

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 5

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

2-59-450 Notice of Proposed Adoption and Amendment - Renewal Fees for Mortgage Brokers - Mortgage Lenders - Mortgage Loan Originators. No Public Hearing Contemplated. 274-276

LABOR AND INDUSTRY, Department of, Title 24

24-174-61 (Board of Pharmacy) Notice of Public Hearing on Proposed Amendment and Repeal - Definitions - Examination for Licensure - Administration of Vaccines - Prescription Requirements - Internship Requirements - Preceptor Requirements - Registered Pharmacist Continuing Education - Disciplinary Action. 277-285

24-183-37 (Board of Professional Engineers and Professional Land Surveyors) Notice of Public Hearing on Proposed Amendment - Application Processes for Professional Engineers and Professional Land Surveyors. 286-288

LIVESTOCK, Department of, Title 32

32-11-216 Notice of Proposed Amendment - Grade A Pasteurized Milk - Time From Processing That Fluid Milk May Be Sold for Public Consumption. No Public Hearing Contemplated. 289-292

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-533 Notice of Public Hearing on Proposed Adoption, Amendment, and Repeal - Psychiatric Residential Treatment Facility Reimbursement. 293-311

37-534 Notice of Public Hearing on Proposed Adoption and Repeal - Developmental Disabilities Eligibility Rules for Medicaid Only. 312-318

RULE ADOPTION SECTION

LABOR AND INDUSTRY, Department of, Title 24

24-320-245 Corrected Notice of Adoption - Approved Construction Techniques for Fire Mitigation. 319

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-22-147 (Board of Land Commissioners and the Department) Notice of Amendment and Adoption - Forest Management Rules for Implementing Conservation Easements and Habitat Conservation Plans. 320-321

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-528 Notice of Amendment - Provider Reimbursement Under the Mental Health Services Plan. 322

37-531 Notice of Amendment - Child Care Assistance. 323-332

37-532 Notice of Amendment - Components of Quality Assessment Activities. 333

REVENUE, Department of, Title 42

42-2-854 Notice of Amendment - Valuation Methods for Commercial Properties. 334-335

42-2-855 Notice of Amendment - Property Tax Assistance Programs for the Disabled Veterans and Elderly Homeowners. 336-344

42-2-856 Notice of Adoption and Amendment - Property Taxes. 345-351

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee.	352-353
How to Use ARM and MAR.	354
Accumulative Table.	355-363

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to renewal fees for mortgage brokers, mortgage lenders, and mortgage loan originators, and the amendment of ARM 2.59.1708	)	NOTICE OF PROPOSED ADOPTION AND AMENDMENT
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On April 13, 2011, the Department of Administration proposes to adopt and amend 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 Department of Administration no later than 5:00 p.m. on April 1, 2011, 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 rule proposed to be adopted provides as follows:

NEW RULE I RENEWAL FEES (1) Licenses issued under Title 32, chapter 9, part 1, MCA, expire December 31. Licensees shall submit their renewal applications by December 1 of each year to assure issuance of the license to qualified renewal applicants by January 1 of the following year. The renewal fees for the license period January 1 through December 31 are:

Mortgage Broker Entity	\$500.00
Mortgage Broker Branch	\$250.00
Mortgage Lender Entity	\$750.00
Mortgage Lender Branch	\$250.00
Mortgage Loan Originator	\$400.00
(except as provided in 32-9-117(1)(b), MCA)	

AUTH: 32-9-117, 32-9-130, MCA
IMP: 32-9-117, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is being adopted because its original version, ARM 2.59.1729, was unintentionally repealed in December 2010 in MAR Notice No. 2-59-443. There is no change to the renewal fees, which are equivalent to what has been charged previously. Therefore, there is no anticipated increase or decrease in revenue resulting from this rule. There are currently 73 mortgage broker entities, 34 mortgage broker branches, 87 mortgage

lender entities, 88 mortgage lender branches, and 718 mortgage loan originators licensed in Montana.

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

2.59.1708 TABLE FUNDING REQUIRES LICENSURE (1) Any person not exempted from the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act under 32-9-104, MCA, who closes a mortgage loan naming themselves as the lender and who, within three business days of closing, consummates sale of the mortgage loan note to another party, commonly known as "table funding" as defined in ARM 2.59.1701, must be licensed as a mortgage broker or loan originator.

AUTH: 32-9-130, MCA
IMP: 32-9-103, 32-9-108, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is being changed in order to make it consistent with ARM 2.59.1701(6), which defines table funding as the closing of a loan naming a mortgage broker, mortgage broker's business entity, or mortgage loan originator as the lender on the mortgage loan note, which note is then sold within three business days of closing to another party. In order to make ARM 2.59.1708 consistent with ARM 2.59.1701(6), "business" day is being added to ARM 2.59.1708. This consistency is important because in the absence of it, one would have to assume that two different times are meant which is not, in fact, the case.

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., April 11, 2011.

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 the person listed in 5 above at the above address no later than 5:00 p.m., April 11, 2011.

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 25 persons based on the number of licensed mortgage brokers, mortgage lenders, and mortgage loan originators.

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 that includes the name and mailing address and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. 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 February 28, 2011.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.174.303 definitions,	)	PROPOSED AMENDMENT AND
24.174.501 examination for licensure,	)	REPEAL
24.174.503 administration of)	
vaccines, 24.174.510 prescription)	
requirements, 24.174.602 internship)	
requirements, 24.174.604 preceptor)	
requirements, 24.174.2104 and)	
24.174.2106 registered pharmacist)	
continuing education, and the repeal)	
of ARM 24.174.1010 disciplinary)	
action)	

TO: All Concerned Persons

1. On April 4, 2011, at 9:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Pharmacy (board) no later than 5:00 p.m., on March 30, 2011, to advise us of the nature of the accommodation that you need. Please contact Ronald Klein, Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2371; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdp@mt.gov.

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

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

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

(5) remains the same.

(6) "Internship period" means 1500 hours of practical experience in an approved pharmacy, hospital, or other facility. The intern ~~must acquire a minimum of 20 hours experience per calendar week and~~ may acquire a maximum of 48 hours experience per calendar week. The student may acquire up to 1500 hours concurrently with school attendance in approved courses, introductory pharmacy

practice experience, and advanced pharmacy practice experience, or demonstration projects in the Pharm.D. program.

(7) and (8) remain the same.

(9) "Supervising Pharmacist" means the registered pharmacist who is in charge of the day-to-day supervision of the intern.

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

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: The board is amending the definition of internship period to repeal an outdated 20-hour per week minimum requirement and align with the shift of pharmacy education to a doctor of pharmacy degree. The board is adding a definition of supervising pharmacist to clarify the supervision requirements in accord with current pharmacy accreditation recommendations.

24.174.501 EXAMINATION FOR LICENSURE AS A REGISTERED PHARMACIST (1) remains the same.

(2) In addition, the NABP shall administer a multistate pharmacy jurisprudence examination (MPJE). This examination shall be prepared to measure the competence of the applicant regarding the statutes and rules governing the practice of pharmacy. A score of not less than 75 shall be a passing score for this examination. A candidate who does not attain this score may retake the examination after a 30-day waiting period from the date of the exam.

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

(4) The board may waive the provisions of (3)(d) upon request of the applicant, if the board determines the applicant is able to communicate in the English language.

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

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

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

REASON: The board determined this rule is burdensome and unnecessarily rigid for foreign pharmacy graduates who are native English speakers. The amendment will allow the board flexibility to waive the English testing requirements and thus save these applicants and the board unnecessary expenses.

