (1)(a) is an all-inclusive a bundled per diem rate, and includes:

(a) ~~all therapies, services, and items not specifically designated as an ancillary service that are provided while the youth is an inpatient in the PRTF~~ services, therapies, and items related to the youth's psychiatric condition;

(b) services provided by licensed psychologists, licensed clinical social workers, and licensed professional counselors; and

(c) lab and pharmacy ~~costs~~ services related to the youth's psychiatric condition ~~with the exception noted in (4)(r) pharmacy for post-discharge medication.~~

~~(4) Ancillary services are provided by or include the following:~~

~~(a) ambulatory surgical center;~~

~~(b) audiologist;~~

~~(c) chiropractor;~~

~~(d) dentist, denturist, and orthodontist;~~

~~(e) durable medical equipment;~~

~~(f) emergency room services not related to the psychiatric condition;~~

~~(g) eyeglasses;~~

~~(h) federally qualified health center;~~

~~(i) hearing provider and hearing aides;~~

~~(j) hospital;~~

~~(k) licensed addiction counselor;~~

~~(l) medical transportation and ambulance services;~~

~~(m) mental health center;~~

~~(n) MRI, or other diagnostic services;~~

~~(o) nutritionist;~~

~~(p) optometrist and ophthalmologist;~~

~~(q) outpatient hospital not relative to the psychiatric condition;~~

~~(r) pharmacy for post-discharge medication;~~

~~(s) physical and speech therapist;~~

~~(t) physician, psychiatrist, and mid-level practitioner;~~

~~(u) podiatrist;~~

~~(v) public health clinic;~~

~~(w) respiratory therapy;~~

~~(x) rural health clinic;~~

~~(y) targeted case management; and~~

~~(z) any other Medicaid service provided to the youth receiving PRTF in-patient care not related to the youth's psychiatric condition may be considered an ancillary service.~~

(5) Emergency medical conditions treated by providers outside the PRTF will be reimbursed at the prevailing Montana Medicaid rate, and must be billed by an enrolled provider directly to the Montana Medicaid program. Emergency services must be authorized by the department or its designee within 24 hours of the emergency service being provided or the next business day (Monday through Friday).

(6) For purposes of this rule "emergency medical condition" means:

(a) a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in:

(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

(ii) serious impairment to bodily functions; or

(iii) serious dysfunction of any bodily organ or part.

~~(5) (7)~~ (7) If a youth receiving in-patient care in a PRTF has an unusually expensive medical condition that requires a higher ancillary rate, prior to the cost settlement process, the PRTF may request interim reimbursement for the ancillary care. The department at its discretion may grant the youth specific request if the PRTF:

(a) submits a request in writing to the department with documentation of the expenses; and

(b) interim payments must be requested within 90 days of the date of service and will be taken into consideration during the ancillary cost settlement process described in ~~(2) (3)~~. Payment of these claims will be made by the department within 90 days from the date all requirements for payment are met.

(6) through (9) remain the same but are numbered (8) through (11).

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

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

37.87.1223 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, REIMBURSEMENT (1) For PRTF services provided on or after ~~March 1, 2009~~ January 1, 2010, the Montana Medicaid program will pay a provider for each patient day as provided in these rules.

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

(4) Out-of-state PRTF providers ~~who are not hospital-based~~ will be reimbursed 50% of their usual and customary charges. Reimbursement will include all Medicaid covered psychiatric, medical, and ancillary services provided in and by the PRTF consistent with ARM 37.87.1222. The usual and customary charge may not be more than twice the cost of providing the service. Medical services are included as ancillary services. Ancillary services are defined in ARM 37.87.1222. The PRTFs usual and customary charge for medical and ancillary services must be defined by the facility and may not be more than two times the cost of procuring these services.

(5) Emergency medical conditions treated by providers outside the PRTF will not be included in the out-of-state PRTF's usual and customary rate, and must be billed by an enrolled provider directly to the Montana Medicaid program. Emergency medical services provided outside the PRTF will be reimbursed the prevailing Montana Medicaid rate. See ARM 37.87.1222 for the definition of emergency medical conditions and authorization requirements.

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

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

4. The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.87.1217, 37.87.1222, and 37.87.1223 pertaining to Medicaid reimbursement for psychiatric residential treatment facility (PRTF) services. The proposed amendments are necessary to provide clear direction on PRTF discharge planning requirements and reimbursement for medical and ancillary services when they are provided "in and by" in-state and out-of-state PRTFs.

A U.S. Department of Health and Human Services Departmental Appeals Board (DAB) decision with the state of Kansas, dated June 23, 2009, upheld a disallowance by the Centers for Medicare and Medicaid Services (CMS), the federal agency responsible for the regulation of Medicaid, of \$3.8 million in federal financial participation (FFP) for medical services provided by outside providers to youth in psychiatric residential treatment facilities (PRTF). The department is proposing changes to its PRTF rules and Medicaid state plan (SPA) to conform to this DAB decision and directives from CMS. According to CMS, FFP is not available for medical services provided outside a PRTF, to youth residing in the PRTF. The proposed amendments would identify services that may be provided "in and by" the PRTF. Services provided "outside" the PRTF, for youth in the PRTF, would be limited to emergency services reimbursed at the prevailing Montana Medicaid rate. The department's PRTF SPA will not be approved without these rule changes. The department does not see a reasonable alternative to making these proposed changes. Failure to conform to CMS directives could result in the loss of FFP as experienced by the states of New York in 2007, Virginia in 2008, Texas in 2009, and Kansas in 2009. The proposed amendments are discussed in detail below.

ARM 37.87.1217

The department is proposing additional language in ARM 37.87.1217 to provide clear direction on PRTF discharge planning requirements to ensure youth receive adequate services upon discharge to continue the gains they made in the PRTF, when being treated at a lower level of care.

Some targeted case management (TCM) services by the PRTF are currently allowed when provided by the PRTF or through contracts with mental health centers with the appropriate area of endorsement added to their licensure. These TCM services would be discontinued if the proposed rule amendment is implemented.

Discharge planning has been and would continue to be a PRTF requirement, including referrals for needed services and supports upon discharge. The department proposes to monitor the adequacy of PRTF discharge plans more closely. Comprehensive and appropriate discharge plans would be required under the proposed amendment. Insufficient PRTF discharge plans could be grounds for disenrollment from the Montana Medicaid program.

ARM 37.87.1222

The department is proposing an amendment to ARM 37.87.1222 that would clarify which medical and ancillary services will be reimbursed when provided "in and by" a PRTF.

In-state PRTFs would be required to track medical and ancillary services provided "in and by" their facility. The department is proposing a cost settlement reimbursement procedure with in-state PRTFs to receive 100% of their total cost for providing medical services "in and by" their facility when reimbursement exceeds or is less than 100% of actual costs. This is a change from the current rule using 105% and 95% of the actual cost as a trigger for cost settlement.

Medical services provided by providers outside the PRTF would be limited to emergency conditions. Emergency medical conditions are defined in this rule. Outside providers of medical services would be required to seek authorization of emergency services within one business day of delivering the service and to bill the state directly, bypassing the PRTF. Reimbursement for these services would be limited to the prevailing Montana Medicaid rate. Authorization would be determined by the department or its designee.

ARM 37.87.1223

The proposed amendment to ARM 37.87.1223 would specify that out-of-state PRTFs must provide psychiatric, medical, and ancillary services "in and by" their facility, that the cost of such services may be included in their usual and customary rate, and that the facility would not receive more than 100% of its actual cost of providing services from Montana Medicaid. The proposed amendment refers to ARM 37.87.1222 that would limit medical services provided outside the facility to emergency conditions; would require authorization; would be billed directly to the state by an enrolled provider; and would be reimbursed the prevailing Montana rate. Out-of-state PRTFs would continue to be reimbursed at the rate of 50% of their usual and customary charges. Only services provided "in and by" their facility could be included in their rate which may not be more than twice what their actual cost of providing services are.

Persons and entities affected

The proposed rule amendments would affect in-state and out-of-state psychiatric residential treatment facilities (PRTFs) enrolled in Montana Medicaid. There are

three in-state and approximately 18 out-of-state PRTFs currently enrolled. Approximately 431 youth were served in a PRTF (in-state and out-of-state) in state fiscal year (SFY) 2009.

Fiscal and benefit effects

The department would see an increase in general fund expended for Medicaid services provided outside a PRTF to resident youths in a PRTF. The department is proposing to limit these to emergency services. The department estimates an additional \$726,292 in state general fund is needed to cover the general fund liability for nonqualifying FFP medical and ancillary services allowed under current reimbursement rules between March 1, 2009 when the PRTF reimbursement methodology and rate were changed and January 1, 2010 when these proposed amendments are expected to be effective.

Recipients would not see an increase in cost, and Medicaid benefits would remain the same, except that recipients would not receive nonemergent medical services while they are residents of a PRTF. The state general fund cost beyond January 1, 2010 for emergency services provided outside the PRTFs is unknown. The above estimate is the difference between the state's general fund liability for nonallowed FFP for all medical and ancillary services currently provided for in rule that are available to youth in a PRTF, both inside and outside the facility.

5. The department intends the proposed rule amendments to be effective January 1, 2010.

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, and must be received no later than 5:00 p.m., December 10, 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/ John Koch
Rule Reviewer

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

Certified to the Secretary of State November 2, 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 37.82.101 and 37.82.701) PROPOSED AMENDMENT
pertaining to Medicaid eligibility)

TO: All Concerned Persons

1. On December 3, 2009, at 11:00 a.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 November 24, 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:

37.82.101 MEDICAL ASSISTANCE, PURPOSE, AND INCORPORATION OF POLICY MANUALS (1) remains the same.

(2) The department adopts and incorporates by reference the state policy manuals, namely the Family Medicaid Manual and the Aged Blind Disabled (ABD) Medicaid Manual governing the administration of the Medicaid program dated ~~July 1, 2008~~ January 1, 2010. The Family Medicaid Manual, the ABD Medicaid Manual, and the proposed manual updates are available for public viewing at each local Office of Public Assistance or at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson Street, Fifth Floor, P.O. Box 202925, Helena, MT 59601-2925. The proposed manual updates are also available on the department's web site at www.dphhs.mt.gov/legalresources/proposedmanualchange.shtml.

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

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

(a) remains the same.

(b) individuals who have been receiving assistance in the nonmedically needy family Medicaid program and whose assistance is terminated because of earned income. These individuals may continue to receive Medicaid for any or all of the 12 calendar months immediately following the month in which nonmedically needy family Medicaid is last received, providing:

(i) and (ii) remain the same.

(iii) there continues to be an eligible child in the assistance unit. This coverage group is known as the "~~family-extended~~ family-transitional".

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

(e) a pregnant woman whose pregnancy has been verified, whose family income does not exceed ~~433%~~ 150% of the federal poverty guidelines, and whose countable resources do not exceed \$3,000. This coverage group is known as the "pregnancy group";

(i) through (m)(iv) remain the same.

(n) families who, due to receipt of new or increased child or spousal support, lose eligibility for nonmedically needy family Medicaid. To be eligible the family must:

(i) remains the same.

(ii) have received nonmedically needy family Medicaid in Montana for three of six months prior to the closure of nonmedically needy family Medicaid. The coverage will continue for four consecutive months. This program is known as the "~~extended child/spousal support~~ family-extended group".

(2) and (3) remain the same.

AUTH: 53-4-212, 53-4-1105, 53-6-113, MCA

IMP: 53-4-231, 53-4-1104, 53-4-1105, 53-6-101, 53-6-131, 53-6-134, MCA

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

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

ARM 37.82.101 currently adopts and incorporates by reference the Medicaid policy manuals effective January 1, 2008. The department proposes to make some revisions to these manuals that will take effect on January 1, 2010. The amendment of ARM 37.82.101 is therefore necessary in order to incorporate into the Administrative Rules of Montana the revised versions of the policy manuals and to permit all interested parties to comment on the department's policies and to offer suggested changes. Manuals and draft manual material are available for review in each local Office of Public Assistance and on the department's web site at www.dphhs.mt.gov. Following is a brief overview of the changes being made to each manual section for the Family Medicaid manual and the ABD Medicaid manual.

ABD Medicaid Manual

MA 404-2 Penalty Periods for Asset Transfers -- The average cost of nursing home care in Montana is used to calculate penalty periods for uncompensated asset transfers made by nursing home and home and community-based Waiver applicants and/or recipients. The federal Medicaid statute at 42 USC 1396p(c) mandates that the penalty period for a disqualifying transfer of assets be computed by dividing the value of the assets transferred without adequate compensation by the average monthly cost to a private patient of nursing facility services at the time of application in the state where the person is applying for or receiving Medicaid. The average private pay cost is recalculated annually. The average is now being changed to reflect the results of the most recent survey of private nursing home rates in Montana, as conducted by the department's Senior and Long Term Care Division. The updated average is \$5,376.50 per month, increased from the 2008 average of \$5,125.50 per month.

The department estimates this change will affect approximately 50 recipients per year. The higher the average private pay cost of care is, the shorter the penalty period will be, resulting in an increase in department costs. The reduced penalty would be approximately 11 days shorter for a \$40,000 transfer, \$40,000 being the average value of a disqualifying transfer. The average daily Medicaid costs for an institutionalized individual is approximately \$100.90 per day, so the total estimated fiscal impact of this change is \$55,495.00 annually, of which approximately \$12,686.16 is general fund.

Family Medicaid Manual

FMA 201-9 Family Transitional -- Certain households are eligible to receive Family Transitional Medicaid for up to 12 months. A household qualifies for Family Transitional Medicaid if (1) the household became ineligible for nonmedically needy Family Medicaid due to earned income or an increase in earned income or went from being eligible for nonmedically needy Family Medicaid to being eligible for medically needy Family Medicaid due to earned income or an increase in earned income; (2) the household received nonmedically needy Family Medicaid in Montana for three of the six months immediately prior to the closing of its nonmedically needy Medicaid or becoming eligible for medically needy Medicaid; and (3) there continues

to be at least one qualifying child in the home. Previously eligibility for Family Transitional Medicaid was divided into two six-month periods. During the initial six months there was no income limit and households were not required to file quarterly reports providing information about their income. During the second six-month period there was an income limit and households were required to file quarterly reports. This section has been amended to remove the income limit and the requirement to file a quarterly report during the second six months.