24.174.503 ADMINISTRATION OF VACCINES BY PHARMACISTS (1) ~~A In order to administer or prescribe vaccinations, a pharmacist must have a collaborative practice agreement with a practitioner authorized to prescribe drugs, or in the case of a public health emergency, a directive from the chief medical officer of the Montana Department of Public Health and Human Services in order to administer and/or prescribe vaccinations.~~

(2) remains the same.

(a) the pharmacist has successfully completed ~~an accredited~~ a course of training ~~provided~~ approved by the Centers for Disease Control and Prevention

(CDC), the American Council on Pharmaceutical Education a provider accredited by the Accreditation Council on Pharmacy Education (ACPE), or other authority approved by the board;

(b) the pharmacist holds a current basic cardiopulmonary resuscitation certification issued by the American Heart Association, the American Red Cross, or other recognized provider, and documentation is on file at the practice site;

(c) the pharmacist and the pharmacist intern must provide a copy of the immunization certificate and CPR certification to the board for initial specialty recognition;

~~(e)~~ (d) the vaccines are administered in accordance with an established protocol that includes site-specific emergency measures; and

~~(d)~~ (e) the pharmacist has either a current copy of or ~~on-site~~ online access to the most recent edition of the Centers for Disease Control and Prevention CDC reference "Epidemiology and Prevention of Vaccine-Preventable Diseases."

(3) The pharmacist must give ~~the appropriate~~ a copy of the most current vaccine information statement (VIS) to the patient or the patient's legal representative for those vaccines which have them, with each dose of vaccine covered by these forms and counsel the patient accordingly.

(4) remains the same.

(5) The pharmacist must report any significant adverse events to the primary care provider if one is identified by the patient, and to the CDC Vaccine Adverse Events Reporting System (VAERS), if applicable.

(6) through (6)(e) remain the same.

~~(f) the name and address of the patient's primary health care provider;~~

~~(g) the date on which the vaccination information was reported to the patient's primary health care provider under the provisions of the National Vaccine Injury Compensation Program;~~

~~(h)~~ (f) the name or identifiable initials of the administering pharmacist; and

(i) remains the same but is renumbered (g).

(7) The authority of a pharmacist to administer immunizations may not be delegated; however, an immunization-certified intern may immunize under the direct supervision of a pharmacist or other health care provider qualified under this chapter in vaccine administration and deemed appropriate by the preceptor.

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

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

~~(a)~~ maintain a current CPR certification;

~~(b)~~ participate in a minimum of two hours of continuing education on immunizations or vaccine-preventable diseases every year. The continuing education must be American Council on Pharmaceutical Education (ACPE), Continuing Medical Education (CME), or Continuing Education Advisory Council (CEAC) approved; and

~~(c)~~ maintain competency in vaccine administration technique by:

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

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

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

AUTH: 37-7-201, MCA

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

REASON: This board determined it is reasonably necessary to amend this rule throughout to clarify education requirements, references, documentation, and recordkeeping for a pharmacist to administer vaccines, as the present rule is unclear and confusing. During the 2009 H1N1 swine flu epidemic, the board was called upon to coordinate with federal health agencies to facilitate the timely distribution and administration of vaccines to the public. To be more responsive to similar future health emergencies, the board is amending (1) to allow qualified pharmacists to administer vaccinations upon the directive of the department of public health and human services chief medical officer.

24.174.510 PRESCRIPTION REQUIREMENTS (1) remains the same.

~~(a) date of issuance;~~

~~(b) name and address of patient [or patient location if an institution];~~

~~(c) name and address of prescriber [if not a staff physician of institution];~~

~~(d) DEA number of prescriber in the case of controlled substances;~~

~~(e) name, strength, dosage form and quantity [or stop date, and route of administration] of drug prescribed;~~

~~(f) refills authorized;~~

~~(g) directions of use for patient.~~

(a) patient's name;

(b) name of drug, device, or biological;

(c) strength of drug or biological, if applicable;

(d) dosage form of drug or biological, if applicable;

(e) quantity of drug, device, or biological prescribed;

(i) the quantity for residents of long-term care facilities must be for 60 days, unless otherwise limited by the prescriber.

(f) directions for use;

(g) date of issuance;

(h) prescriber's name;

(i) if the prescription is written, it must contain the prescriber's hand-written signature and the name of the prescriber stamped, typed, printed, or clearly handwritten in addition to the signature;

(ii) if the prescription is written, it must be tamper-resistant and contain all of the following characteristics:

(A) one or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form;

(B) one or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription pad by the prescriber; and

(C) one or more industry-recognized features designed to prevent the use of counterfeit prescription forms.

(i) number of refills authorized;

(i) when the refill designation on the prescription is prn or Pro re nata, such designation, unless otherwise limited, means a refill for one year;

(ii) if a prescription is for a controlled substance in Schedules III, IV, or V, refill five times in the six months from the date of issuance;

(iii) if a prescription is for a noncontrolled drug, device, or biological, refill for 12 months from the date of issuance;

(iv) controlled substances in Schedule II cannot be refilled and a refill designation for a controlled substance in Schedule II has no meaning.

(i) if the prescription is for a controlled substance, the following additional information is required to be on the prescription:

(i) patient's address;

(ii) prescriber's address; and

(iii) prescriber's Drug Enforcement Administration (DEA) registration number.

(k) prescriber's employee or agent;

(i) prescription or refill authorization issued by a prescriber may be communicated to a pharmacist or a pharmacist intern by an employee or agent of the prescriber.

(2) remains the same.

(Note: Information presented in brackets [] represents institutional pharmacy requirements.)

AUTH: 37-7-201, MCA

IMP: 37-7-201, 37-7-505, MCA

REASON: The board is amending this rule to update the prescription requirements to conform to new Federal Drug Administration (FDA) rules. The board concluded that the amendments will also clarify obsolete prescription requirements.

24.174.602 INTERNSHIP REQUIREMENTS (1) The experience required to obtain licensure as a pharmacist shall be that instruction period composed of computed time obtained under the supervision of the preceptor in an approved site.

(2) An intern may practice only under the immediate personal supervision of a registered supervising pharmacist.

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

~~(3) The intern shall receive instruction in only one approved area and under only one preceptor concurrently, except in unusual and extenuating circumstances approved by the board upon written request.~~

(4) through (14) remain the same.

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: The board is amending this rule to repeal outdated language regarding intern supervision and reflect current pharmacy practice and accreditation standards for schools of pharmacy.

24.174.604 PRECEPTOR REQUIREMENTS (1) through (1)(b) remain the same.

(i) the practice of pharmacy for ~~two years~~ one year, unless otherwise approved by the board; or

(ii) through (1)(g) remain the same.

(h) notify the board of any change of address or employment within ~~ten~~ 30 days. Change of employment shall serve to suspend preceptor approval until such time as reevaluation is made by the board; ~~and~~

(i) not be permitted to leave an intern work alone to assume the responsibility of a pharmacist; ~~and~~

(j) complete a training course as approved by the board.

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

(3) A supervising pharmacist ~~preceptor~~ may only supervise ~~one student in internship~~ or one student in introductory pharmacy practice experience (IPPE) at any time.

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

(5) remains the same.

(6) A preceptor may serve as a preceptor for no more than one intern at a time.

AUTH: 37-7-201, MCA

IMP: 37-7-201, MCA

REASON: A number of licensees recently petitioned the board for exemptions from the requirement for two years of active pharmacist practice to become preceptors. The board determined it is reasonable to amend the rule and allow a pharmacist to become a preceptor with just one year of practice plus an additional board-approved training course. With the greater pharmacy education offered to current doctor of pharmacy graduates (versus former bachelor of science in pharmacy), pharmacists are prepared to become preceptors after a shorter period of active pharmacy practice. The board is amending (1)(h) to require that preceptors notify the board of address or employment changes within 30 days to align with similar requirements within board rules.

The board recognizes that recent market trends are moving away from pharmacies with just one or two pharmacists. Even though larger pharmacies with a number of pharmacists are more common, the board notes that not all pharmacists in a larger pharmacy will be preceptors. Therefore, the board is amending (2) through (6) to allow a supervising pharmacist to stand in the place of the named preceptor during those times when the preceptor is not on duty or is unavailable.

24.174.2104 REGISTERED PHARMACIST CONTINUING EDUCATION - REQUIREMENTS (1) remains the same.

(2) The board will require: ~~1.5 CEU for each fiscal year.~~

(a) 1.5 CEU for each fiscal year if a pharmacist takes at least 0.5 CEU in an approved group program; or

(b) 2.0 CEU for each fiscal year if a pharmacist does not take at least 0.5 CEU in an approved group program.

~~(a) (3) This requirement~~ The annual CEU requirement will not pertain to a pharmacist applying as a new graduate for his or her first license renewal.

(b) remains the same but is renumbered (4).

~~(c) A minimum of 0.5 CEU is to be obtained in approved group program.~~

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

AUTH: 37-1-319, MCA

IMP: 37-1-306, MCA

REASON: The board has received a number of complaints that the group continuing education (CE) requirement is burdensome and unnecessary, especially for rural and out-of-state pharmacists. The board is amending this rule to allow licensees to meet the CE requirement without having to take any group CEU.

Pharmacists have also asked whether the exemption for first-time renewal applies to experienced pharmacists moving to Montana. The board is amending this rule to clarify that only new pharmacist graduates, not pharmacists licensed in other states, are exempt from the CE requirement for the first renewal period.

24.174.2106 REGISTERED PHARMACIST CONTINUING EDUCATION - APPROVED PROGRAMS (1) through (1)(c) remain the same.

(2) Pharmacists may receive CEU for programs other than those on the ACPE list of providers by applying for prior approval by the board or its designee on board-approved forms. ~~The forms and guidelines for applying for approval are available from the board office.~~

(3) remains the same.

AUTH: 37-1-319, MCA

IMP: 37-1-306, MCA

REASON: The board is amending this rule to specify that CE approval must be requested on board-approved forms to reduce the number of obsolete and inadequate CE forms received in the board office.

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

24.174.1010 DISCIPLINARY ACTION found at ARM page 24-19746.

AUTH: 37-7-712, MCA

IMP: 37-7-703, 37-7-704, 37-7-711, MCA

REASON: The board's screening panel has been unable to institute disciplinary proceedings in recent cases because this rule requires that the board defer action until the out-of-state mail service pharmacy's home state reviews the matter. The board concluded that it should be able to take appropriate action where it possesses jurisdiction over a licensee concerning a matter of public health, safety, or welfare, and is proposing to repeal this rule.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdpba@mt.gov, and must be received no later than 5:00 p.m., April 12, 2011.

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

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

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

9. Mike Fanning, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PHARMACY
LEE ANN BRADLEY, RPH, 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 February 28, 2011

BEFORE THE BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.183.502 and 24.183.504) PROPOSED AMENDMENT
application processes for professional)
engineers and professional land)
surveyors)

TO: All Concerned Persons

1. On April 4, 2011, at 2:00 p.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Professional Engineers and Professional Land Surveyors (board) no later than 5:00 p.m., on March 30, 2011, to advise us of the nature of the accommodation that you need. Please contact Brooke Jasmin, Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2351; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdpels@mt.gov.

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

24.183.502 APPLICATIONS (1) Applications received ~~by the department~~ must be on a ~~board approved~~ form provided by the department and accompanied by appropriate fees. An application not accompanied by the appropriate fees or not completed in its entirety with all required information shall be ~~returned to the applicant with instructions~~ deemed incomplete. Fees will be deposited as received.

(2) through (8) remain the same.

AUTH: 37-1-131, 37-67-202, MCA
IMP: 37-1-104, 37-67-303, 37-67-306, MCA

REASON: The board determined it is reasonably necessary to amend this rule to facilitate 37-1-104, MCA, which requires the department to adopt standardized forms to streamline and expedite application processes. Implementation cites are being amended to accurately reflect all statutes implemented through this rule.

24.183.504 DISPOSAL EXPIRATION OF APPLICATIONS (1) An application will ~~be on file~~ expire one year from the date of receipt. ~~If no action is taken by the applicant~~ has not successfully completed all application and examination requirements within one year, ~~the application fee will be forfeited and reapplication will be required this period, and still desires to pursue licensure, the applicant must submit a new, original application and appropriate fees, with supporting documents.~~ The year begins for the exam applicants on the date the applicant has been approved by the board or designated board staff to take the exam.

AUTH: 37-1-131, 37-67-202, MCA
IMP: 37-67-303, MCA

REASON: The board is amending this rule to clearly set forth the timeline for licensure applications. The board determined the current rule is confusing and does not adequately explain the requirements for applicants and staff. A one-year time limit will ensure that the board considers the most current application information.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdpels@mt.gov, and must be received no later than 5:00 p.m., April 12, 2011.

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

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at

(406) 841-2309; e-mailed to dlibsdpels@mt.gov; or 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, do not apply.

8. Mary Tapper, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
DAVID ELIAS, PRESIDING OFFICER

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

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

Certified to the Secretary of State February 28, 2011

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.8.101 and 32.8.202	)	AMENDMENT
pertaining to grade A pasteurized milk)	
and time from processing that fluid	)	NO PUBLIC HEARING
milk may be sold for public	)	CONTEMPLATED
consumption)	

TO: All Concerned Persons

1. On April 15, 2011, the Department of Livestock proposes to amend the above-stated rules.

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 April 11, 2011, 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

3. 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: 2-4-307, 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 2-4-315, MCA, 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 3 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 2-4-315, MCA, 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 2-4-302 and 315, MCA. 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.

This new amendment notice is necessary because the formal evidentiary hearing process has not been completed and the required extension notice was not filed in a timely manner. The original Notice No. 32-9-200 published on November 12, 2009, stated the department would use a combined two-part hearing under the requirements of 2-4-302 and 315, MCA and the notice announced the dates and times of the hearings. The first part of the combined hearing allowed for submission of evidence by designated parties in a formal setting, presided over by a hearings examiner, and governed by rules of evidence. The second part of the combined hearing, presided over by the board, presented 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. The second part has been completed. The first part has not been completed. After the first part has been completed, which includes the presentation of written finding of fact and conclusions of law, and legal briefing by the designated parties, the hearing examiner will be presenting to the board, a proposed decision based on the testimony and evidence received at that first part of the hearing. As noted in the original published notice on November 12, 2009, MAR Notice No. 32-9-200 at page 2095 of the 2009 Montana Administrative Register, Issue Number 21, 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.

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: 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., April 11, 2011.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. April 11, 2011.

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

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program 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 department.

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

9. The bill sponsor 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 February 28, 2011.

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

In the matter of the adoption of New Rule I, amendment of 37.87.903, 37.87.1201, 37.87.1202, 37.87.1206, 37.87.1217, 37.87.1222, and 37.87.1223, and repeal of 37.88.910 pertaining to psychiatric residential treatment facility reimbursement) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL)

TO: All Concerned Persons

1. On March 30, 2011, at 10:30 a.m., the Department of Public Health and Human Services will hold a public hearing in the Auditorium, 111 North Sanders, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process 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 March 23, 2011, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-9503; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I OUT-OF-STATE PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY (PRTF) SERVICE REQUIREMENTS

(1) Payment for Psychiatric Residential Treatment Facility (PRTF) services provided outside the state of Montana will be made only under the conditions specified in this rule and subchapter. The Montana Medicaid program will not make payment for PRTF services provided by out-of-state facilities unless the department or its designee determines that PRTF, and applicable PRTF waiver services in the state of Montana are unavailable. PRTF waiver sites are identified in ARM 37.87.1303.