This change was made because Section 5400 of the American Recovery and Reinvestment Act of 2009 gives the states the option to extend the initial eligibility period for Transitional Medicaid from six months to 12 months. Under federal Medicaid law there is no income limit during the initial eligibility period, so the extension of the initial period from six months to 12 months eliminates the need for an income limit and reporting requirement during the second six months of Transitional Medicaid. The department therefore chose the option of extending the initial period of Transitional Medicaid from six months to 12 months because this simplifies administration of Transitional Medicaid by removing the income limit and reporting requirement. It is estimated that 171 adults and 292 children per year will receive Family Transitional Medicaid for an additional six months as a result of eliminating the income limit and reporting requirement. This will result in an increase in Medicaid expenditures of \$833,400 per year, of which \$635,800 will be federal funds and \$197,600 will be state general fund match.

ARM 37.82.701 lists and describes the Family Medicaid coverage groups. The department proposes to make several changes to ARM 37.82.701. In ARM 37.82.701(1)(b)(iii) the name "family-transitional" is replacing "family-extended" to identify the coverage group receiving Medicaid for up to 12 months after the family's nonmedically needy Medicaid eligibility would otherwise end due to receipt of new or increased earned income. This new name was chosen because this coverage group is referred to as "transitional Medicaid" in federal law, and also to avoid confusion with the coverage group described in ARM 37.82.701(1)(o)(ii), which is currently called "extended child/spousal support". In ARM 37.82.701(1)(o)(ii) the name "family-extended" is replacing "extended child/spousal support" to identify the coverage group receiving Medicaid for four months after the family's nonmedically needy Medicaid eligibility would otherwise end due to receipt of new or increased child or spousal support. This new name was chosen because "family-extended" is less cumbersome than the name "extended child/spousal support". The names are being changed in the rules to the new names used to identify the coverage groups in the Combined HealthCare Information and Montana Eligibility System (CHIMES), the new Medicaid eligibility system which was implemented on October 1, 2009. There is no change in the policies governing these coverage groups. Only the names of the groups are being changed.

Additionally, in ARM 37.82.701(1)(e) the income limit for receipt of Medicaid under the pregnancy coverage group is being changed from 133% to 150% of the federal poverty guidelines. The department has been using the higher income limit since 2007 when the Legislature appropriated additional Medicaid funds so that women

with income of up to 150% of poverty could receive Medicaid, but the rule was never amended to reflect the new income limit for this group. It is now necessary to amend the rule so that it will accurately reflect the income policy currently in effect.

It is estimated that an additional 248 women will receive Medicaid during the biennium as a result of raising the income limit from 133% to 150% of the federal poverty guidelines. Additionally, there will be an increase in the number of infants eligible to receive Medicaid as a result of the increased income limits, because a newborn child whose mother was eligible for and receiving Medicaid at the time of the infant's birth is automatically eligible for Medicaid through the infant's first birthday as long as the child continues to reside in Montana. It is estimated that 199 infants will receive child-newborn coverage due to the increased income limit for pregnant women. The total increase in expenditures for both pregnant women and newborn infants will be approximately \$1,222,000 in federal funds per year and approximately \$550,000 in state funds per year. The state share is funded through state special revenue.

5. The department intends the proposed rule amendments to be effective January 1, 2010.

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, and must be received no later than 5:00 p.m., December 11, 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, apply and have been fulfilled. The primary bill sponsor was contacted by letter on October 27, 2009, sent postage prepaid via USPS, and by telephone and e-mail on October 27, 2009.

/s/ Barbara Hoffmann
Rule Reviewer

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

Certified to the Secretary of State November 2, 2009.

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

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rule I and the amendment of ARM	)	PROPOSED ADOPTION AND
37.86.105, 37.86.1101, and	)	AMENDMENT
37.86.1105 pertaining to Medicaid)	
physician administered drug)	
reimbursement and pharmacy)	
outpatient drug reimbursement)	

TO: All Concerned Persons

1. On December 2, 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 adoption and 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 November 23, 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 adopted provides as follows:

RULE I CALCULATION OF THE STATE MAXIMUM ALLOWABLE COST, THE ESTIMATED ACQUISITION CHARGE, AND PROVIDER'S USUAL AND CUSTOMARY CHARGE

(1) The state maximum allowable cost (SMAC) is the state average acquisition cost per drug determined by direct pharmacy survey, wholesale survey, and other relevant cost information.

(a) The department will review SMAC rates on an ongoing basis and adjust the rates as necessary to reflect prevailing market conditions and ensure reasonable access by providers to drugs at or below the applicable SMAC rate.

(b) Pharmacies and providers that are enrolled in Montana Medicaid are required, as a condition of participation, to submit, upon request, to the department, or its designee, acquisition cost information, product availability information, and other information deemed relevant by the department for the efficient operation of the pharmacy benefit. Information will be provided in the format requested by the department or its designee. Providers will not be reimbursed for this information and will submit information to the department or its designee within 30 days following a

request for such information unless the department or its designee grants an extension upon written request of the pharmacy or provider.

(2) The estimated acquisition cost (EAC) for a drug is:

(a) the direct price charged by manufacturers to retailers;

(b) 85% of the average wholesale price (AWP) if there is no direct price available to providers in the state; or

(c) a department set SMAC for specified drugs or drug categories when the department determines that acquisition cost is lower than (2)(a) or (b) based on national pricing data.

(3) The usual and customary charge is the price the provider charges a typical customer in the provider's typical course of business.

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

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

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

37.86.105 PHYSICIAN SERVICES, REIMBURSEMENT/GENERAL REQUIREMENTS AND MODIFIERS (1) through (3)(b) remain the same.

(4) Reimbursement to physicians for physician-administered drugs which are billed under HCPCS "J" and "Q" codes is made either according to a the department's fee schedule established by the department and updated at least annually based upon the Montana estimated acquisition cost or maximum allowable cost, as defined in ARM 37.86.1104 or the provider's usual and customary charge, whichever is lower. No dispensing fee is paid to physicians. The department's fee schedule is updated at least annually based upon:

(a) the Medicare Average Sale Price (ASP) Fee Schedule set at 42 CFR 414.904 (2009) if there is an ASP fee;

(b) the RBRVS fee as defined in ARM 37.85.212 if there is an RBRVS fee;

(c) the estimated acquisition cost (EAC) as defined in ARM 37.86.1101 if there is an EAC; or

(d) the by-report amount as defined in ARM 37.85.212.

~~(a)~~ (5) The maximum allowable cost limitation shall not apply in those cases where the physician certifies in their own handwriting that in their medical judgment a specific brand name drug is medically necessary for a particular patient.

Acceptable certification statements are "brand necessary" or "brand required". A check-off box on a form or a rubber stamp is not acceptable.

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

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

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

37.86.1101 OUTPATIENT DRUGS, DEFINITIONS (1) "Acquisition cost" means the actual price paid by a provider for a drug.

(2) "Average manufacturer price (AMP)" means, with respect to a covered outpatient drug of a manufacturer for a rebate period, the average price paid to the

manufacturer for the drug in the United States by wholesalers for drugs distributed to the retail pharmacy class of trade. The AMP is determined without regard to customary prompt pay discounts extended to wholesalers.

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

~~(3)~~ (4) "Estimated acquisition cost (EAC)" means the calculation of the provider's estimated cost of drugs a drug for which no state maximum allowable cost (SMAC) price has been determined. The EAC is the department's best estimate of what price providers are generally paying in the state for a drug in the package size providers buy most frequently. If actual wholesale cost is not available the EAC is 85% of average wholesale price. The EAC for a drug is:

(a) the direct price (DP) charged by manufacturers to retailers;

(b) if there is no available DP for a drug or the department determines that the DP is not available to providers in the state, the EAC is the average wholesale price (AWP) less 15%; or

~~(c) the department may set an allowable acquisition cost for specified drugs or drug categories when the department determines that acquisition cost is lower than (3)(a) or (b) based on data provided by the drug pricing file contractor.~~

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

(7) "Multi-source" means a drug product sold under its generic name whose active ingredients are identical in chemical composition to one or more others sold under trademark that can be purchased from different manufacturers or distributors.

~~(6)~~ (8) "State Maximum allowable cost (SMAC)" means the per unit amount the department reimburses a provider for a prescription drug included in the state maximum allowable cost program. SMAC is the upper limit the department will pay for multi-source drugs. In order to establish base prices for calculating the maximum allowable cost, the department hereby adopts and incorporates by reference the methodology for limits of payment set forth in 42 CFR 447.331 and 447.332 (1996). The maximum allowable cost for multi-source drugs will not exceed the total of the dispensing fee established by the department and an amount that is equal to the price established under the methodology set forth in 42 CFR 447.331 and 447.332 for the least costly therapeutic equivalent that can be purchased by pharmacists in quantities of 100 tablets or capsules or, in the case of liquids, the commonly listed size. If the drug is not commonly available in quantities of 100, the package size commonly listed will be the accepted quantity. A copy of the above-cited regulations may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(7) remains the same but is renumbered (9).

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

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

37.86.1105 OUTPATIENT DRUGS, REIMBURSEMENT (1) Drugs will be paid for on the basis of the Montana "estimated acquisition cost" or the "state maximum allowable cost", plus a dispensing fee established by the department, or the provider's "usual and customary charge", whichever is lower; except that the "state maximum allowable cost" limitation shall not apply in those cases where a

physician or other licensed practitioner who is authorized by law to prescribe drugs and is recognized by the Medicaid program certifies in their own handwriting that in their medical judgment a specific brand name drug is medically necessary for a particular patient. An example of an acceptable certification would be the notation "brand necessary" or "brand required". A check-off box on a form or a rubber stamp is not acceptable.

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

(3) In-state pharmacy providers that are new to the Montana Medicaid program will be assigned an interim \$5.04 dispensing fee until a dispensing fee questionnaire, as provided in (2), can be completed for six months of operation. At that time, a new dispensing fee will be assigned which will be the lower of the dispensing fee calculated in accordance with (2) for the pharmacy or the ~~\$4.70~~ \$5.04 dispensing fee. Failure to comply with the six months dispensing fee questionnaire requirement will result in assignment of a dispensing fee of \$2.00.

(4) through (7) remain the same.

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

IMP: 53-2-201, 53-6-101, 53-6-113, ~~53-6-144~~, MCA

5. The Department of Public Health and Human Services (department) is proposing the adoption of new Rule I and the amendment of ARM 37.86.105, 37.86.1101, and 37.86.1105 pertaining to Medicaid physician administered drug reimbursement and Medicaid pharmacy outpatient drug reimbursement. The department administers the Montana Medicaid program, which is a public assistance program jointly funded by the state and federal government. Montana Medicaid pays providers for covered health care service delivered to eligible low income and disabled Montana residents enrolled in Medicaid. Outpatient drugs and physician administered drugs are covered health care services.

Montana Medicaid uses three methods to calculate the reimbursement it will pay for outpatient drugs - state maximum allowable cost, estimated acquisition cost, and usual and customary charges. These rule changes edit and move existing language regarding the reimbursement methods. The changes also delete a reference to federal regulations regarding federal maximum allowable costs.

These rule changes are necessary to set Montana drug prices at appropriate market driven rates. By implementing a state maximum allowable cost (SMAC) algorithm in the pricing structure the state could save \$1.1 million dollars in general fund while ensuring a fair price for medications dispensed at retail pharmacies. Pharmacies use a typical distribution for consumer goods, a pharmacy buys from a wholesaler and sells to a consumer. The wholesaler buys from a manufacturer. Unlike most consumer goods, however, there is often a third party, either an insurance company or the government, also involved at the point of sale to the consumer. The component of the price a pharmacy charges that is paid by the third party is called a "reimbursement". The third party reimbursement is typically based on an estimate of what pharmacies generally pay for a drug, a price list, not on the actual price paid. The third party payer also pays the pharmacist a dispensing fee.

Rule I

As currently stated in ARM 37.86.1105, the reimbursement price Montana Medicaid pays pharmacies for outpatient drugs has two components, the cost of acquiring the drug from a manufacturer and a dispensing fee. The cost of acquiring the drug is estimated based on three possible methods, the state maximum allowable cost (SMAC) method, the estimated acquisition cost (EAC) method, and the usual and customary charges method.

This proposed new rule should be read in conjunction with the amendments to ARM 37.86.1101. Existing language regarding SMAC and EAC is removed from ARM 37.86.1101. Proposed new Rule I is added to describe in more detail how the department applies these three methods to calculate the price Montana Medicaid will pay pharmacies for outpatient drugs.

ARM 37.86.105

The proposed amendment to ARM 37.86.105 states Montana Medicaid current practices for setting reimbursement for physician administered drugs (PADs), which mirror the Medicare average sales price method. There are some exceptions to the method. Most PADs that do not have Medicare associated reimbursement are reimbursed according to ARM 37.86.1101. There are a few remaining PADs that are not reimbursed using either methodology. They will be reimbursed using either a resource based relative value scale (RBRVS) system if there is an RBRVS fee or "by report". These reimbursement methodologies are located in ARM 37.85.212 and will be referenced in the proposed amendment to ARM 37.86.105.

ARM 37.86.1101

ARM 37.86.1101 defines terms used in these rules. The definitions of state maximum allowable cost and estimated acquisition cost are edited and definitions of average acquisition cost and multi-source drug are added.

ARM 37.86.1105

The proposed amendment to ARM 37.86.1105 is to consistently use the term "state maximum allowable cost". This rule currently uses the term "maximum allowable cost".

Fiscal Effect

The proposed adoption of new Rule I and amendment to ARM 37.86.1101 and 37.86.1105 impact approximately 314 providers. The estimated fiscal impact of this change is a decrease of \$4.6 million federal expenditures and \$1.1 million of state expenditures.

The proposed amendment to ARM 37.86.105 impacts approximately 5,000 providers. The estimated fiscal impact of this change is a decrease of \$7,827.81 in federal expenditures and \$2,319.72 of state expenditures.

6. The department intends the proposed rule changes to be applied effective January 1, 2010.

7. 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, and must be received no later than 5:00 p.m., December 10, 2009.

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

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 7 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 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.

11. 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 November 2, 2009.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 44.3.105, 44.3.106, 44.3.1101,	)	AMENDMENT AND REPEAL
44.3.1403, 44.3.1701, 44.3.1704,)	
44.3.1706, 44.3.1707, 44.3.1710,	)	NO PUBLIC HEARING
44.3.1713, 44.3.1717, 44.3.2002,	)	CONTEMPLATED
44.3.2005, 44.3.2012 through)	
44.3.2016, 44.3.2102, 44.3.2103,)	
44.3.2109 through 44.3.2111,)	
44.3.2113 through 44.3.2115,)	
44.3.2203, 44.3.2302 through)	
44.3.2304, 44.3.2401, 44.3.2402, and)	
44.3.2501, and repeal of ARM)	
44.3.2601 and 44.9.313 pertaining to)	
elections)	

TO: All Concerned Persons

1. On December 14, 2009, the Secretary of State proposes to amend and repeal the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on November 27, 2009, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 444-5375; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

44.3.105 SURVEY PROCEDURE TO DETERMINE ACCESSIBILITY

(1) Unless specified otherwise, the election administrator shall conduct an on-site survey in each polling place 45 days prior to utilizing that facility, ~~except those designated as "rural"~~, as provided in ARM 44.3.109, to determine whether such facilities are in compliance with the criteria set forth in these rules.