(2) PRTF and PRTF waiver services in the state of Montana will be determined unavailable when:

(a) the youth has been officially screened for admission by all enrolled in-state PRTFs, and an applicable PRTF waiver site, and denied admission because the PRTFs or PRTF waiver site cannot meet the youth's treatment needs; or

(b) the youth has been officially screened for admission by all enrolled in-state PRTFs, and an applicable PRTF waiver site, and denied admission for one of the following reasons:

(i) a bed or opening is not available in a PRTF or PRTF waiver site; or
(ii) the youth's parent or legal guardian refuses PRTF waiver services; or
(iii) the youth's psychiatric condition prevents the youth from being temporarily and safely placed in another setting while awaiting admission to an in-state PRTF or PRTF waiver site.

(3) The department or its designee will not commence a preadmission review for or certify an admission to an out-of-state PRTF until receiving from the prospective PRTF written verification that the youth cannot be served within the state of Montana.

(a) Written verification must be provided on a form approved by the department or its designee, and must be completed and signed on behalf of the in-state PRTFs and an applicable PRTF waiver site indicating that the requirements of (2)(a) or (2)(b) are met.

(b) In-state PRTFs and a PRTF waiver site that do not complete, sign, and return the form by fax to the prospective out-of-state PRTF within three days after receipt will be deemed to be unable to serve the youth.

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

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

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

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

(a) the youth, defined in ARM 37.87.102, has been determined to have a serious emotional disturbance as defined in ARM 37.87.303;

(b) the department or its designee has determined on a case by case basis, that treatment is medically necessary for early intervention and prevention of a more serious emotional disturbance:

(i) prior to treatment, (prior authorization); and

(ii) when required, (continued authorization).

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

(2) If a youth has a mental health diagnosis designated by the department, the youth is not required to have a serious emotional disturbance to receive the following services:

(a) group outpatient therapy; and

(b) the first 24 sessions per state fiscal year of individual and family outpatient therapy.

(3) Prior authorization and when required continued authorization by the department or its designee is required for the following services:

(a) individual or family outpatient therapy services in excess of 24 sessions per state fiscal year, subject to such additional limitations for outpatient therapy services as may be set forth in the Medicaid Mental Health and Mental Health

Services Plan, Individuals Under 18 Years of Age Fee Schedule adopted at ARM 37.87.901. This rule does not apply to a session with a physician or midlevel practitioner for the purpose of medication management;

(b) targeted case management in excess of 120 units of service per state fiscal year and in accordance with ARM 37.87.808;

(c) all outpatient therapy services provided on the same day as comprehensive school and community treatment (CSCT) described at ARM 37.86.2224, 37.86.2225, 37.106.1955, 37.106.1956, 37.106.1960, 37.106.1961, and 37.106.1965;

(d) therapeutic group home services and extraordinary needs aide services in accordance with ARM 37.87.1011, 37.87.1013, 37.87.1015, and 37.87.1017;

(e) therapeutic family care (TFC) and therapeutic foster care (TFOC) services in accordance with ARM 37.87.1021, 37.87.1023, and 37.87.1025 and ARM Title 37, chapter 51;

(f) psychiatric residential treatment facility services defined in ARM 37.87.1202;

(g) psychiatric hospital and partial psychiatric hospital services defined in ARM 37.86.2901 and 37.86.3001; and

(h) as provided for in other rules.

(4) The department may waive a requirement for prior authorization or continued authorization when the provider submits documentation that:

(a) there was a clinical reason why the request for prior authorization or continued authorization could not be made at the required time, and the provider submitted a subsequent authorization request within ten business days; or

(b) a timely request for prior authorization or continued authorization was not possible because of a failure or malfunction of the department's or its designee's equipment that prevented the transmittal of the request at the required time and the provider submitted a subsequent authorization request within ten business days.

(5) The prior authorization or continued authorization requirement shall not be waived except as provided in this rule.

(6) Review of authorization requests by the department or its designee will be made with consideration of the department's clinical management guidelines. The department adopts and incorporates by reference the Children's Mental Health Bureau's Provider Manual and Clinical Guidelines for Utilization Management dated ~~January 15, 2011~~ May 13, 2011. A copy of the manual can be obtained from the department by a request in writing to the Department of Public Health and Human Services, Developmental Services Division, Children's Mental Health Bureau, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 or at www.dphhs.mt.gov/mentalhealth/children/index.shtml.

(7) The department may review the medical necessity of services or items at any time either before or after payment in accordance with the provisions of ARM 37.85.410. If the department determines that services or items were not medically necessary or otherwise in compliance with applicable requirements, the department may deny payment or may recover any overpayment in accordance with applicable requirements.

(8) The department or its designee may require providers to report outcome data or measures regarding mental health services, as determined in consultation with providers and consumers.

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

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

37.87.1201 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, PURPOSE (1) The purpose of ARM 37.87.1201, 37.87.1202, 37.87.1203, 37.87.1206, 37.87.1207, 37.87.1214, 37.87.1215, 37.87.1216, 37.87.1217, 37.87.1222, 37.87.1223, 37.87.1224, and 37.87.1225, and [New Rule I] is to specify provider participation and program requirements and to define the basis and procedure the department will use to pay for psychiatric residential treatment facility (PRTF) services.

(2) Facilities in which these services are available are referred to as providers.

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

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

37.87.1202 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, DEFINITIONS As used in this subchapter, the following definitions apply:

(1) "Care coordination" means monitoring and referral services provided to youth in a PRTF by an outside provider to assist in discharging the youth from the PRTF to create a smooth transition in which to transfer the clinical gains the youth has made in the PRTF to the community. Care coordination may be provided by a licensed or in-training mental health professional, or targeted case manager who has extensive knowledge of community services. In-training mental health professional services are only reimbursed when provided by a licensed mental health center. Care coordination includes the following:

(a) monitoring, which means attending telephonically the youth's monthly PRTF treatment team meetings and consultation with the team about:

(i) the youth's treatment goals and progress in treatment;

(ii) the youth's readiness for discharge and promoting discharge at the earliest opportunity;

(iii) the youth's discharge plan and specific service needs; and

(iv) advocating for the parent or legal guardian's recommendations about treatment and discharge.

(b) referral services, which means:

(i) making appointments for needed psychiatric, medical, educational, psychological, social, behavioral, developmental, and chemical dependency treatment services, as appropriate upon discharge from the PRTF; and

(ii) ensuring communication exists and pertinent clinical information is shared between the youth's PRTF treatment team and community providers prior to discharge.

~~(4)~~ (2) "Continuity of care payment" means an annual payment made to qualifying hospital-based psychiatric residential treatment facilities (PRTF) according to the eligibility criteria and payment calculation methodology in ARM 37.87.1224.

~~(2)~~ (3) "Devoted to the provision of inpatient psychiatric care for persons under the age of 21" means an inpatient psychiatric hospital facility or residential treatment facility whose goals, purpose, and care are designed for and devoted exclusively to persons under the age of 21.

~~(3)~~ (4) "Hospital-based psychiatric residential treatment facility" means a residential treatment facility that meets the requirements of ARM 37.87.1207.

~~(4)~~ (5) "Inpatient psychiatric services" means psychiatric residential treatment facility, or hospital-based psychiatric residential treatment facility services.

~~(5)~~ (6) "Patient day" means a whole 24-hour period in which a person is present and receiving inpatient psychiatric services. Even though a person may not be present for a whole 24-hour period, the day of admission and, subject to the limitations and requirements of ARM 37.87.1223, therapeutic home leave days are patient days. The day of discharge is not a patient day for purposes of reimbursement.

~~(6)~~ (7) "Psychiatric residential treatment facility (PRTF)" means a facility other than a hospital that provides psychiatric services only to individuals under age 21. The PRTF must be certified for Medicaid participation by:

- (a) the department as a PRTF; or
- (b) the appropriate agency in the state where the facility is located as a PRTF.

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

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

37.87.1206 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, PARTICIPATION REQUIREMENTS (1) These requirements are in addition to those contained in rule generally applicable to Medicaid providers.

(2) PRTF providers, as a condition of participation in the Montana Medicaid program, must comply with the following requirements:

(a) maintain a current license as a residential treatment facility under the rules of the department's Quality Assurance Division to provide PRTF services, or, if the provider's facility is not located within the state of Montana, maintain a current license in an equivalent category under the laws of the state in which the facility is located;

(b) maintain a current PRTF certification for Medicaid participation by the state in which the facility is located as required by the Centers for Medicare and Medicaid;

(c) for all providers, enter into and maintain a current provider enrollment form with the department's fiscal agent to provide psychiatric PRTF services;

(d) license and/or register facility personnel in accordance with applicable state and federal laws;

(e) accept, as payment in full for all operating and property costs, the amounts paid in accordance with the reimbursement method set forth in this rule and

ARM 37.87.1201, 37.87.1202, 37.87.1203, 37.87.1207, 37.87.1214, 37.87.1215, 37.87.1216, 37.87.1217, 37.87.1222, 37.87.1223, 37.87.1224, and 37.87.1225;

(f) for providers maintaining patient trust accounts, ensure that any funds maintained in those accounts are used only for those purposes for which the youth, legal guardian, or personal representative of the patient has given written authorization. A provider may not borrow funds from these accounts for any purpose;

(g) maintain accreditation as a PRTF by the Joint Commission on Accreditation of Health Care Organizations (JCAHO), Council on Accreditation (COA), or the Commission on Accreditation of Rehabilitation Facilities (CARF) or any other organization designated by the Secretary of the United States Department of Health and Human Services as authorized to accredit PRTF for Medicaid participation;

(h) submit to the department prior to receiving initial reimbursement payments and thereafter within 30 days after receipt, all accreditation determinations, findings, reports, and related documents issued by the accrediting organization to the provider;

(i) provide PRTF services according to the service requirements for individuals under age 21 specified in Title 42 CFR, part 441, subpart D (2008). The department adopts and incorporates by reference Title 42 CFR, part 441, subpart D. A copy of these regulations may be obtained through the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951;

(j) agree to indemnify the department in the full amount of the state and federal shares of all Medicaid inpatient psychiatric services reimbursement paid to the facility during any period when federal financial participation is unavailable due to facility failure to meet the conditions of participation specified in these rules or due to other facility deficiencies or errors;

(k) complete periodic surveys requested by the department. At a minimum, a PRTF must provide the following information:

(i) average length of stay;

(ii) special treatment programs offered or facility's ability to treat co-occurring issues such as developmental disabilities, chemical dependency; medically fragile and sexual reactivity or offending issues;

(iii) specialized staff or evidence-based practices used;

(iv) special assessments used, such as psychosexual or forensic; and

(v) frequency of seclusion and restraint.

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

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

37.87.1217 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY (PRTF) SERVICES, TREATMENT REQUIREMENTS (1) PRTF services must include

active treatment designed to achieve the youth's discharge to a less restrictive level of care at the earliest possible time. Active treatment includes, but is not limited to, the following services provided regularly and as clinically indicated:

(a) individual psychotherapy;

(b) group psychotherapy; and

(c) family therapy.

(2) PRTF services must be provided under the direction of a licensed physician.

(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) The youth's plan of care and discharge plan must be reviewed at least every 30 days at the multidisciplinary treatment team meeting, and more frequently if there is a significant change in the youth's condition. The youth's parent or legal guardian must be invited to participate in these meetings, and given adequate notice to participate. Adequate notice means generally a week unless the youth's condition dictates otherwise. At a minimum the following must be discussed:

(a) diagnosis or changes to diagnosis;

(b) mental status or changes to mental status;

(c) medication use, purpose, and any changes;

(d) youth's treatment goals, progress or lack of progress, and revisions to the treatment plan;

(e) risk behaviors and the use of special treatment procedures;

(f) co-occurring issues that impact youth's treatment, such as developmental or cognitive delays, chemical dependency, and sexual reactivity or offending;

(g) individual, group, and family therapy outcomes; and

(h) youth's readiness for discharge, specific services needed on discharge, and who will be making the appointments for discharge services.

~~(4)~~ (5) PRTF services include only treatment or services provided in accordance with all applicable licensure, certification, and accreditation requirements, and these rules.

~~(5)~~ (6) In addition to the requirements in (4) that pertain to discharge planning the following activities are required. The PRTF must:

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

(b) decide whether or not to contract with a care coordinator to assist in discharge planning;

~~(a)~~ (c) develop a discharge plan with the care coordinator, if assistance is needed, within 30 days of admission that identifies the youth and family's needed services and supports upon discharge:

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

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

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

~~(d)~~ (e) work with the youth's parent or legal guardian, independently or with a care coordinator in making agreed upon discharge plans and referrals for needed services.

~~(6)~~ (7) If appropriate arrangements for services upon discharge are not made as required in ~~(5)~~ (6) the PRTF may be at risk of losing its enrollment in the Montana Medicaid program.

(7) (8) As part of the discharge planning requirements, PRTFs shall ensure the youth has a seven-day supply of needed medication 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, IN-STATE 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) the psychiatric service rate provided in the department's Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule adopted in ARM ~~37.86.2207~~ 37.87.901;

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

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

(2) Medicaid services included in the ancillary add-on rate in (1)(c) ~~must~~ may be provided in and by the PRTF by individuals employed by or under contract with the PRTF who have appropriate credentials or by outside providers, ~~and who will be subject to the Montana Medicaid program's prevailing payment methodology and/or fee schedule for reimbursement. Services provided outside the PRTF are not separately reimbursable and must be reimbursed by the PRTF.~~ At a minimum, covered ancillary services include the following services:

(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.~~

(a) ambulatory surgical center;

(b) audiologist;

(c) care coordination per the limits in (3);

(d) chiropractor;

(e) dentist, denturist, and orthodontist;

(f) durable medical equipment;

(g) emergency room services not related to the youth's psychiatric condition;

- (h) eyeglasses;
- (i) federally qualified health center;
- (j) hearing provider and hearing aides;
- (k) Indian health services for enrolled tribal members;
- (l) lab and pharmacy services not related to the youth's psychiatric condition;
- (m) licensed addiction counselor;
- (n) medical transportation and ambulance services;
- (o) MRI, or other diagnostic services;
- (p) nutritionist;
- (q) optometrist and ophthalmologist;
- (r) outpatient hospital services not related to the youth's psychiatric condition;
- (s) pharmacy for post-discharge medication;
- (t) physical and speech therapist;
- (u) physician, psychiatrist, and mid-level practitioner;
- (v) podiatrist;
- (w) public health clinic;
- (x) respiratory therapist;
- (y) rural health clinic;
- (z) any other Medicaid service approved by the department to address the youth's plan of care needs in the facility.

(3) If a PRTF contracts for care coordination the following limits apply:

- (a) up to 16 units per month to attend multidisciplinary treatment team meetings to monitor the youth's progress; and
- (b) up to 32 units within 30 days of the youth's discharge. Of these 32 units, up to 16 units may be used for attending treatment team and discharge planning meetings and up to 16 units may be used for making referrals and related activities for needed services upon discharge; and

(c) only one care coordinator will be reimbursed per youth.