(2) through (7) remain the same.

AUTH: ~~13-3-202~~ 13-3-205, MCA

IMP: 13-3-206, ~~13-3-207~~, MCA

REASON: The amendment is reasonably necessary to reflect the statutory changes to section 13-3-207, MCA, by the 2007 Legislature which removed the "rural"

classification of polling places. The statutory authority and implementation citations were reviewed and updated.

44.3.106 EXEMPTION PROCEDURE (1) through (4) remain the same.

(5) The Secretary of State may grant an exemption pursuant to this subchapter if all potential polling places have been surveyed and ~~it is determined~~ the election administrator has certified that:

(a) remains the same.

(b) the location is designated inaccessible because it is a rural polling place and designation of an accessible facility as a polling place will require excessive travel or impose other hardships for the majority of qualified electors in the ~~precinct~~ polling place.

(6) remains the same.

(7) A polling place designated as "~~rural~~" 45 days prior to an election as inaccessible because it is rural shall be exempt from the on-site survey procedure provided in ARM 44.3.108.

(8) remains the same.

AUTH: 13-3-205, MCA

IMP: 13-3-207, 13-3-212, MCA

REASON: The amendments are reasonably necessary to reflect the statutory changes to section 13-3-207, MCA, by the 2007 Legislature which removed the "rural" classification of polling places. The statutory implementation citations were reviewed and updated.

44.3.1101 SCHEDULE OF FEES FOR THE CENTRALIZED VOTER FILE

(1) Upon written request, the Secretary of State through its vendor shall furnish, for noncommercial use to private individuals or entities, a list of registered electors as compiled and maintained in its statewide voter database. For the statewide list or available extracts from the statewide list the charge is \$1,000.00. For a legislative representative district list the charge is \$100.00, for a legislative senate district list the charge is \$150.00, and for a county list the charge is \$200.00, and for the petition signers report the charge is \$200. For a subscription for ongoing access to the database and all other available extracts or lists the charge is \$5,000.00 for one year.

AUTH: 2-15-404, MCA

IMP: ~~43-2-115(2)~~ 13-2-122, MCA

REASON: This amendment is reasonably necessary to set a charge for the petition signers report commensurate with the amount of time and effort it takes to extract it, which is consistent with the time and effort it takes to produce a county list. The statutory implementation citation was reviewed and updated.

44.3.1403 FACSIMILE REQUESTS FOR ABSENTEE BALLOTS (1) through (2)(a) remain the same.

(b) is legible and the same size as the original.

AUTH: ~~13-1-204~~ 13-1-202, MCA

IMP: 13-13-212, MCA

REASON: The amendment to (2)(b) is reasonably necessary to clarify that a facsimile copy may be usable even though it may not be the same size as the original. The statutory authority citation was reviewed and updated.

44.3.1701 EXAMINATION OF VOTING MACHINES AND DEVICES

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

(g) "Engineering change order" means a change to the voting system that does not affect the current federal certification, form, fit, or function of the voting system.

(g) through (l) remain the same, but are renumbered (h) through (m).

(3) Such examination shall be conducted by the office of Secretary of State, who may choose ~~up to~~ at least two Montana electors to assist with the examination.

(4) and (5) remain the same.

(6) Examination of voting machines and devices shall be made only upon application to the Secretary of State. Such application shall be in writing on the form prescribed by the Secretary of State and shall contain the information prescribed by the Secretary of State.

(7) remains the same.

AUTH: 13-17-103, 13-17-107(~~4~~), MCA

IMP: ~~13-17-104, 13-17-107~~ 13-17-101, 13-17-103, MCA

REASON: The addition of (2)(g) is reasonably necessary to provide a definition for an "engineering change order." The amendments to (3) and (6) are necessary for clarity and to specify that the form is prescribed by the Secretary of State. The statutory authority and implementation citations were reviewed and updated.

44.3.1704 CRITERIA OF EXAMINATION (1) remains the same.

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

(h) Engineering change orders considered to be *de minimis* changes to voting systems shall be reviewed and approved by the Secretary of State upon written application.

AUTH: 13-17-103, 13-17-107(~~4~~), MCA

IMP: 13-17-101, 13-17-103, MCA

REASON: The amendment is reasonably necessary to reflect that certain engineering change orders may be necessary. The statutory authority and implementation citations were reviewed and updated.

44.3.1706 NOTIFICATION OF APPLICANT (1) Within 30 days after completion of such examination, the Secretary of State or ~~his~~ the deputy or deputies

shall prepare and file in ~~his~~ the office a report of ~~his~~ the findings with respect to the system examined.

(2) A copy of such report shall be forwarded to the applicant at the address shown in ~~his~~ the application for such examination.

(3) remains the same.

AUTH: 13-17-107(~~4~~), MCA

IMP: 13-17-101, 13-17-103, MCA

REASON: The amendments are necessary to ensure that rule language is gender-neutral. The statutory authority and implementation citations were reviewed and updated.

44.3.1707 APPEAL FROM DISAPPROVAL (1) If upon examination any system shall have been disapproved by the Secretary of State under these rules, the applicant may appeal ~~therefrom~~ by requesting reconsideration of the system so disapproved, under the following conditions:

(a) through (3) remain the same.

AUTH: 13-17-107(~~4~~), MCA

IMP: 13-17-101, 13-17-103 ~~43-47-407~~, MCA

REASON: The amendment to (1) is a simple grammatical change to an existing rule. The statutory authority and implementation citations were reviewed and updated.

44.3.1710 EXTENSION OF PREVIOUS APPROVAL OF VOTING MACHINES OR DEVICES (1) Any system having been approved under rules previously promulgated by the ~~Board of Election Devices or approved by the~~ Secretary of State under prior citations of law shall continue to have approval under the application of these rules without reexamination. However, any contracts for purchase drawn after December 28, 1979, must contain the guarantees as provided in ARM 44.3.1703(3).

AUTH: 13-17-107(~~4~~), MCA

IMP: 13-17-101, 13-17-103, MCA

REASON: This amendment reflects the cessation of the Board of Election Devices and the reality that the rules in question were primarily promulgated by the Secretary of State. The statutory authority and implementation citations were reviewed and updated.

44.3.1713 UNIFORM PROCEDURES FOR USING VOTING SYSTEMS

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

(f) testing and certification of voting systems pursuant to 13-17-212, MCA, including a random test conducted by a county election administrator or designee of

5% of each type of voting systems, a minimum of one per county, on election day, to validate the accuracy of voted paper ballots with the voting system results.

AUTH: 13-17-211, MCA

IMP: 13-17-211, MCA

REASON: The amendment to (1)(f) is reasonably necessary to reflect an audit recommendation that each type of voting system be tested. It is unclear in the existing rule that each type of voting system must be tested.

44.3.1717 SEALING BALLOTS AND VOTING SYSTEMS (1) remains the same.

(2) All voting systems must be secured as provided in accordance with the procedures specified in the instruction manuals, user guides, and technical manuals provided by the manufacturer of the voting system, as well as the election judge handbook and testing and security procedures provided by the office of the Secretary of State, except in cases in which those materials conflict with state laws or rules, in which case the laws or rules shall apply. All such procedures must ensure to the greatest degree possible the security of the voting systems from intentional and unintentional misuse.

(3) remains the same.

AUTH: ~~13-16-417~~, 13-17-211, MCA

IMP: 13-16-417, 13-17-211, MCA

REASON: The amendment to (2) recognizes the Secretary of State's role in providing testing and security procedures, pursuant to the rulemaking authority in Title 13, chapter 17, MCA. The statutory authority citations were reviewed and updated.

44.3.2002 DEFINITIONS As used in this subchapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) through (6) remain the same.

(7) "Legally registered electors" include but are not limited to electors who were properly registered prior to January 1, 2003, and those who registered on or after that date whose applications for voter registration were accepted, processed, and verified as provided by law.

(7) remains the same, but is renumbered (8).

AUTH: 13-2-109, MCA

IMP: 13-2-110, MCA

REASON: The addition of the definition for "legally registered electors" is reasonably necessary to define a term used in other parts of current rules.

44.3.2005 VOTER REGISTRATION CARD INFORMATION REQUIREMENTS (1) and (2) remain the same.

(3) An applicant for voter registration who does not provide the applicant's driver's license number, the last four digits of the applicant's social security number, or a form of identification required in ARM 44.3.2002(6), shall be registered as a provisionally registered elector pending receipt and verification, at any time up to and including on election day, of one of the required numbers or, if the applicant has not been issued either number, receipt of a form of identification required.

(4) remains the same.

AUTH: 13-2-109, MCA

IMP: 13-2-110, MCA

REASON: The amendment to (3) is to specify that an individual who does not possess a driver's license number or a social security number will need to provide another form of required identification.

44.3.2012 VERIFICATION OF VOTER REGISTRATION INFORMATION

(1) remains the same.

(2) Throughout the election process, an election administrator shall, as necessary, work in conjunction with the office of the Secretary of State, the Department of Justice's Motor Vehicle Division, the Social Security Administration and any additional agencies to ensure the verification of the accuracy of the information provided in ARM 44.3.2011.

AUTH: 13-2-109, MCA

IMP: 13-2-110, MCA

REASON: The amendment to (2) is to clarify that the Motor Vehicle Division is within the Department of Justice.

44.3.2013 NOTICE TO APPLICANT OF STATUS OF APPLICATION FOR VOTER REGISTRATION

(1) An election official shall confirm an elector's registration by a confirmation notice required under 13-2-207, MCA, which ~~includes at minimum the elector's name, address, and precinct number~~ is substantially in the form prescribed by the Secretary of State.

(2) remains the same.

AUTH: 13-2-109, MCA

IMP: 13-2-110, MCA

REASON: The amendment to (1) is necessary to strike language that is too specific and unnecessary because the language on the forms is prescribed by the Secretary of State and printed on the forms that the election administrators print from the Montana VOTES database.

44.3.2014 MAINTENANCE OF ACTIVE AND INACTIVE VOTER REGISTRATION LISTS FOR ELECTIONS (1) and (1)(a) remain the same.

(b) mail a nonforwardable, first-class, "~~return if undeliverable--address correction requested~~" notice to all registered electors of each jurisdiction using current U.S. Postal Service language to ensure the mailing if undeliverable is returned with a corrected address, if available, to confirm their addresses and provide the appropriate confirmation notice to those individuals who return the notices;

(c) remains the same.

(2) Any notices not returned or returned as undeliverable to the election administrator after using the procedures provided in (1) must be followed by an appropriate confirmation notice that is a forwardable, first-class, postage-paid, self-addressed, return notice. If the elector fails to respond within 30 days of the confirmation notice, the election administrator shall move the elector to the inactive list.

(3) through (6) remain the same.

AUTH: 13-2-108, MCA

IMP: 13-2-220, MCA

REASON: The amendment to (1)(b) is reasonably necessary to allow for variations in current postal language. The amendment to (2) is necessary to ensure that the elector requirements for the first confirmation notice are the same as the elector requirements for the second notice by stating that the elector's failure to respond twice leads to inactivation.

44.3.2015 LATE REGISTRATION PROCEDURES (1) remains the same.

(a) ~~Election administrators shall close late registration at noon on the day before election day.~~ Any elector wishing to register after noon on the day before election day may ~~do so by~~ submitting a voter registration application at the county election administrator's office, ~~the day before election day or on election day during polling hours, and appearing~~ but the elector must appear at the county election office on election day in order to ~~vote~~ complete the late registration process and receive an absentee ballot.

(2) through (4) remain the same.

(5) If a late transfer registration applicant who is registered in another county appears in the county election office in order to transfer the applicant's registration, an election official shall, if the county from which the applicant is transferring registration has already printed applicable precinct registers, but not yet printed supplemental registers:

(a) subject to 13-2-304(2), MCA, ~~register the applicant in the statewide voter database as a duplicate voter~~ move the voter's registration from the current county into the new county of registration; and

(b) issue the applicant a ~~provisional~~ regular ballot; and

~~(c) after the election, contact the county from which the applicant is transferring the applicant's registration in order to determine whether the applicant voted in the other county, and follow all other applicable requirements specified in laws and rules for provisional electors.~~

(6) If a late transfer registration applicant who is registered in another county appears in the county election office in order to transfer the applicant's registration, an election official shall, if the county from which the applicant is transferring registration has already printed supplemental registers:

(a) subject to 13-2-304(2), MCA, move the voter's registration from the current county into the new county of registration;

(b) issue the applicant a provisional ballot; and

(c) after the election, contact the county from which the applicant is transferring the applicant's registration in order to determine whether the applicant voted in the other county, and follow all other applicable requirements specified in laws and rules for provisional electors.

(7) To correct administrative error, an election official may register a late registration applicant in the statewide voter database as a duplicate voter:

(a) issue the applicant a provisional ballot; and

(b) after the election, contact the county from which the applicant is transferring the applicant's registration in order to determine whether the applicant voted in the other county, and follow all other applicable requirements specified in laws and rules for provisional electors.

AUTH: 13-2-108, MCA

IMP: 13-2-304, 13-2-514, MCA

REASON: These amendments are reasonably necessary to more accurately reflect the late registration process and the requirements of the statewide voter database.

44.3.2016 STATEWIDE VOTER REGISTRATION DATABASE (1) through (1)(b) remain the same.

(c) proper maintenance and use of lists for legally registered electors, and provisionally registered electors and late registrants;

(d) through (3) remain the same.

(4) An elector who was properly registered prior to January 1, 2003, must be considered a legally registered elector.

AUTH: 13-2-108, MCA

IMP: 13-2-108, MCA

REASON: The amendment to (1)(c) is reasonably necessary to provide procedures for handling late registrants. Section (4) is deleted to remove a potentially confusing definition which has now been included in ARM 44.3.2102.

44.3.2102 DEFINITIONS As used in this subchapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Current address" means residence address, or mailing address, or the precinct number that is preprinted on the voter confirmation notice issued pursuant to 13-2-207, MCA. For the purposes of this subchapter, an address is presumed to be current unless proved otherwise.

(2) through (6) remain the same.

(7) "Legally registered electors" include but are not limited to electors who were properly registered prior to January 1, 2003, and those who registered on or after that date whose applications for voter registration were accepted, processed, and verified as provided by law.

(7) remains the same, but is renumbered (8).

~~(8)~~(9) "Polling place elector identification form" means a form prescribed by the Secretary of State and printed by the election administrator that:

(a) requires an elector to provide the elector's current Montana residential address, current mailing address, date of birth, signature, ~~date of birth~~, and date;

(b) requires an elector to provide the elector's Montana driver's license number or Montana state identification number or, ~~only if verification is available~~, the last four digits of the elector's social security number; and

(c) remains the same.

(9) remains the same, but is renumbered (10).

~~(a)~~(11) "Polling place manager" means an election official who ~~assists electors with voting procedures while they are inside the~~ is responsible for polling place procedures.

AUTH: 13-13-603, MCA

IMP: 13-13-114, 13-13-601, 13-15-107, MCA

REASON: The amendment to (1) is reasonably necessary to remove the option that a precinct number can serve as address because that option was based on a now outdated voter registration confirmation card. The addition of a definition for "legally registered electors" is appropriately removed from ARM 44.3.2016 and placed in this definitions rule. Subsection (9)(b) is amended to remove a reference to situations in which verification is available, since the verification is now available. The amendments to (9)(a) and (11) are for clarity.

44.3.2103 PRINTING OF IDENTIFICATION AND PROVISIONAL VOTING MATERIALS (1) Election administrators shall provide materials for identification and provisional voting in sufficient numbers for each election. These materials shall include at least the following, in forms prescribed by the Secretary of State:

(a) through (f) remain the same.

(g) at the option of the election administrator, ~~educational~~ postings for inside or outside of the polling place ~~in the form suggested by the Secretary of State.~~

(2) Election ~~administrators~~ officials shall use regular ballots for provisional voting.

AUTH: 13-13-603, MCA

IMP: 13-13-112, 13-13-603, MCA

REASON: These amendments are reasonably necessary to allow for postings inside or outside the polling place, whether or not the form is suggested by the Secretary of State.

44.3.2109 PROCEDURES FOR CHALLENGES (1) through (3)(a) remain the same.

(b) after the close of regular registration or on election day, the election administrator or, on election day, the election judge shall allow the challenged elector to cast a provisional paper ballot, which must be handled as provided in 13-15-107, MCA.

(4) through (6) remain the same.

AUTH: 13-13-301, MCA

IMP: 13-13-301, MCA

REASON: The amendment to (3)(b) is necessary to specify that there is now a close of regular registration, whereas in the past the close of regular registration was the close of all registration. With the implementation of late registration, it is useful to include the word "regular" before the word registration when referring to the 30-day close of registration rather than to late registration.

44.3.2110 PROCEDURES AT THE POLLING PLACE FOR DETERMINING THE SUFFICIENCY OF IDENTIFICATION - PRIOR TO CASTING A BALLOT

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

(3) An elector who is otherwise eligible to vote and who provides a required form of identification shall be permitted to vote as follows:

(a) and (b) remain the same.

(c) consistent with 13-13-114(1)(c) and (d), MCA, if the identification provided differs from information in the precinct register, but an election judge determines that the information provided is sufficient to verify the voter's identity to vote pursuant to 13-2-512, MCA, the elector may sign the precinct register, complete a transfer form or new registration form to correct the elector's voter registration information, and vote. An election judge shall write "transfer form" or "registration form" in the register beside the name of any elector submitting a form.

(4) remains the same.

AUTH: 13-13-603, MCA

IMP: 13-1-116, 13-13-114, MCA

REASON: These amendments are reasonably necessary to clarify that the form of identification submitted by the elector may or may not actually be a required form of identification and that the election judge should write certain information in the register.

44.3.2111 PROCEDURES AT THE POLLING PLACE FOR DETERMINING ELIGIBILITY TO VOTE - PRIOR TO CASTING A BALLOT (1) An individual who provides sufficient identification specified in ARM 44.3.2110(2)(6), but whose name does not appear on the precinct register, shall be permitted to:

(a) provide information to an election official at the polling place to verify the individual's registration, subject to the following:

(i) an ~~elector~~ individual whose name is erroneously omitted from a precinct register or other election register may secure from the election administrator or designee a certificate of the error, stating the precinct in which the ~~elector~~ individual is entitled to vote, and present the certificate, ~~(which will entitle the elector individual to vote a regular ballot),~~ to an election judge;

(ii) the certificate shall be marked "voted" by the election judges and returned by them with the precinct register. The ~~elector individual should~~ shall sign the back of the precinct register or in a location specified by the ~~county~~ election administrator;

(iii) if the ~~elector individual~~ is for any reason unable to secure a certificate of error ~~from the election administrator,~~ the ~~elector individual~~ may vote by signing an oath that ~~his~~ the individual's name was erroneously omitted, if the ~~election administrator or designee can confirm such omission by telephone to the chief election judge of the precinct confirms such omission by contacting the election administrator or designee.~~ The oath shall be marked "voted" by the election judges and returned by them with the precinct register. The ~~elector individual should~~ shall sign the back of the precinct register or in a location specified by the county election administrator; ~~and or~~

(iv) if the election official is unable to verify the individual's eligibility while the ~~elector individual~~ is at the polling place, sign the precinct register and cast a provisional ballot.

(2) and (3) remain the same.

AUTH: 13-13-603, MCA

IMP: 13-13-114, MCA

REASON: The amendments are reasonably necessary to indicate that an individual undergoing the procedures listed may not necessarily be an elector, since the individual's registration as an elector is in question. The amendments also clarify that the chief election judge must contact the election administrator or designee.

44.3.2113 PROVISIONAL VOTING PROCEDURES AT THE POLLING PLACE - CASTING A BALLOT (1) The election administrator shall direct election officials in each precinct to mark, in a location specified by the election administrator in the records maintained by election officials, a notation for each ~~elector individual~~ who has chosen to cast a provisional ballot or set of provisional ballots, as applicable.

(2) Consistent with 13-13-601, MCA, an election official shall give to an ~~elector individual~~ who has ~~been permitted the option of casting~~ chosen to cast a provisional ballot the following, in the forms prescribed by the Secretary of State:

(a) ~~instructions for casting a provisional ballot~~ instructions, which must be filled out by an election official in the areas specified;

(b) through (d) remain the same.

(3) The ~~elector individual~~ shall, upon receipt of the forms in ~~(4)~~(2):

(a) read the ~~instructions for casting a provisional ballot~~ instructions;

(b) remains the same.

(c) allow an election official to review the provisional ballot outer envelope that has been filled out by the ~~elector individual~~.

(4) An election official, upon receiving the provisional ballot outer envelope from the ~~elector~~ individual, shall:

(a) ensure that the ~~elector~~ individual completed all required information on the provisional ballot outer envelope; and

(b) inform the ~~elector~~ individual that the ~~elector~~ individual may provide additional information at the ~~elector's~~ individual's option.

(5) After the ~~elector~~ individual and the election official complete the requirements in this rule, the election official shall allow the ~~elector~~ individual to:

(a) remains the same.

(b) ~~cast~~ vote the ballot;

(c) place the ballot in the provisional ballot secrecy envelope, and in a primary election, place the unvoted party ballot in an unvoted ballot envelope;

(d) remains the same.

(e) return the provisional ballot outer envelope to an election official, who shall place the provisional ballot outer envelope into an unverified provisional ballot container, and who shall in a primary election, place the unvoted party ballot into an unvoted ballot box or into the provisional ballot outer envelope. The location where the unvoted party ballot is placed must be consistent within a county and must be consistent with direction given by the election administrator.

(6) Consistent with 13-15-107, MCA, an election official shall handle a provisional ballot outer envelope which holds a ballot cast provisionally by an ~~elector~~ individual whose voter information is verified by the close of the polls on election day as follows:

(a) and (b) remain the same.

(c) remove the provisional ballot secrecy envelope, which must be opened by the ~~elector~~ individual to remove the provisional ballot, which must then be deposited with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other ballot;

(d) and (e) remain the same.

AUTH: 13-13-603, MCA

IMP: 13-13-114, 13-13-601, 13-15-107, MCA

REASON: The amendments are reasonably necessary to indicate that an individual may not necessarily be an elector and to clarify the options for handling voted and unvoted ballots.

44.3.2114 PROVISIONAL VOTING PROCEDURES ON ELECTION DAY
AFTER THE CLOSE OF POLLS - THE SIXTH DAY AFTER ELECTION DAY

(1) remains the same.

(2) All information regarding electors who have chosen to cast provisional ballots shall remain private at all times prior to and during the counting of provisional ballots and shall not be released prior to ~~and~~, during, or after the counting period without a court order.

(3) through (11) remain the same.

AUTH: 13-13-603, MCA

IMP: 13-15-107, 13-15-301, MCA

REASON: The amendments to (2) are reasonably necessary to clarify procedures regarding maintaining provisional voter secrecy.

44.3.2115 PROVISIONAL VOTING PROCEDURES - AFTER FINAL DETERMINATION WHETHER OR NOT TO COUNT PROVISIONAL BALLOTS

(1) Election officials, after making the final determination whether or not to count the ballot(s) of each elector who cast a provisional ballot(s) and separately recording the reason(s) why each ballot was cast as a provisional ballot and why each ballot was counted or not counted, shall:

(a) through (2) remain the same.

AUTH: 13-13-603, MCA

IMP: 13-15-107, MCA

REASON: The amendment to (1) is necessary to change existing rule survey requirements to record and report provisional voting information.

44.3.2203 FORM OF ABSENTEE BALLOT APPLICATION AND ABSENTEE BALLOT TRANSMISSION TO ELECTION ADMINISTRATOR (1) and (2) remain the same.

(3) Consistent with 13-13-213(1), MCA, and except as provided in 13-13-213(4), MCA, all absentee ballot application forms must be addressed to the appropriate election official. The elector may mail the application directly to the election administrator or, deliver the application in person to the election administrator, or transmit it by facsimile pursuant to ARM 44.3.1403. An agent designated pursuant to 13-1-116, MCA, or a third party, may collect the elector's application and forward it to the election administrator.

(4) and (5) remain the same.

(6) The election administrator shall mail ~~an~~ a forwardable address confirmation form, prescribed by the Secretary of State in January and July of each year to each elector who has requested an absentee ballot for subsequent elections. The address confirmation form mailed in January is for elections to be held between February 1 following the mailing through July of the same year, and the address confirmation form mailed in July is for elections to be held between August 1 following the mailing through January of the succeeding year. The form shall, in bold print, indicate that the elector may update the elector's mailing address using the form. The elector or elector's agent shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the register of electors who have requested an absentee ballot for subsequent elections.

(7) In order for an elector to be sent an absentee ballot for an election under the procedures and during the period specified under (4) through (6), the elector shall return ~~the confirmation form specified under (6) shall be returned to the~~

election administrator within the time period specified for receipt of absentee ballot applications under 13-13-211, MCA.

(8) remains the same.

AUTH: ~~13-1-202, 13-13-212~~, MCA

IMP: 13-13-211, 13-13-212, 13-13-213, MCA

REASON: These amendments are reasonably necessary to specify the option to transmit an absentee ballot application by facsimile, reflect that the confirmation form is sent forwardable, and clarify the effect of the elector returning the confirmation form. The statutory authority citation was reviewed and updated.

44.3.2302 DEFINITIONS As used in this subchapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Current address" means residence address, or mailing address, ~~or the precinct number that is preprinted on the voter confirmation notice issued pursuant to 13-2-207, MCA.~~ For the purposes of this subchapter, an address is presumed to be current unless proved otherwise.

(2) through (6) remain the same.

(7) "Legally registered electors" include but are not limited to electors who were properly registered prior to January 1, 2003, and those who registered on or after that date whose applications for voter registration were accepted, processed, and verified as provided by law.

(8) remains the same.

AUTH: 13-13-603, MCA

IMP: 13-13-201, 13-13-214, 13-13-241, 13-13-602, 13-15-107, MCA

REASON: The amendments are reasonably necessary to clarify the definitions of "current address" and "legally registered electors."

44.3.2303 ABSENTEE OR MAIL BALLOT ELECTOR IDENTIFICATION FORM (1) An election official or election worker shall enclose with the materials sent to each provisionally registered elector instructions in the form prescribed by the Secretary of State notifying the elector of the requirement to provide one of the forms of required identification defined in ARM 44.3.2302(6).

AUTH: 13-13-603, MCA

IMP: 13-13-201, 13-13-603, MCA

REASON: The amendment is reasonably necessary to ensure that the instructions are in the form prescribed by the Secretary of State.

44.3.2304 PROCEDURES FOR ABSENTEE AND MAIL BALLOT VOTING - DETERMINING THE SUFFICIENCY OF IDENTIFICATION OF PROVISIONALLY REGISTERED ELECTORS (1) and (1)(a) remain the same.

(b) Upon receipt of one of the forms of required identification defined in ARM 44.3.2302(6), if the identification form is verified through a voter verification process or another form of identification provided in ARM 44.3.2302(6) is sufficient;

(i) an election official or election worker shall mark on the absentee or mail ballot outer return envelope that sufficient identification was provided by the elector; and

(ii) the county election administrator or designee shall register the elector as a legally registered elector.

(c) remains the same.

~~(d) A legally registered elector includes but is not limited to an elector who was properly registered prior to January 1, 2003.~~

AUTH: 13-13-603, MCA

IMP: 13-13-114, 13-13-201, 13-13-241, ~~13-19-309~~, MCA

REASON: The addition of (1)(b)(ii) is reasonably necessary to clarify the process of registering an elector as legally registered. Subsection (1)(d) is deleted because it is confusing.

44.3.2401 BALLOT FORM AND UNIFORMITY (1) through (1)(e) remain the same.

~~(f) the order and arrangement of voting system ballots.~~

(2) through (6) remain the same.

AUTH: 13-12-202, MCA

IMP: 13-12-202, MCA

REASON: Subsection (1)(f) is amended to better reflect the language in 13-12-202, MCA, which states that the "secretary of state shall adopt statewide uniform rules that prescribe the ballot form for each type of ballot used in this state." Voting systems ballots are not the only type of ballots used in Montana.

44.3.2402 DETERMINING A VALID VOTE IN MANUALLY COUNTING AND RECOUNTING PAPER AND OPTICAL SCAN BALLOTS (1) remains the same.

(2) The following general rules shall apply in a count or recount of paper and optical-scan ballots:

(a) through (j) remain the same.

AUTH: 13-16-206, MCA

IMP: 13-10-211, 13-15-206, MCA

REASON: The amendment to (2) is simply grammatical.

44.3.2501 UNITED STATES ELECTORS (1) through (1)(b) remain the same.

(c) in receiving absentee ballots, United States electors must be given priority to receive ballots as soon as they are available, if possible before the ~~30-day~~ deadline for making them available;

(d) remains the same.