(4) Reimbursement for in-house practitioner services in (2) only includes the professional component of the service.

~~(3)~~ (5) 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 the reimbursement that the facility received as an interim rate:

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

(ii) the facility will reimburse the department for costs less than 100% of the aggregate.

~~(4)~~ (6) The psychiatric service rate in (1)(a) is a bundled per diem rate, and includes:

(a) 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 services related to the youth's psychiatric condition, with the exception noted in (2)(s) pharmacy for post discharge medication.

(7) Covered ancillary services provided by the PRTF will be cost-settled using the existing Medicaid reimbursement rate according to the applicable Medicaid fee schedule. Covered ancillary services provided by outside providers will be cost-settled using the amount the PRTF reimbursed the outside providers. This amount may not exceed the outside provider's usual and customary charge. Whenever possible, outside ancillary service providers will be reimbursed the Medicaid rate.

(8) Third party liability billing requirements apply for PRTF and ancillary services reimbursed by the Medicaid program. Medicaid prior authorization requirements for ancillary services in (2) do not apply when the youth is in a PRTF.

(9) Reimbursement for the following personal transportation may be included in the PRTF cost report, per the reimbursement rate on the current "Montana Medicaid Personal and Commercial Transportation Fee Schedule":

(a) When the personal transportation is provided by the PRTF for a youth to a medical appointment off site and the mileage exceeds 15 miles per month per specific youth. Documentation must be maintained regarding the youth's name, outside provider name, appointment date and time, and mileage; and

(b) When a youth's parent, guardian, or other family member is reimbursed mileage to drive to and from the PRTF to attend family therapy sessions. Reimbursement for transporting a youth to and from their home for a therapeutic home visit is not an allowable expense unless family therapy is provided prior to the youth's home visit and upon their return to the PRTF. Meals and/or lodging are not covered for a round trip that can reasonably be made in one day. If a round trip cannot be reasonably made in one day, meals and lodging may be reimbursed according to the fee schedule in (9), and the following documentation maintained:

(i) youth name;

(ii) date of family therapy session;

(iii) parent, guardian, or family member name;

(iv) community the parent, guardian, or family member is driving from;

(v) total mileage; and

(vi) total number of meals.

~~(5) (10) Emergency medical conditions treated by providers outside the PRTF will be reimbursed using state funds at the prevailing Montana Medicaid rate, and must be billed by an enrolled provider directly to the Montana Medicaid program. Emergency medical conditions treated outside the PRTF may be reimbursed when provided in a hospital emergency room. If the youth's condition requires admission to a hospital, the youth must be discharged from the PRTF for Medicaid or state funded reimbursement to be available for the hospitalization the hospital to be reimbursed.~~

~~(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 in serious jeopardy;~~

~~(ii) serious impairment to bodily functions; or~~

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

~~(7) Additional outside services that may be reimbursed using state funds to pay the prevailing Montana Medicaid rate for youth in a PRTF are:~~

~~(a) emergency dental services in accordance with the Montana Medicaid Dental Program as identified in ARM 37.86.1006 for adults ages 21 and over with basic Medicaid;~~

~~(b) eyeglasses and vision examinations;~~

~~(c) durable medical equipment; and~~

~~(d) hearing aids and hearing examinations.~~

~~(8) (11) If a youth receiving inpatient 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 (3). Payment of these claims will be made by the department within 90 days from the date all requirements for payment are met.~~

~~(12) Care coordination services will be reimbursed to the PRTF at the prevailing Medicaid rate for Healthcare Common Procedure Coding System (HCPCS) code T1016 HA (Targeted Case Management) when:~~

~~(a) the parent or guardian is given the choice of eligible providers;~~

~~(b) services are not contingent on youth receiving other services from the agency providing care coordination;~~

~~(c) services are adequately documented in a narrative form and maintained in the care coordinator's records to justify the number of units billed to the PRTF; and~~

~~(d) care coordination activities are included on the youth's PRTF's treatment plan. A separate care coordination assessment and care plan are not required.~~

~~(9) (13) Reimbursement will be made to an in-state PRTF provider for reserving a bed while the youth is temporarily absent for a therapeutic home visit if:~~

~~(a) the youth's plan of care documents the medical need for therapeutic home visits as part of a therapeutic plan to transition the youth to a less restrictive level of care;~~

~~(b) the youth is temporarily absent on a therapeutic home visit;~~

~~(c) the provider clearly documents staff contact and youth achievements or regressions during and following the therapeutic home visit; and~~

~~(d) the youth is absent from the provider's facility for no more than three patient days per therapeutic home visit, unless additional days are authorized by the department.~~

~~(40) (14) No more than 14 patient days per youth in each state fiscal year will be allowed for therapeutic home visits.~~

~~(44) (15) Providers must bill for PRTF services using the revenue codes designated by the department.~~

~~(42) (16) Notice of the youth's admission and discharge dates must be submitted to the department or its designee the day of admission or discharge. A~~

\$100 fine may be imposed against the facility for each instance where the department does not receive timely notification.

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

(a) Medicaid payment is not allowable for treatment or services provided in a PRTF that are not consistent with the definition of PRTF in ARM 37.87.1202 and unless all other applicable requirements are met.

(2) For inpatient psychiatric services provided by a PRTF in the state of Montana, the Montana Medicaid program will pay a provider, for each Medicaid patient day, a bundled per diem interim rate as specified in (3), less any third party or other payments. The interim rate is defined in ARM 37.87.1222.

(3) The statewide bundled per diem interim rate for ~~inpatient psychiatric in-~~ state PRTF services is the lesser of:

(a) the amount specified in the department's Medicaid Mental Health and Mental Health Services Plan Fee Schedule, Individuals Under 18 Years of Age; or

(b) the provider's usual and customary charges ~~(billed charges)~~.

(4) Out-of-state PRTF providers 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 or by outside providers consistent with ARM 37.87.1222. Services provided by an outside provider while the youth is a patient in a PRTF are not separately reimbursable by the Montana Medicaid program. ~~The usual and customary charge may not be more than twice the cost of providing the service.~~

~~(5) Emergency medical conditions treated by providers in a hospital emergency room 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 using state funds. See ARM 37.87.1222 for the definition of emergency medical conditions, additional outside services that may be reimbursed using state funds at the prevailing Montana Medicaid rate and where services must be provided to be reimbursed.~~

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

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

5. The department proposes to repeal the following rule:

37.88.910 RESIDENTIAL PSYCHIATRIC CARE OUTSIDE MONTANA, is found on page 37-21685 of the Administrative Rules of Montana.

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

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

6. Statement of Reasonable Necessity

The Department of Public Health and Human Services (the department) is proposing to amend the above-stated Psychiatric Residential Treatment Facility (PRTF) administrative rules governing reimbursement for outside ancillary services. This is necessary to reflect recent federal policy direction the department received from the Centers for Medicare and Medicaid Services (CMS) pertaining to Federal Financial Participation (FFP) in the reimbursement of these services.

Approximately 417 mentally ill youth could be affected by the proposed changes. Approximately 14 in-state and out-of-state PRTFs could also be affected.

The department is proposing changes to the reimbursement rules for outside ancillary services retroactive to September 1, 2010. The department does not believe the changes will have a negative impact on Medicaid providers or clients. The changes are necessary to allow the department to use FFP for outside services youth receive while in a PRTF. The department currently reimburses the following outside services with 100% state general funds (some services require prior authorization): hospital emergency room services, eyeglasses and vision examination, durable medical equipment, hearing aids and hearing exams, and emergency dental procedures. If the proposed amendments are adopted, outside services received by youth in a PRTF could be reimbursed with a combination of Medicaid FFP and state general funds back to September 1, 2010.