AUTH: ~~13-21-103~~ ~~13-21-104~~, MCA

IMP: 13-13-205, 13-21-201, MCA

REASON: The amendment to (1)(c) is reasonably necessary to remove the reference to a 30-day deadline since there is no longer a 30-day deadline.

4. The Secretary of State proposes to repeal the following rules:

44.3.2601 ADMINISTRATIVE COMPLAINT PROCEDURES is found on page 44-213 of the Administrative Rules of Montana.

AUTH: 13-1-202, MCA, Public Law 107-252

IMP: 13-1-202, MCA, Public Law 107-252

REASON: The repeal of ARM 44.3.2601 is proposed because it is not required by state law and a directive is in place that addresses the requirements of federal law.

44.9.313 RECORD OF QUESTIONED BALLOTS is found on page 44-293 of the Administrative Rules of Montana.

AUTH: 13-1-202, 13-19-104, MCA

IMP: 13-19-105, MCA

REASON: The Secretary of State is proposing the repeal of ARM 44.9.313 because it is not required by law and is replaced by provisional procedures already in existence. Questioned ballots are now provisional ballots.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 444-5375; fax (406) 444-4249; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., December 10, 2009.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Jorge Quintana at the above address no later than 5:00 p.m., December 10, 2009.

7. 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 63,411 persons based on the number of registered voters in Montana.

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

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 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.

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

/s/ Jorge Quintana
JORGE QUINTANA
Rule Reviewer

/s/ Linda McCulloch
LINDA MCCULLOCH
Secretary of State

Dated this 2nd day of November, 2009.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 44.5.121 pertaining to fees) PROPOSED AMENDMENT
charged by the Business Services)
Division)

TO: All Concerned Persons

1. On December 3, 2009, at 10:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Conference Room, Room 206, State Capitol Building, at Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on November 20, 2009, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 444-5375; fax (406) 444-4240; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

44.5.121 MISCELLANEOUS FEES (1) through (3) remain the same.

(4) Copy of all filed trademarks per month 100.00

(5) Copy of new business entity list per month 80.00

~~(4)~~ (6) Bulk data for corporation records vary according to data type and number of documents. Please see the Secretary of State's web site.

AUTH: 2-15-405, 30-9A-526, 35-1-1307, 35-2-1107, 35-7-103, MCA

IMP: 2-6-103, 2-15-405, 30-9A-525, 30-13-320, 35-1-1206, 35-2-119, 35-2-1003, 35-7-103, MCA

REASON: The rule amendment is reasonably necessary to set by rule the fees charged for the services identified in sections (4) and (5). When a flat copy fee of \$10 was initiated for corporations in December 2004, the rule change failed to specify the \$0.50 per page charge still being assessed for the Business Entity List and Trademarks. In the process of reviewing and addressing this omission, an administrative decision was made to charge a flat monthly fee for these services versus a per page charge. This determination was made based on research conducted by the Business Services Division that analyzed the costs associated with generating the lists on a monthly basis. The proposed flat monthly fees are based on the dollar amounts Business Services Division customers currently pay each month

for these services at the \$0.50 per page charge. Therefore, the rule amendment is reasonably necessary to specify in rule the monthly flat fee charge for these two services.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 444-5375; fax (406) 444-4240; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., December 10, 2009.

5. Jorge Quintana, Secretary of State's Office, has been designated to preside over and conduct this hearing.

6. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request 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 4 above or may be made by completing a request form at any rules hearing held by the Secretary of State.

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

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

/s/ Jorge Quintana
JORGE QUINTANA
Rule Reviewer

/s/ Linda McCulloch
LINDA MCCULLOCH
Secretary of State

Dated this 26th day of October, 2009.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	CORRECTED NOTICE OF
ARM 6.6.2801, 6.6.2803, 6.6.2804,	)	AMENDMENT, ADOPTION,
6.6.2808, and 6.6.2809, the repeal of	)	AND REPEAL
ARM 6.6.2802, 6.6.2805, 6.6.2806,)	
and 6.6.2807, and the adoption of)	
NEW RULE I (ARM 6.6.2810))	
pertaining to Surplus Lines Insurance)	
Transactions)	

TO: All Concerned Persons

1. On July 30, 2009, the State Auditor and Commissioner of Insurance published MAR Notice No. 6-185 pertaining to the public hearing on the proposed adoption, amendment, repeal of the above-stated rules at page 1191 of the 2009 Montana Administrative Register, Issue Number 14. On October 29, 2009, the department published the notice of adoption, amendment, and repeal at page 2005 of the 2009 Montana Administrative Register, Issue Number 20.

2. The reason for this notice is to add New Rule I (ARM 6.6.2810) into the text of ARM 6.6.2801, as it was erroneously omitted, and to make minor non-substantive changes in style. The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

6.6.2801 PURPOSE AND SCOPE (1) In accordance with 33-2-301, et seq., MCA, the commissioner declares that the purpose of these rules is to implement Title 33, chapter 2, part 3, MCA. ARM 6.6.2801 through ~~6.6.2809~~ 6.6.2810 implement 33-2-301, et seq., MCA, ~~through 33-2-326, MCA~~, the surplus lines insurance law.

AUTH: 33-1-313, 33-2-316, MCA

IMP: 33-2-301, 33-2-302, 33-2-303, 33-2-304, 33-2-305, 33-2-306, 33-2-307, 33-2-308, 33-2-309, 33-2-310, 33-2-311, 33-2-312, 33-2-313, 33-2-314, 33-2-315, 33-2-316, 33-2-317, 33-2-321, 33-2-326, MCA

3. The replacement pages for this corrected notice will be submitted to the Secretary of State on December 31, 2009.

/s/ Christina L. Goe
Christina L. Goe
Rule Reviewer

/s/ Robert W. Moon
Robert W. Moon
Deputy Insurance Commissioner

Certified to the Secretary of State November 2, 2009.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW)
RULES I through III and amendment of)
ARM 12.11.6601, 12.11.6603, and) NOTICE OF ADOPTION AND
12.11.6605 regarding emergency) AMENDMENT
closures of department lands and)
public waters)

TO: All Concerned Persons

1. On July 30, 2009, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-356 pertaining to the proposed amendment and adoption of the above-stated rules at pages 1208 of the 2009 Montana Administrative Register, Issue Number 14.

2. The commission has amended ARM 12.11.6603 and 12.11.6605 and adopted New Rules II (ARM 12.8.218) and III (ARM 12.8.219) as proposed.

3. The commission has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

12.11.6601 DEPARTMENT'S AUTHORITY TO CLOSE PUBLIC WATERS DUE TO EMERGENCY (1) The commission authorizes the department to adopt temporary emergency rules to close public waters or portions thereof to public use as provided in ARM 12.11.6603.

(2) and (3) remain as proposed.

AUTH: 87-1-303, MCA

IMP: 2-4-303, 87-1-303, MCA

4. The commission has adopted the following rule as proposed but with changes from the original proposal, matter to be stricken interlined, new matter underlined.

NEW RULE I (ARM 12.8.217) DEPARTMENT'S AUTHORITY TO CLOSE DESIGNATED RECREATION AREAS DUE TO EMERGENCY (1) The commission authorizes the department to adopt temporary emergency rules to close designated recreation areas or portions thereof to public use as provided in NEW RULE II.

(2) and (3) remain as proposed.

AUTH: 23-1-106, 87-1-303, MCA

IMP: 2-4-303, 23-1-106, 87-1-303, MCA

5. The following comments were received and appear with the commission's responses:

Comment 1: One person commented to the commission that they did not believe the commission or the department have or should have the power to regulate any of the closures of the waters or parks.

Response 1: The commission does have the statutory authority provided in 87-1-303, MCA to "adopt and enforce rules governing uses of lands that are acquired or held under easement by the commission or lands that it operates under agreement with or in conjunction with a federal or state agency or private owner" and "adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams that are legally accessible to the public or on reservoirs and lakes that it operates under agreement with or in conjunction with a federal or state agency or private owner" and may do so "in the interest of public health, public safety, public welfare, and protection of property and public resources". The department has the statutory authority provided in 23-1-106, MCA to "make rules governing the use, occupancy, and protection of the lands and property under its control". Through this rulemaking process, the commission is delegating its authority to the department to adopt temporary emergency rules closing public waters and designated recreation areas.

The Montana Administrative Procedure Act makes clear that an emergency rule must be used only in extraordinary circumstances. Section 2-4-303(1)(a) states, "if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days notice and states in writing its reasons for that finding, it may proceed upon special notice filed with the committee, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule."

Comment 2: The commission received two comments stating the government did not need to dictate to and regulate the public on public lands and waters. The comments stated the public can be responsible for its own safety and did not need help from the government.

Response 2: The commission recognizes the concerns expressed in these comments. Historically, the commission and department have thoroughly evaluated a situation and other potential options before adopting emergency rules restricting access, recreation, and occupation of public lands and waters. When making these decisions, the safety of the public is evaluated as well as the safety of other individuals such as aircrews fighting fires, search and rescue personnel, and emergency responders. The commission and department have adopted closure rules in order to prevent dangers unknown or unseen to the public creating an emergency situation or done at the request of other agencies involved.

Comment 3: The Administrator of the Parks Division of the Department of Fish, Wildlife and Parks stated the new rules were unclear about the need to specify a

portion of a designated recreation area that can be closed and asked for the ability for the department to close portions of, and specific facilities within, designated recreation areas.

Response 3: The commission has added the language "or portions there of" to NEW RULE I (ARM 12.8.217) and ARM 12.11.6601 to clarify that a portion of a designated recreation area or water body may be closed.

Comment 4: The Administrator of the Parks Division of the Department of Fish, Wildlife and Parks stated ARM 12.8.209 currently states that "[n]o person may enter any portion of any area that is posted as restricted to public passage" and no criteria are established in association with that authority. The Administrator of the Parks Division asked for clarification of how ARM 12.8.209 relates to the proposed rules.

Response 4: The rules do not relate to each other and do not conflict with each other. ARM 12.5.209 states individuals are not to violate a closure including an emergency closure, seasonal closure, or time restriction such as nighttime closure. These rules effectively delegate authority.

Comment 5: The Administrator of the Parks Division of the Department of Fish, Wildlife and Parks stated that other reasons than the "dangerous conditions" leading to "imminent peril" as stated in NEW RULE II (ARM 12.8.218) and ARM 12.11.6603 can occur that would cause closure. The Administrator of Parks provided an example of investigating a crime and recovering evidence.

Response 5: The commission originally adopted rules delegating its authority to the department to close public waters due to fire emergency. The commission is revising and adopting rules to delegate its authority to the department to close public waters and designated recreation areas due to other emergency situations. The commission and the department will continue to evaluate the need for revisions in the future as other situations occur. As for the example provided by the Administrator of the Parks Division, other statutes and rules apply to the specific situation and are the jurisdiction of local law enforcement and not of the commission or department.

Comment 6: The Administrator of the Parks Division of the Department of Fish, Wildlife and Parks stated, notification prior to the closure is difficult because the first action is to close the site as a means of protecting safety and welfare and communication comes following that action in many cases.

Response 6: The commission understands the urgency to have restrictions enforceable during an emergency situation and for this reason, is delegating its authority to the department. When a rule becomes effective is regulated by statute. Mont. Code Ann. 2-4-306(4)(b)(i) states that a temporary rule is effective immediately upon filing with the secretary of state.

Comment 7: The Administrator of the Parks Division of the Department of Fish, Wildlife and Parks stated the rules were unclear whether the authority could be delegated to staff at any level.

Response 7: The commission has delegated its authority to close designated recreation areas and public waters. The commission does not have authority to delegate responsibilities of department staff. The Director of the Department of Fish, Wildlife and Parks is responsible for establishing and enforcing department protocol.

Comment 8: The Administrator of the Parks Division of the Department of Fish, Wildlife and Parks stated the rules were unclear whether the authority to close a designated recreation area is separate from the authority to close a public water body and hoped the rules would not establish different processes or requirements closing an area where both land and water would be necessary.

Response 8: The commission carefully wrote the rules to mirror processes and requirements for each type of closure. If it becomes necessary to close both land and water, the closure would be adopted as a single temporary emergency rule.

Comment 9: Fishing Outfitters Association of Montana (FOAM) stated concerns regarding closures being based solely on subjective decisions and asked the department to develop internal criteria for department personnel to apply when considering a temporary emergency closure.

Response 9: The commission understands the concerns expressed by FOAM. If any member of the public does not agree with a temporary emergency rule, they are provided with an opportunity to express concerns and comment on the rule. The rule will still be in effect but will be evaluated immediately upon receipt of comment. If a comment is received that justifies amending or repealing a temporary emergency rule, the department will take immediate and appropriate action. The commission will be notified prior to or simultaneously with adoption of the emergency rule. If the commission does not agree with the emergency rule, it will take appropriate action to correct the rule. The commission believes this process will prevent subjective decisions being made.

Comment 10: FOAM stated that it believed the commission is delegating its authority to the department only when a quorum of commissioners cannot be formed and action taken in short order and that individual commissioners would be allowed to authorize, bar, overturn, or repeal adoption of temporary emergency closures in their regions.

Response 10: The commission is delegating its authority to the department because adoption of temporary emergency rules are necessary to respond immediately to a situation that poses a threat to the public health, safety, and welfare. It is not the commission's intention for the department to take the time to contact the members of the commission and to evaluate, and decide whether a quorum can be established. It is the intent of the commission to allow the department to take immediate action

and to notify the commission of that action. An individual commissioner cannot act and make decisions on behalf of the whole commission. However, the commission will be notified prior to or simultaneously with adoption of the emergency rule and the commission may exercise its authority and a quorum can amend or repeal an emergency rule.

Comment 11: FOAM requested the commission and department restrict closures to the section containing the hazards or dangerous conditions that jeopardize public health, safety, and welfare rather than closing entire water bodies.

Response 11: The commission has added the language "or portions there of" to NEW RULE I (ARM 12.8.217) and ARM 12.11.6601 to clarify that a portion of a designated recreation area or water body may be closed allowing for a closure to be as narrow as possible so the public may continue to access and enjoy the resources.

6. These rule amendments and adoptions are effective November 13, 2009.

/s/ Shane Colton
Shane Colton, Chairman
Fish, Wildlife and Parks Commission

/s/ William A. Schenk
William A. Schenk
Rule Reviewer

Certified to the Secretary of State November 2, 2009.

BEFORE THE BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.114.401 fee schedule,)
24.114.1401 applications,)
24.114.1402 education and)
experience, and 24.114.1403)
examinations)

TO: All Concerned Persons

1. On August 27, 2009, the Board of Architects and Landscape Architects (board) published MAR Notice No. 24-114-30 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1457 of the 2009 Montana Administrative Register, issue no. 16.

2. On September 17, 2009, a public hearing was held on the proposed amendment of the above-stated rules in Helena. No comments were received by the September 25, 2009, deadline.

3. The board has amended ARM 24.114.401, 24.114.1401, 24.114.1402, and 24.114.1403 exactly as proposed.

BOARD OF ARCHITECTS AND
LANDSCAPE ARCHITECTS
BAYLISS WARD, PRESIDENT

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

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

Certified to the Secretary of State November 2, 2009

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.126.301 definitions,)
24.126.501 applications, 24.126.511)
display of license, 24.126.901)
applications, 24.126.910 continuing)
education, and 24.126.2301)
unprofessional conduct)

TO: All Concerned Persons

1. On June 11, 2009, the Board of Chiropractors (board) published MAR Notice No. 24-126-30 regarding the public hearing on the proposed amendment of the above-stated rules, at page 923 of the 2009 Montana Administrative Register, issue no. 11.

2. On July 7, 2009, a public hearing was held on the proposed amendment of the above-stated rules in Helena. No comments were received by the July 15, 2009, deadline.

3. The board has amended ARM 24.126.301, 24.126.501, 24.126.511, 24.126.901, 24.126.910, and 24.126.2301 exactly as proposed.

BOARD OF CHIROPRACTORS
TOM FULLERTON, DC, PRESIDENT

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

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

Certified to the Secretary of State November 2, 2009

BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.177.405 physical therapy)
aides, 24.177.504 temporary)
licenses, 24.177.507 out of state)
applicants, 24.177.510 foreign-trained)
applicants, 24.177.704 topical)
medication protocols, and)
24.177.2105 continuing education, all)
pertaining to physical therapists)

TO: All Concerned Persons

1. On May 14, 2009, the Board of Physical Therapy Examiners (board) published MAR Notice No. 24-177-27 regarding the public hearing on the proposed amendment of the above-stated rules, at page 586 of the 2009 Montana Administrative Register, issue no. 9.

2. On June 4, 2009, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the June 12, 2009, deadline.

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

COMMENT 1: Several commenters stated support of the proposed amendments to ARM 24.177.504, 24.177.507, 24.177.510, 24.177.704 and 24.177.2105.

RESPONSE 1: The board appreciates all comments made in the rulemaking process.

ARM 24.177.405:

COMMENT 2: Several commenters supported the amendment to ARM 24.177.405, noting that the amendment conforms to the American Physical Therapy Association (APTA) positions. Several proponents expressed concern about aides receiving on-the-job training for a wide range of tasks, including conducting ultrasound, traction and massage, and the physical therapists then billing insurance companies for the work performed by aides. The commenters' overriding concern was protection of the public, since it may appear that inappropriate use of physical therapy aides in Montana is outside the parameters considered normal in other states.

RESPONSE 2: In amending this rule, the board is attempting to bring Montana's use of aides within the nationally recognized boundaries established by the APTA.

The board is statutorily mandated to protect the public. The board concluded that concerns about the misuse and overuse of physical therapy aides in Montana must be addressed proactively and globally in rule, and should not be policed on a case-by-case complaint basis only following patient harm.

COMMENT 3: Numerous comments were received in opposition to the proposed amendments to ARM 24.177.405 and the perceived elimination of physical therapy aides. The commenters stated that aides are needed in the provision of physical therapy to keep costs low for patients, maintain access to care, and to allow physical therapists to provide hands-on treatment while aides complete delegated tasks for other patients. Commenters also asserted that if the rule is amended as proposed, physical therapy aides will lose their jobs if they cannot be employed to provide components of physical therapy and stressed the importance of aides in providing personal attention to patients. Opponents asked the board to enumerate the specific tasks that physical therapy aides may perform. Lastly, opponents questioned the need for a broad-based rule change if the board has not received many complaints and suggested the board just address any problems on a case-by-case basis.

RESPONSE 3: The board concluded that many of the comments clearly show that physical therapy aides are being used in physical therapy offices in a manner that exceeds the scope of practice envisioned by the Federation of State Boards of Physical Therapy (FSBPT). Commenters confirm that aides are being used to monitor exercises, provide ultrasound treatments, and provide ice and heat treatments, in addition to appropriately delegated routine tasks. The intent for the amendments is not to eliminate aides, but to assure that aides are not treating patients and the public is adequately protected. In the interest of public protection, the board has been working on this rule for several years.

Following review of the comments, the board considered further amending this rule to clarify the tasks that may be performed by a physical therapy aide, particularly in reference to the definition of direct supervision. The board also considered more clearly delineating the tasks that a physical therapy aide may do without direct supervision. In response to the perceived overuse of physical therapy aides in the delivery of physical therapy services, the board also considered changing the proposed definition of a physical therapy aide to more clearly define the scope of the aide's position. After lengthy discussion of these issues, the board is amending the rule accordingly.

COMMENT 4: Several commenters expressed concern about the distinction between statutes and rules. A number of commenters asked the board to identify its authority for amending this rule.

RESPONSE 4: The board concluded that there is a misperception that the board is amending statutory language through rules. This is not correct because rules are promulgated to implement statutes. The board is authorized to promulgate rules to implement the Physical Therapy Act under 37-1-131 and 37-11-201, MCA.

COMMENT 5: One commenter stated that the board did not provide adequate notice of the proposed rule changes and that the board members should have been at the rules hearing.

RESPONSE 5: The board and the department complied with all the statutory requirements of the Montana Administrative Procedures Act for the administrative rulemaking process. Rules hearings are conducted by the department as one avenue to gather comments for the board's consideration in addition to comments received by e-mail, fax, and regular mail.

COMMENT 6: Several commenters questioned why the board was eliminating language in the rules that referred to the physical therapy statutes, particularly in reference to the supervision of physical therapist assistants and students.

RESPONSE 6: The board is deleting sections of ARM 24.177.405, because they unnecessarily duplicate statutory language in 37-11-105, MCA.

COMMENT 7: A few commenters asked the board not to eliminate the simple and allowable physical therapy aide tasks but instead appropriately certify the aides.

RESPONSE 7: The board lacks jurisdiction to certify physical therapy aides and to do so would require a statutory change through the legislative process.

COMMENT 8: Several commenters also questioned the impact of the rule change in reference to Medicare and health insurance billing.

RESPONSE 8: The board has no jurisdiction over insurance payments, reimbursement, billing codes, and related issues. While the board recognizes that reimbursement for physical therapy services is critical to the success of a physical therapy practice, its jurisdiction is limited to and by Montana statutes.

COMMENT 9: Several commenters described personal experiences with physical therapists and physical therapy aides and urged the board not to change the rules. Commenters indicated that the personal care and treatment received from aides is cost-effective, personally welcome, and necessary for the provision of many treatments.

RESPONSE 9: The board notes that many of the comments received appear to confirm the information previously provided to the board that aides are being employed in place of licensed physical therapy assistants in Montana.

COMMENT 10: Several commenters suggested the board use the model practice act of the Federation of State Boards of Physical Therapy (FSBPT) to draft changes to the board's physical therapy aide rules.

RESPONSE 10: The board declared that the FSBPT Model Practice Act is an excellent guideline and did use it to assist the board in changing the rules.

ARM 24.177.2105:

COMMENT 11: One commenter suggested that online continuing education (CE) hours be increased to more than four hours because of the course work required to transition to a physical therapy doctorate degree program. Several commenters asked that the board accept all physical therapy doctorate degree program courses toward the required CE credits.

RESPONSE 11: The board notes that many licensees do fulfill their CE requirements and decided to explore the allowance of doctoral course credits toward CE requirements. However, because this will take further consideration, and because the board would also like to consider how to handle the course credits for physical therapy assistants who complete course requirements to achieve a physical therapy degree, the board declined allowing more than four hours for online courses at this time and is amending the rule exactly as proposed.

COMMENT 12: One commenter requested that required CE be increased to 25 or 30 hours every two years.

RESPONSE 12: The board unanimously declined to increase the CE requirements and is amending the rule exactly as proposed.

4. The board has amended ARM 24.177.504, 24.177.507, 24.177.510, 24.177.704, and 24.177.2105 exactly as proposed.

5. The board has amended ARM 24.177.405 with the following changes, stricken matter interlined, new matter underlined:

24.177.405 PHYSICAL THERAPY AIDES, LICENSE EXEMPTION, AND SUPERVISION (1) remains as proposed.

(a) "Physical therapy aide" as defined in 37-11-101(8), MCA, means an unlicensed individual ~~trained on the job by a physical therapist or physical therapist assistant who performs activities supportive of, but not involving assistance in, the practice of physical therapy by performing designated and supervised routine tasks that do not require a formal course of study~~ who has received appropriate, documented, on the job orientation and training by a physical therapist or physical therapist assistant. The physical therapy aide performs designated unskilled tasks.

(b) remains as proposed.

(2) A physical therapy aide ~~performs activities supportive of, but not involving assistance in, the practice of physical therapy by~~ is limited to performing the following patient-related patient-supportive tasks only under the direct supervision of a physical therapist or physical therapist assistant. ~~Such patient-related tasks are limited to preparing a patient for treatment by a physical therapist or physical therapist assistant.~~

(a) preparing a patient for treatment by a physical therapist or physical therapist assistant;

(b) providing unskilled aid to a patient after treatment by a physical therapist or physical therapist assistant; and

(c) assisting a physical therapist or physical therapist assistant when safety or patient care requires a second person's assistance.

(3) A physical therapy aide may perform the following and similar nonpatient care routine tasks under onsite supervision, although without direct or onsite supervision, by a physical therapist or physical therapist assistant:

(a) through (4) remain as proposed.

BOARD OF PHYSICAL THERAPY EXAMINERS
RICHARD SMITH, PT, 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 November 2, 2009

BEFORE THE BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.219.301 definitions,)
24.219.401 and 24.219.405 fees,)
24.219.501 application, 24.219.504)
licensure, 24.219.509 status)
conversion, 24.219.601 application,)
24.219.604 licensure, 24.219.609)
status conversion, 24.219.2101 and)
24.219.2201 continuing education,)
24.219.2301 and 24.219.2305)
unprofessional conduct, pertaining to)
social work examiners and)
professional counselors)

TO: All Concerned Persons

1. On December 24, 2008, the Board of Social Work Examiners and Professional Counselors (board) published MAR Notice No. 24-219-21 regarding the public hearing on the proposed amendment of the above-stated rules, at page 2583 of the 2008 Montana Administrative Register, issue no. 24.

2. On January 20, 2009, a public hearing was held on the proposed amendment of the above-stated rules in Helena. On May 28, 2009, the department published a notice of extension of comment period on the proposed amendment of the above-stated rules at page 812, 2009 Montana Administrative Register, issue number 10. Several comments were received by the extended June 11, 2009, deadline.

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

General Comments:

COMMENT 1: Two commenters requested that the board extend both the hearing and the time period for public comment regarding the proposed amendments. The commenters asserted that nonlicensed students did not receive notice of the hearing and that everyone should have a chance to fully understand the proposed amendments.

RESPONSE 1: The board notes that the board and department complied with all statutory requirements in this administrative rulemaking project. The board takes notice of the importance of contact between the board and the relevant associations

during all rulemaking processes. The board did extend the comment period in response to the requests.

COMMENT 2: One commenter asked if "direct observation of service delivery" can be video-taped or whether "they have to be in the office in the session."

RESPONSE 2: This comment does not appear to apply to any rule changes proposed in this rulemaking notice. The board notes that this question is beyond the scope of the amendments proposed in the original notice.

COMMENT 3: One commenter suggested that Montana require applicants to show evidence of training or competence in the specialty areas of mental health counseling or clinical mental health counseling to qualify for licensure as Licensed Clinical Professional Counselors.

RESPONSE 3: The board notes that this question is beyond the scope of the amendments proposed in the original notice.

ARM 24.219.301:

COMMENT 4: One commenter stated that only Psychiatrists, Licensed Clinical Social Workers (LCSW), and licensed Psychologists should qualify to supervise social work applicants for 1,500 of the required 3,000 hours as they are Medicare-qualified supervisors.

RESPONSE 4: The board determined that the four types of licensees shown in the rule are qualified to supervise and that no restriction should be placed on who supervises what portion of post-graduate hours. The board is amending the definition of supervisor at ARM 24.219.301 accordingly.

COMMENT 5: One commenter questioned whether a LCSW can supervise a social work applicant for the entire period of required supervision.

RESPONSE 5: The board agrees that a LCSW is able to supervise a social work applicant for the entire period of supervision and notes that this will be clarified by the amendments to the definition of supervisor in ARM 24.219.301.

COMMENT 6: Two commenters asked the board to amend the definition of supervisor to allow for flexibility or exceptions in rural areas where supervisors oftentimes do not have three years experience in supervising and may not be of the same licensure as the supervisee.

RESPONSE 6: The board believes the commenters' concerns will be addressed by the amendments to the definition of supervisor in ARM 24.219.301.

COMMENT 7: One commenter suggested the board delay implementation of the experience or training requirements for supervisors to allow supervisors and trainees time to adjust to the new requirements.

RESPONSE 7: The board agrees that more time is needed to ensure that trainees will be able to find qualified supervisors. The board decided to address supervisor training and experience requirements in a future rulemaking project and is amending the rule accordingly.

COMMENT 8: Two commenters opposed the proposed definition of dual relationship as being unnecessary and too broad and suggested that current rules are sufficient.

RESPONSE 8: The board agrees that the proposed definition leaves some room for interpretation by licensees but determined that amending the rule as proposed would be better than the lack of clarity under current rules.

COMMENT 9: One commenter stated that the proposed definition for exploitation is too vague, leaves too much to question, and invites complaints against licensees based on the slightest pretext.

RESPONSE 9: The board does not believe it is possible to identify every type of exploitative behavior. The board concluded that the proposed definition is as specific as possible and is not changing the definition at this time.

ARM 24.219.504:

COMMENT 10: One commenter stated that requiring three years of practice and/or training for supervisors places an undue burden on the social work applicants. The commenter urged the board to instead adopt the clinical supervision standards of the NASWB Model Social Work Act.

RESPONSE 10: The board previously examined the NASWB Model Social Work Act and its clinical supervision standards. The board decided, however, to implement more stringent clinical supervision standards and is amending ARM 24.219.504 exactly as proposed.

COMMENT 11: A commenter expressed concern that not all of the specific areas of minimal competency required for social workers in ARM 24.219.504 occur in every supervised experience environment. The commenter suggested the board amend these rules for additional flexibility.

RESPONSE 11: The board intends that an applicant's minimal competencies will be demonstrated by a review of the entire application and not necessarily that each area of minimal competency will be addressed in every record of supervision. The board is amending the rule exactly as proposed.