Under the proposed rule changes almost all medically necessary state plan Medicaid services will be covered for youth in a PRTF. However, these outside services must be reimbursed by the PRTFs. In-state PRTFs receive a facility-specific ancillary rate. Expenses above or below the ancillary rate are cost-settled with the in-state PRTFs at the end of the state fiscal year (SFY). The estimated annual impact of the proposed amendments is approximately \$881,189 federal funds which will offset current state general fund expenditures. The rule change opening up coverage of additional outside services will also be retroactive to September 1, 2010, with the exception of care coordination services, discussed below.

The department is proposing wording changes to the rule governing how out-of-state PRTFs are reimbursed. They will still be reimbursed 50% of their usual and customary rate. The proposed amendments are necessary to make the rule language clear that their usual and customary bundled facility rate charge must cover all psychiatric, medical, and ancillary services youth need while in their PRTF. To meet FFP requirements, no outside ancillary services will be reimbursed separately by the Montana Medicaid program.

The department is also proposing to allow limited care coordination services for youth in a PRTF for monitoring and referral for needed services to assist the PRTF

in discharge planning. This is necessary to promote effective discharge planning. Care coordination is defined in the amended rule and would be performed by one of the following community providers: (1) a targeted case manager (TCM), (2) an in-training mental health professional, or (3) a licensed mental health professional. Please note that in-training mental health professional services are only separately reimbursable when provided by a licensed mental health center.

As part of the PRTF treatment requirements, the department is proposing to include individual, group, and family therapy sessions. This is necessary to further define active treatment. In some PRTFs these services are not being regularly provided. The department believes they are important interventions in treating youth with a serious emotional disturbance (SED) and are necessary to meet federal requirements for Medicaid services.

The department is proposing another change to PRTF treatment requirements by specifying topics to be discussed at the youth's treatment team meetings. These topics are necessary to assure integrated treatment and discharge planning occurs. The department does not believe these topics are consistently discussed and believes they are an important component of active and integrated treatment.

The department has periodically experienced difficulty placing certain youths in psychiatric residential treatment facilities (PRTF). This is because of the limited number of PRTFs and limitations in the scope of services available. Consequently, certain Montana youth are treated in out-of-state PRTFs. The department's policy is to treat mentally ill persons in the least restrictive environment that meets the patient's needs and to do so as close to the patient's home, family, and community as possible.

The department applied for and received a Medicaid grant commonly referred to as the PRTF waiver to create regional programs for the treatment of mental illness. The department wishes to exhaust all in-state PRTF placements, including regional waiver projects before authorizing an out-of-state PRTF placement. The proposed new rule and amendments are necessary to implement this policy. Studies have shown faster recoveries and better outcomes when mentally ill youth are treated in or close to their homes and communities. Therefore, the department has rejected the alternative of authorizing out-of-state PRTF placement of mentally ill youth whenever in-state PRTF treatment that meets the youth's needs is available. The department finds the best and most economical way to accomplish this goal is to add the requirement that in-state treatment be exhausted prior to authorizing out-of-state PRTF placement. This would utilize the existing prior authorization resources and procedures.

The department is proposing an amendment to require four in-state PRTF denials before a youth may be served by an out-of-state PRTF starting July 1, 2011. The fourth PRTF denial would be from a PRTF Waiver site, for youth from their service area. A parent or legal guardian's lack of consent to participate in the PRTF Waiver would constitute a denial. The current in-state PRTF denial requirement is in ARM

37.88.910 and was inadvertently left out when the other PRTF rules were moved to the children's mental health section, ARM Title 37, chapter 87. The out-of-state PRTF rules in ARM 37.88.910 will be moved to New Rule I. This is necessary to correct an error in the children's mental health services rules. The reference to ARM 37.85.207, in 37.88.910, regarding services not provided by the Medicaid program will not be moved to New Rule I, however ARM 37.87.1206 already requires PRTFs to follow rules generally applicable to Medicaid providers in the Montana Medicaid program.

The in-state PRTF denial requirement is also stated in the Children's Mental Health Bureau's Provider Manual and Clinical Guidelines for Utilization Management (provider manual). If the proposed amendments are adopted, the PRTF Waiver denial requirement will also be added to the provider manual in the PRTF section. The provider manual will be updated and dated May 13, 2011 when the proposed rules are effective, even though the PRTF Waiver denial requirement will not be implemented until July 1, 2011. The TCM section of the provider manual will be updated in the following areas to make TCM requirements clearer; initial authorization and unscheduled revision requirements, nonbillable TCM activities and TCM discharge requirements. The Community-Based Psychiatric Rehabilitation and Support Services (CBPRS) section will be updated with regard to the length of the authorization spans for youth in the PRTF Waiver receiving day treatment. The outpatient therapy section will be updated and not require group therapy to be prior authorized on the same day as Comprehensive School and Community Treatment (CSCT) when provided after CSCT program hours and to clarify that when outpatient therapy is prior authorized on the same day as CSCT with an MSOTA therapist, the therapy must be for a qualifying SED diagnosis. The provider manual is posted on the CMHB web site for public review. The revisions are necessary so that the provider manual will be clear and accurate and easier to use.

An additional Montana Medicaid participation requirement is being proposed for all PRTFs. If adopted, the amendment would require each PRTF to complete periodic surveys about the treatment programs and special SED populations they serve. This is necessary to assure that youth are served by in-state PRTFs whenever possible. However, youth may need out-of-state PRTF services. The survey information is necessary in assisting decision-makers with determinations about where the youth's treatment needs can best be met when the youth cannot be served by an in-state PRTF.

Specific provisions of the new and amended rules are described below.

New Rule I

The requirements for receiving three in-state PRTF denials prior to reviewing an out-of-state PRTF certification for admission would be moved to New Rule I from ARM 37.88.910. The department is proposing to require a fourth in-state PRTF denial, from PRTF Waiver sites for youth from their service area starting July 1, 2011.

ARM 37.87.903

The department is proposing to update the provider manual effective date to May 13, 2011, and update the PRTF Prior Authorization for Out of State Facilities section of the provider manual to include a PRTF Waiver denial for youth in their service area, before they may be served by an out-of-state PRTF. Participation in the PRTF Waiver is based on parent or legal guardian approval. July 1, 2011 was selected as the effective date of the requirement to allow the new PRTF Waiver sites enough time to become established and develop service capacity. If these amendments are adopted, the TCM section will be updated to clarify the authorization and discharge requirements and nonbillable activities. The CBPRS section would be updated with regard to the length of authorization spans for youth in the PRTF Waiver receiving day treatment services. The Outpatient Therapy section would be updated to clarify that group therapy does not require prior authorization when provided on the same day as CSCT when provided after CSCT program hours and when outpatient therapy is prior authorized on the same day as CSCT and provided by an MSOTA therapist the focus of treatment must be a qualifying SED diagnosis. Other than requiring the PRTF waiver denial before a youth receives out-of-state PRTF services, the other changes in the provider manual are intended to be effective May 13, 2011.

ARM 37.87.1201

The department is proposing to add New Rule I to explain the purpose of the PRTF rules. This rule would be amended to add a cross reference to New Rule I.

ARM 37.87.1202

A definition for "care coordination" services in a PRTF would be added to subsection (1) of this rule. Care coordination was developed to assist the PRTFs in making specific service appointments for youth on discharge, to ensure communication between the PRTF and the parent or legal guardian and community providers and to assist the youth in transferring the clinical gains they make in the PRTF to the community. Care coordination must be provided by a community provider and is limited to monitoring and referral services.