COMMENT 12: One commenter was concerned that social work applicants would not receive credit for supervised hours reported on supervision logs prepared under previous standards of ARM 24.219.504.

RESPONSE 12: The board will accept supervision logs that satisfied previous rules for work supervised prior to amendment of the rules. Experience gained after the rule changes should be recorded on forms that satisfy the new documentation requirements.

ARM 24.219.604:

COMMENT 13: One commenter asked if Licensed Clinical Professional Counselor (LCPC) course curriculum will be clearly defined following the deletion of (1)(a) through (c) from ARM 24.219.604.

RESPONSE 13: The course curriculum is already defined in the Council for Accreditation of Counseling and Related Educational Programs (CACREP) standards. The board concluded there is no need to restate the curriculum in rule.

COMMENT 14: Several commenters asked the board to also accept the Council on Rehabilitation Education's (CORE) core curriculum for LCPC applicants in ARM 24.219.604 in addition to CACREP core courses, as they are nearly identical and already accepted in thirteen states. The commenters stated that doing so would encourage people to enter the field of rehabilitation counseling and would improve services offered to disabled Montanans.

RESPONSE 14: The board decided not to make the suggested change at this time, noting that the board currently accepts courses that meet CACREP and equivalent standards. The board may approach this issue in a future rulemaking project.

COMMENT 15: A commenter expressed concern that not all of the specific areas of minimal competency required for professional counselors in ARM 24.219.604 occur in every supervised experience environment. The commenter suggested the board amend these rules for additional flexibility.

RESPONSE 15: The board intends that an applicant's minimal competencies will be demonstrated by a review of the entire application and not necessarily that each area of minimal competency will be addressed in every record of supervision. The board is amending the subsection on minimal competences exactly as proposed.

COMMENT 16: One commenter was concerned that professional counselor applicants would not receive credit for supervised hours reported on supervision logs prepared under previous standards of ARM 24.219.604.

RESPONSE 16: The board will accept supervision logs that satisfied previous rules for work supervised prior to amendment of the rules. Experience gained after the

rule changes should be recorded on forms that satisfy the new documentation requirements.

COMMENT 17: One commenter asserted that the word "current" in reference to CACREP standards in ARM 24.219.604 could be problematic due to the delay between the time a new accreditation standard is developed by CACREP and the time a university's curriculum is accredited or reaccredited by CACREP.

RESPONSE 17: The board agrees and is amending the rule to delete the word "current." This change will allow acceptance of an applicant's education if the institution's curriculum was accredited by CACREP when the applicant attended.

ARM 24.219.2101 and 24.219.2201:

COMMENT 18: Several commenters opposed the mandatory requirement for two hours ethics CE as unnecessary and difficult to obtain.

RESPONSE 18: The board considered the comments and is amending ARM 24.219.2101 and 24.219.2201 to not require any CE in ethics.

COMMENT 19: One commenter requested the board allow licensees to carry over ethics CE credits from year to year.

RESPONSE 19: The board notes that carryover of CE hours is allowed under current rules. The board is amending the CE rules to not require any CE in ethics.

COMMENT 20: Two commenters stated that two hours of CE in ethics is inadequate and recommended the board increase the required ethics hours.

RESPONSE 20: The board acknowledges the comments but decided to amend the CE rules to not require any CE in ethics at this time.

ARM 24.219.2301 and 24.219.2305:

COMMENT 21: Two commenters stated that prohibiting sexual relationships with clients for a three-year time period seemed arbitrary and questioned why other dual relationships have no time limit. The commenters noted that it could lead licensees to believe that it is acceptable to enter into exploitative relationships with clients as long as three years had elapsed since the professional relationship ended.

RESPONSE 21: The board agrees and is amending the rules to remove the three-year language to clarify that all sexual relationships with former clients are prohibited unless the licensee demonstrates the relationship was not exploitative.

COMMENT 22: One commenter suggested that any kind of bartering relationship could be risky for both licensee and client.

RESPONSE 22: The board understands the risks associated with bartering. However, the board is amending ARM 24.219.2301 and 24.219.2305 as proposed to allow clients with no other means to obtain professional assistance to continue to receive treatment, while encouraging licensees to ensure bartering arrangements do not harm clients.

COMMENT 23: A commenter stated that dual relationships may occur unexpectedly in a large state like Montana, especially in rural communities. The commenter suggested the board amend the rules to set a time limit similar to the three-year limit for sexual relationships.

RESPONSE 23: The board is amending the rules to delete the three-year time limit on sexual relationships. The board does not want to impose an arbitrary time limit on any dual relationships but will consider each circumstance individually.

4. The board has amended ARM 24.219.401, 24.219.405, 24.219.501, 24.219.504, 24.219.509, 24.219.601, and 24.219.609 exactly as proposed.

5. The board has amended ARM 24.219.301, 24.219.604, 24.219.2101, 24.219.2201, 24.219.2301, and 24.219.2305 with the following changes, stricken matter interlined, new matter underlined:

24.219.301 DEFINITIONS (1) through (7) remain as proposed.

(8) "Supervisor," when used to refer to a person who supervises the work of an applicant for licensure, means a licensed clinical social worker, a licensed clinical professional counselor, a licensed psychologist, or a licensed and board-certified psychiatrist. ~~A supervisor shall have three years of post-licensure experience or board-approved training in clinical supervision. For social work applicants, a licensed psychologist or psychiatrist shall only qualify to supervise up to one half of the total post-graduate hours required, and a supervisor holding the license for which the applicant has applied must supervise at least half of the total post-graduate hours required for licensure.~~

24.219.604 LICENSURE REQUIREMENTS (1) and (1)(a) remain as proposed.

(b) completion of ~~current~~ Council for Accreditation of Counseling and Related Educational Programs (CACREP) core courses as evidenced by submission of a summary sheet on education on a form prescribed by the board;

(c) through (5) remain as proposed.

24.219.2101 HOURS, CREDITS, AND CARRY OVER (1) Each social work licensee of the Board of Social Work Examiners and Professional Counselors shall earn 20 clock hours of accredited continuing social work education each year. ~~The 20 clock hours required shall include a minimum of 2 clock hours of instruction in ethics.~~ Clock hours or contact hours shall be the actual number of hours during which instruction was given.

(2) through (5) remain as proposed.

24.219.2201 HOURS, CREDITS, AND CARRY OVER (1) Each licensee of the Board of Social Work Examiners and Professional Counselors shall earn 20 clock hours of accredited continuing professional counselor education each year. ~~The 20 clock hours required shall include a minimum of 2 clock hours of instruction in ethics.~~ Clock hours or contact hours shall be the actual number of hours during which instruction was given.

(2) through (5) remain as proposed.

24.219.2301 UNPROFESSIONAL CONDUCT FOR SOCIAL WORKERS

(1) through (2)(e) remain as proposed.

(f) Engage in sexual contact with a former client ~~for at least three years after termination of professional services.~~ unless the licensee who engages in such activity ~~after three years~~ following termination of professional services ~~bears the burden of demonstrating~~ demonstrates that there has been no exploitation, in light of all relevant factors, including:

(i) through (l) remain as proposed.

24.219.2305 UNPROFESSIONAL CONDUCT FOR PROFESSIONAL COUNSELORS (1) through (2)(e) remain as proposed.

(f) Engage in sexual contact with a former client ~~for at least three years after termination of professional services.~~ unless the licensee who engages in such activity ~~after three years~~ following termination of professional services ~~bears the burden of demonstrating~~ demonstrates that there has been no exploitation, in light of all relevant factors, including:

(i) through (l) remain as proposed.

BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
LINDA CRUMMET, LCSW, PRESIDENT

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

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

Certified to the Secretary of State November 2, 2009

BEFORE THE BOARD OF OIL AND GAS CONSERVATION
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment ARM) NOTICE OF AMENDMENT
36.22.302, 36.22.307, 36.22.1214,)
36.22.1215, 36.22.1216, and)
36.22.1243 pertaining to oil and gas)
provisions and production)

To: All Concerned Persons

1. On September 24, 2009, the Board of Oil and Gas Conservation of the Department of Natural Resources and Conservation published MAR Notice No. 36-22-135 regarding the proposed amendment of the above-stated rules at page 1619 of the 2009 Montana Administrative Register, Issue No. 18.

2. The department has amended ARM 36.22.307, 36.22.1214 through 36.22.1216, and 36.22.1243 as proposed.

3. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

36.22.302 DEFINITIONS Unless the context otherwise requires, the words defined shall have the following meaning when found in these rules:

(1) through (52) remain as proposed.

(53) "Owner", as defined in 82-11-101(9), MCA, means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas the person produced from a pool either for the person or others or for the person or for the person and others, and the term includes all persons holding that authority by or through the person with the right to drill.

(54) through (81) remain as proposed.

4. The department has thoroughly considered the comment and testimony received. The comment received and the department's response are as follows:

COMMENT: Commenter stated that the word "to" should be inserted in ARM 36.22.302(53) between "right" and "drill" in the last sentence.

RESPONSE: DNRC thanks the commenter and has made the change.

/s/ Mary Sexton
MARY SEXTON
Director

/s/ Tommy Butler
TOMMY BUTLER
Rule Reviewer

Certified to the Secretary of State November 2, 2009.

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

In the matter of the adoption of New)
Rule I and the amendment of ARM)
37.40.405 pertaining to Medicaid)
reimbursement for swing-bed hospital)
services)

NOTICE OF ADOPTION AND
AMENDMENT

TO: All Concerned Persons

1. On September 24, 2009, the Department of Public Health and Human Services published MAR Notice No. 37-487 pertaining to the proposed adoption and amendment of the above-stated rules at page 1642 of the 2009 Montana Administrative Register, Issue Number 18.

2. The department has adopted New Rule I (37.40.422) as proposed. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

4. The department intends for the adoption and amendment of rules to be effective January 1, 2010.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State November 2, 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 June 30, 2009. This table includes those rules adopted during the period July 1, 2009, through September 30, 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 June 30, 2009, 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 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.

GENERAL PROVISIONS, Title 1

- 1.2.104 and other rules - Administrative Rules, p. 1465
- 1.2.419 Scheduled Dates for the 2010 Montana Administrative Register, p. 1586, 2031

ADMINISTRATION, Department of, Title 2

- 2.2.101 Department of Administration's Procedural Rules, p. 1180, 1777
 - 2.59.308 and other rule - Examination Fees - Dollar Amounts To Which Consumer Loan Rates Are To Be Applied, p. 1826
 - 2.59.1701 and other rules, Licensing and Regulation of Mortgage Brokers - Mortgage Lenders - Mortgage Loan Originators - License Renewals for Mortgage Lenders as of July 1, 2009 - New Applicants for a Mortgage Loan Originator License – Temporary Licenses - New Applicants for a Mortgage Broker or Mortgage Lender License – Temporary Licenses - Net Worth Requirement for Mortgage Brokers - Unacceptable Assets - Proof of Net Worth - Records to be Maintained by Mortgage Lenders - Financial Responsibility, p. 1292
 - 2.59.1711 Continuing Education, p. 159, 735
- (Public Employees' Retirement Board)
- 2.43.3502 and other rule - (Public Employees' Retirement Board) Investment Policy Statement for the Defined Contribution Retirement Plan -

Investment Policy Statement for the 457 Deferred Compensation Plan,
p. 394, 1010

(Teachers' Retirement Board)

I Determination of Incentives and Bonuses as Part of a Series of Annual
Payments and Included in Earned Compensation, p. 1183, 1778

(Board of County Printing)

2.67.201 and other rules - Board of County Printing, p. 1187, 1782

AGRICULTURE, Department of, Title 4

4.9.401 Raising the Wheat and Barley Assessment, p. 2574, 264
4.12.1320 and other rules - Quarantines - Pest Management Standards, p. 118,
343
4.12.1427 and other rules - Produce, p. 1829
4.12.3402 Raising the Seed Laboratory Analysis Fees, p. 1319, 1783

STATE AUDITOR, Title 6

6.6.504 and other rules - Medicare Supplements, p. 506, 1107
6.6.2801 and other rules - Surplus Lines Insurance Transactions, p. 1191, 2005

COMMERCE, Department of, Title 8

I Administration of the 2009-2010 Federal Community Development
Block Grant (CDBG) Program, p. 2408, 410
I & II Administration of the Quality Schools Grant Program - Planning
Grants - Emergency Grants, p. 1837
8.94.3725 Administration of the 2009-2010 Federal Community Development
Block Grant (CDBG) Program, p. 1605
8.119.101 Tourism Advisory Council, p. 398, 862
8.119.101 Tourism Advisory Council, p. 1066, 1590

(Montana Coal Board)

8.101.201 and other rules - Policies of the Montana Coal Board - Applications for
Montana Coal Board Grant Assistance, p. 2220, 344

(Board of Housing)

8.111.602 Low Income Housing Tax Credit Program, p. 952, 1589

EDUCATION, Department of, Title 10

(Board of Public Education)

I Sign Language Interpreters, p. 1205, 1659
10.54.4010 and other rules - Math Content Standards and Performance
Descriptors, p. 767, 1201, 1657

- 10.57.102 and other rules - Educator Licensure, p. 30, 345
- 10.57.102 and other rules - Educator Licensure, p. 1712
- 10.57.412 and other rule - Mentor Teachers, p. 789, 1259

FISH, WILDLIFE AND PARKS, Department of, Title 12

(Fish, Wildlife and Parks Commission)

- 12.6.1101 and other rules - Falconry Regulation in Montana, p. 792, 1470
- 12.11.2204 No Wake Zone on Echo Lake, p. 53, 863
- 12.11.6601 and other rules - Emergency Closures of Department Lands and Public Waters, p. 1208
- 12.14.101 and other rules - Commercial Use Rules in Montana, p. 1436

ENVIRONMENTAL QUALITY, Department of, Title 17

- I-V Underground Storage Tanks - Underground Storage Tank Operator Training, p. 1529
- 17.36.802 and other rule - Fee Schedules - Changes in Subdivision, p. 1725
- 17.50.403 and other rules - Solid Waste - Licensing and Operation of Solid Waste Landfill Facilities, p. 164, 1326
- 17.53.111 and other rules - Hazardous Waste Fees - Registration of Generators - Information Requests - Annual Reports, p. 1717
- 17.55.102 and other rules - Definitions - Facility Listing - Facility Ranking - Delisting a Facility on the CECRA Priority List - Incorporation by Reference - Proper and Expeditious Notice - Third-Party Remedial Actions at Order Sites - Additional Remedial Actions Not Precluded - Orphan Share Reimbursement - Purpose, p. 1730

(Board of Environmental Review)

- 17.4.101 and the Department - Model Rules, p. 129, 1011
- 17.8.102 Air Quality - Incorporation by Reference, p. 1, 411
- 17.8.102 and other rules - Incorporation by Reference of Current Federal Regulations and Other Materials into Air Quality Rules, p. 954, 1784
- 17.8.501 and other rules - Air Quality - Definitions - Permit Application Fees - Operation Fees - Open Burning Fees, p. 958, 1785
- 17.30.201 Water Quality - Permit Fees, p. 1335
- 17.30.617 and other rule - Water Quality - Outstanding Resource Water Designation for the Gallatin River, p. 2294, 328, 1398, 438, 1953, 162, 1324
- 17.30.702 and other rules - and the Department - Water Quality - Subdivisions/On-Site Subsurface Wastewater Treatment - Public Water and Sewage Systems Requirements - CECRA Remediation - Department Circular DEQ-4 - Gray Water Reuse, p. 968, 1786
- 17.38.101 and other rules - Public Water and Sewage System Requirements - Plans for Public Water or Wastewater Systems - Treatment Requirements - Control Tests - Microbial Treatment - Sanitary Surveys - Chemical Treatment of Water - Ground Water - Initial Distribution

- System Evaluations - Stage 2 Disinfection Byproducts Requirements - Enhanced Treatment for Cryptosporidium - Licenses-Private Water Supplies - Disposal of Excrement - Barnyards and Stockpens, p. 1353, 1794
- 17.40.318 and other rule - and the Department - Water Treatment Systems and Operators - Public Water and Sewage System Requirements - State Revolving Fund and Public Water and Sewer Projects Eligible for Categorical Exclusion From MEPA Review, p. 55, 412
- 17.50.403 and other rule - Solid Waste - Definitions - Annual Operating License Requirements, p. 964
- 17.53.105 and other rules - Hazardous Waste - Incorporation by Reference - Standardized Permits, p. 1444
- 17.56.101 and other rules - Underground Storage Tank Operation Requirements - Leak Detection - License Renewal Training, p. 1450

CORRECTIONS, Department of, Title 20

- 20.7.507 Siting, Establishment, and Expansion of Prerelease Centers, p. 1363, 1798

JUSTICE, Department of, Title 23

- 23.12.602 and other rules - Uniform Fire Code - Fire Safety - Fireworks, p. 1535, 1608
- 23.12.1201 and other rules - Attendance at MLEA - Performance Criteria at MLEA, p. 401, 867
- 23.12.1411 Student Academic Performance Requirements at Law Enforcement Academy, p. 1548, 2018
- 23.19.1001 Consumer Debt Management License Fee, p. 810, 1166

(Gambling Control Division)

- 23.16.202 and other rules - Gambling Business License - Approval of Variations of Standard Bingo Cards - Credit Play - Card Dealer Licenses - Card Room Contractors License Requirements - Sports Tab Game Seller License - Distributor Licenses - Route Operator Licenses - Manufacturer Licenses - Accounting System Vendor Licenses - Manufacturer of Illegal Gambling Devices License - Raffle Record Keeping Requirements, p. 912, 1260

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

- I Licensee Lookup Database, p. 61, 1167
- I-XIII Workers' Compensation Claims Examiner Certification, p. 1213, 2019

- 24.17.127 Prevailing Wage Rates for Public Works Projects - Building Construction Services, Heavy Construction Services, Highway Construction Services, and Nonconstruction Services, p. 249, 736, 868
- 24.17.127 Prevailing Wage Rates for Public Works Projects - Building Construction Services - Heavy Construction Services - Highway Construction Services - Nonconstruction Services, p. 1840
- 24.301.161 Model Energy Code, p. 1844

(Alternative Health Care Board)

- 24.111.401 and other rule - Fees - Licenses, p. 1550
- 24.111.2102 and other rule - Continuing Education, p. 2577, 265

(Board of Architects and Landscape Architects)

- 24.114.101 and other rules - Board Organization - Procedural Rules - Definitions - Fees - Architect Seal - Architect Business Entity Practice - Emergency Use - Licensure By Examination - Unprofessional Conduct - Screening Panel - Architect Partnerships - Landscape Architect Licensure, p. 2545, 413
- 24.114.401 and other rules - Fee Schedule - Applications - Education and Experience - Examinations, p. 1457

(Board of Chiropractors)

- 24.126.301 and other rules - Definitions - Applications - Display of License - Continuing Education - Unprofessional Conduct, p. 923

(Board of Dentistry)

- 24.138.402 and other rules - Fee Schedule - Dental Auxiliaries - Requirements and Restrictions - Continuing Education - Restricted Volunteer Licensure, p. 1743
- 24.138.508 and other rules - Dental Anesthetic Certification - Dental Permits - Exemptions - Continuing Education, p. 1068

(State Electrical Board)

- 24.141.301 and other rules - Definitions - Apprentice Registration - Fee Schedule - Electrician Applications - Examinations - Licensure - Contractor Licensing - Continuing Education - Unprofessional Conduct - Complaint Procedure - Electrician Qualifications, p. 1365, 1665

(Board of Medical Examiners)

- I Medical Direction, p. 2238, 416
- 24.156.616 and other rules - Registry - Licenses - Testing Requirements - Registration, p. 1610
- 24.156.2719 Expired License, p. 2235, 415

(Board of Nursing)

24.159.1006 and other rules - Cosmetic Procedure Standards - Nonroutine Applications, p. 252, 1404

(Board of Nursing Home Administrators)

24.162.420 and other rules - Fee Schedule - Documentation for Licensure - Temporary Permit - Reciprocity Licenses - Continuing Education, p. 1072, 2024

(Board of Outfitters)

24.171.401 and other rules - Fees - Qualifications, p. 256, 1406

24.171.602 and other rules - Guide or Professional Guide License - Emergency Guide License - Unprofessional Conduct - Guide to Hunter Ratio, p. 1616

(Board of Pharmacy)

24.174.301 and other rules - Definitions - Administration of Vaccines - Prescriptions - Transmission of Prescriptions - Objectives - Internship - Registration Requirements - Pharmacy Technician - Record Keeping - Registration Conditions - Emergency Drug Kit - Renewal - Unprofessional Conduct - Agent of Records, p. 1079

(Board of Physical Therapy Examiners)

24.177.405 and other rules - Physical Therapy Aides - Temporary Licenses - Out of State Applicants - Foreign Trained Applicants - Topical Medication Protocols - Continuing Education - Physical Therapists, p. 586

(Board of Private Alternative Adolescent Residential or Outdoor Programs)

24.181.301 and other rules - Definitions - Fees - Private Alternative Adolescent Residential and Outdoor Programs, p. 303, 1478

24.181.401 and other rules - Registration Fee Schedule - Licensing Fee Schedule - Renewals - Private Alternative Adolescent Residential and Outdoor Programs, p. 339, 870, 1799

(Board of Professional Engineers and Professional Land Surveyors)

24.183.408 and other rules - Authorization - Applications - Examination Procedures - Continuing Education - Screening Panel, p. 1554

(Board of Radiologic Technologists)

24.204.501 and other rules - Permit Application Types - Practice Limitations - Course Requirements - Permit Examinations - Code of Ethics - Unprofessional Conduct, p. 1089

(Board of Real Estate Appraisers)

24.207.401 and other rule - Fees and USPAP, p. 1223, 1800

(Board of Realty Regulation)

- 24.101.413 and other rules - Renewal Dates - Brokers and Salespersons - Property Management - Timeshare Licensure and Registration, p. 1748
- 24.210.301 and other rules - Definitions - Licensing - Renewals - Unprofessional Conduct - Continuing Education, p. 928
- 24.210.641 Unprofessional Conduct, p. 2580, 748

(Board of Sanitarians)

- 24.216.402 and other rule - Fees - Sanitarian in Training, p. 75, 455

(Board of Social Work Examiners and Professional Counselors)

- 24.219.301 and other rules - Definitions - Fees - Application - Licensure - Status Conversion - Application - Continuing Education - Unprofessional Conduct - Social Work Examiners and Professional Counselors, p. 2583, 812

(Board of Veterinary Medicine)

- 24.225.401 and other rules - Fee Schedule - Veterinarian Licensure - Embryo Transfer - Euthanasia Technicians and Agencies - Continuing Education Providers, p. 1561

LIVESTOCK, Department of, Title 32

- 32.3.104 and other rules - Trichomoniasis - Deputy State Veterinarians, p. 1852
- 32.6.712 Food Safety and Inspection Service (Meat, Poultry), p. 1096, 1591
- 32.23.101 and other rules - Purchase and Resale of Milk, p. 1762
- 32.28.202 and other rule - Uncoupling Horses for Wagering Purposes, p. 1098, 1592

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

- 36.10.129 and other rule - Wildland-Urban Interface - Guidelines for Development Within the Wildland-Urban Interface, p. 1101, 1667
- 36.12.190 and other rule - Filing a Change Application - Change Application - Historic Use, p. 814

(Board of Oil and Gas Conservation)

- 36.22.302 and other rules - Oil and Gas Provisions and Production, p. 1619

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

- I-V State Matching Fund Grants to Counties for Crisis Intervention - Jail Diversion - Involuntary Precommitment - Short-Term Inpatient Treatment Costs for Individuals with Mental Illness, p. 1624, 1807
- I-VI Medical Marijuana Program, p. 2027, 322
- I-VI State Matching Fund Grants to Counties for Crisis Intervention - Jail Diversion - Involuntary Precommitment - Short-Term Inpatient

	Treatment Costs - Contracts for Crisis Beds - Emergency and Court-Ordered Detention Beds for Persons With Mental Illness, p. 1871
I-IX	Mental Health Center Services for Youth With Serious Emotional Disturbance (SED), p. 2603, 272
I-XXVII	Behavioral Health Inpatient Facilities (BHIF), p. 844, 1801
37.5.117	and other rules - Swimming Pools, Spas, and Other Water Features, p. 604, 1104
37.8.126	Grandparents and Relative Caregivers Access to Birth Records, p. 1007, 1671
37.30.405	Vocational Rehabilitation Program Payment for Services, p. 407, 941
37.36.101	and other rules - The Montana Telecommunications Access Program (MTAP), p. 1226, 1672
37.40.307	and other rule - Medicaid Nursing Facility Reimbursement, p. 997, 1411
37.40.405	and other rule - Medicaid Reimbursement for Swing-Bed Hospital Services, p. 1642
37.52.210	Adjustment of Subsidy Payment, p. 132, 417
37.78.102	and other rules - Temporary Assistance for Needy Families (TANF), p. 596, 1020
37.78.102	and other rule - Temporary Assistance for Needy Families (TANF), p. 1863
37.79.101	and other rules - Implementing the Healthy Montana Kids Plan Act, p. 1235, 1673
37.81.104	and other rules - Pharmacy Access Prescription Drug Benefit Program (Big Sky Rx Program), p. 1769
37.81.1002	and other rules - Montana PharmAssist Program and Medicaid Reimbursement Rates for Some Services with Rates Not Set Under Resource Based Relative Value Scale (RBRVS), p. 1570, 2029
37.85.206	Basic Medicaid Services for Able-Bodied Adults, p. 1773
37.85.212	and other rule, Resource Based Relative Value Scale (RBRVS) Medicaid Provider Rates and Mid-Level Practitioner's Reimbursement for Services to Medicaid Clients Under Age 21, p. 436, 1012
37.86.1001	and other rules, Medicaid Dental Service Providers' Reimbursement Rates, p. 444, 1017
37.86.3501	and other rules - Case Management Services for Adults with Severe Disabling Mental Illness, p. 1378
37.86.4701	and other rules - Medicaid Covered Organ and Tissue Transplantation, p. 1390, 1806
37.87.1223	Psychiatric Residential Treatment Facility (PRTF) Services - Reimbursement, p. 261, 418
37.87.1303	and other rules - Home and Community-Based Services (HCBS) for Youth with Serious Emotional Disturbance (SED), p. 1630
37.88.101	and other rules - Medicaid Mental Health Center Services for Adults with Severe Disabling Mental Illness, p. 985, 1489
37.106.2301	and other rule - Hospice Facilities, p. 2255, 351
37.106.2401	and other rules - Home Infusion Therapy (HIT), p. 827, 1668
37.107.107	Fee Reduction for Medical Marijuana Patients, p. 1462, 2028

- 37.108.507 Components of Quality Assessment Activities, p. 450, 1019
- 37.111.230 Trailer Courts and Tourist Campgrounds, p. 859, 1408
- 37.113.108 and other rules - Implementation of the Montana Clean Indoor Air Act (CIAA), p. 1003, 1414

PUBLIC SERVICE REGULATION, Department of, Title 38

- 38.3.601 and other rules- Motor Carrier Certificates - Electronic Copy of Filings, p. 319, 1417
- 38.5.1411 Medical Emergencies, p. 1647
- 38.5.2202 and other rule - Pipeline Safety, p. 1880

REVENUE, Department of, Title 42

- I & II Property Tax for Privately Owned Landfills, p. 2460, 751
- 42.4.201 and other rules - Individual Energy Conservation Installation Credit, p. 2456, 459
- 42.4.2501 Biodiesel and Biolubricant Tax Credit, p. 135, 419
- 42.9.102 and other rules - Income Tax, p. 1883
- 49.13.101 and other rules - Regulations for Liquor Licensees, p. 1896
- 42.13.601 Small Brewery Closing Time Restrictions, p. 2613, 1021
- 42.15.215 Senior Interest Income Exclusions, p. 137, 353
- 42.17.101 and other rules - Withholding Taxes, p. 1912
- 42.19.401 and other rule - Property Tax Assistance Program - Tax Exemptions for Disabled Veterans, p. 1993
- 42.19.406 Extended Property Tax Assistance Program (EPTAP), p. 1397, 1685
- 42.20.307 and other rules - Agricultural Land Valuation, p. 1971
- 42.20.515 Taxable Value of Newly Taxable Property, p. 933, 1263
- 42.20.701 and other rules - Forest Land Property, p. 1961
- 42.21.113 and other rules - Property Taxes - Trend Tables For Valuing Property, p. 1932
- 42.25.501 and other rules - Coal Severance, p. 1904
- 42.31.401 and other rules - Telecommunications 9-1-1, p. 1999

SECRETARY OF STATE, Office of, Title 44

- 1.2.104 and other rules - Administrative Rules, p. 1465, 1809
- 1.2.419 Scheduled Dates for the 2010 Montana Administrative Register, p. 1586, 2031
- 44.2.202 and other rules - Fees and Procedures - Business Services Division, p. 1401, 1687, 1808
- 44.15.101 and other rules - Notaries Public, p. 1580

(Commissioner of Political Practices)

- 44.10.331 Limitations on Receipts from Political Committees to Legislative Candidates, p. 1654
- 44.10.338 Limitations on Individual and Political Party Contributions, p. 1651