ARM 37.87.1206

A new PRTF participation requirement would be added to (2) of this rule, completing periodic surveys. The survey results will be used to make decisions about where SED youth are placed for PRTF treatment.

ARM 37.87.1217

Active treatment designed to discharge the youth to a less restrictive level of care at the earliest opportunity would be required for facilities providing PRTF services. Individual and family therapy are not consistently being provided under the existing

rule. The department is proposing to add individual, group, and family therapy sessions to be provided regularly as clinically indicated.

Under the current rule, the youth's parent or legal guardian is not consistently being invited or given adequate notice to participate in the youth's treatment team meetings. The department believes parent or legal guardian participation is important in treatment and discharge planning and is proposing to add this requirement. The department is also proposing specific topics be reviewed at treatment team meetings to ensure treatment and discharge planning is active, integrated, and comprehensive.

ARM 37.87.1222

The Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Year of Age Fee Schedule (fee schedule) was recently moved to the children's mental health section, ARM 37.87.901. The old fee schedule rule is referenced in (1)(a) of this rule and would be updated to reflect the new fee schedule rule.

The facility-specific ancillary add-on rate described in this rule is being amended to include ancillary services from outside the PRTF. The proposed amendments would expand the list of services covered in the facility-specific ancillary rate. Outside services are not separately reimbursable by the Montana Medicaid program, with the exception of the day of admission to and discharge from the PRTF. Under federal regulations, PRTFs must reimburse outside providers for ancillary services a youth receives.

Care coordination services would be allowed on a limited basis to assist the PRTF in discharge planning. PRTF staff would not be reimbursed for care coordination services. Care coordination services would be allowed to provide a smooth transition for youth to community services and support the gains they made in the PRTF. If the PRTF works with a care coordinator to assist with discharge planning, additional requirements are proposed in (12). Care coordination may be provided by a TCM, in-training or licensed mental health professional. If the care coordination is provided by a TCM, the TCM agency may not, according to federal regulation, make other agency services contingent on receiving their TCM services.

PRTFs provide some practitioner services in-house. In such circumstances, only the professional component of these services will be reimbursed. Examples of practitioner services would include physician, psychiatrist, or licensed addiction counselor services.

Section (6) is modified for clarity. A supply of medication provided on discharge to treat the youth's psychiatric condition is included in the facility-specific ancillary rate. Section (7) would be added to identify how ancillary services provided in and by the PRTF will be reimbursed and the reimbursement rate and how ancillary services provided by outside providers will be reimbursed. Section (8) would be added to address third party liability and prior authorization requirements. Section (9) would

be added to specify what transportation may be reimbursed by the PRTF and may be included in their cost report. Section (10) would be modified to reflect the department's practice of reimbursing only in-state PRTFs for therapeutic home visit days. Section (12) would be added to indicate that care coordination services may not be contingent on the youth receiving other services from the agency providing care coordination; and to identify the care coordinator's documentation and treatment plan requirements.

ARM 37.87.1223

This rule would be amended to include reimbursement for additional outside services youth receive in a PRTF. The amendment in (1) would be applied retroactively to September 1, 2010.

The department is proposing changes to this rule to specify how out-of-state PRTFs are reimbursed. The out-of-state PRTF reimbursement rate would include all psychiatric, medical, and ancillary services needed by the youth according to their plan of care.

ARM 37.88.910

This rule would be repealed and most of its provisions moved to New Rule I. The reference to ARM 37.85.207(1) regarding services not provided by the Medicaid program would be repealed and not moved to New Rule I. ARM 37.87.1206 already requires PRTFs to follow rules generally applicable to Medicaid providers to participate in the Montana Medicaid program.

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: Gwen Knight, 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., April 18, 2011.

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/ John Koch
Rule Reviewer

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

Certified to the Secretary of State February 28, 2011

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 II and the repeal of ARM 37.34.206, 37.34.215, 37.34.216, and 37.34.221 pertaining to developmental disabilities eligibility rules for Medicaid only) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND REPEAL

TO: All Concerned Persons

1. On March 30, 2011 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 repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process 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 March 23, 2011 to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-9503; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I DEVELOPMENTAL DISABILITIES COMMUNITY SERVICES ELIGIBILITY: TERMINATION OF ELIGIBILITY FOR A PROGRAM (1) Funding for all individuals receiving developmental disability community services as of February 28, 2011 funded by state general funds will terminate on July 1, 2011.

(a) Individuals who apply for and are determined eligible for the Medicaid program will convert to Medicaid funded services.

(2) The department may terminate a person's eligibility for a particular program of developmental disabilities services if the person, in accordance with this subchapter and the rules pertinent to eligibility for that program, does not meet the eligibility requirements for that program. The particular programs of developmental disability services are:

(a) 37.34.207 Eligibility: Federally Funded Part H Family Education and Support Services;

(b) 37.34.208 Eligibility: Federally Funded Intensive Family Education and Support Services;

(c) 37.34.211 Eligibility: Children's Community Home Services;

(d) 37.34.212 Eligibility: Children's Summer Day Services;

- (e) 37.34.217 Eligibility: Federally Funded Intensive Adult Services; and
- (f) 37.34.222 Eligibility: Federally Funded Senior Services.
- (3) The department may terminate a person's eligibility for a particular program of services for which the person no longer meets eligibility criteria if:
 - (a) the program services or funding necessary to implement the person's service plan are unavailable from the program;
 - (b) the professional and other services necessary to implement the person's service plan are unavailable;
 - (c) the person does not cooperate in the eligibility determination process;
 - (d) the person does not participate in the planning for service delivery;
 - (e) the program services are no longer appropriate or cost effective in relation to the person's needs and there are no alternative program services available by which a service plan can be implemented to provide for the person's needs;
 - (f) the person's failure to receive or participate in the program services poses imminent risk to the health and safety of the individual or another person;
 - (g) behaviors of the person preclude the delivery of program services as provided for in the person's service plan;
 - (h) behaviors of the person necessitate that the person must be served in a setting that is not available through the program or in which the services of the program may not be delivered; or
 - (i) health status of the person necessitates that the person must be served in a setting that is not available through the program or in which the services of the program may not be delivered.

AUTH: 53-20-204, MCA

IMP: 53-20-203, 53-20-205, 53-20-209, MCA

NEW RULE II DEVELOPMENTAL DISABILITIES COMMUNITY SERVICES ELIGIBILITY

(1) For individuals who as of February 28, 2011 receive developmental disability community services and who are not Medicaid eligible, the department may, on or after July 1, 2011, convert funding for such services from state general funding to Title XX funding if such funding is available.

(2) The department may apply available Title XX funding under this rule to maintain the eligibility of an individual and to prevent the termination of services by using the method set forth in the documents dated February 28, 2011 entitled "Application for Title XX Funding" and "Directions for Title XX Funding." The department hereby incorporates those documents by reference. The documents are available from the Developmental Disabilities Program, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604, and at www.dphhs.mt.gov/dsd/ddp/forms.shtml.

(3) Individuals for whom neither Medicaid funding nor Title XX funding is available will be terminated from the developmental disability service program.

AUTH: 53-20-204, MCA

IMP: 53-20-203, 53-20-205, 53-20-209, MCA

4. The department proposes to repeal the following rules:

37.34.206 ELIGIBILITY: STATE FUNDED FAMILY EDUCATION AND SUPPORT SERVICES, is found on page 37-7253 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA
IMP: 53-20-203, 53-20-209, MCA

37.34.215 ELIGIBILITY: STATE FUNDED ADULT SERVICES, is found on page 37-7261 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA
IMP: 53-20-203, 53-20-209, MCA

37.34.216 ELIGIBILITY: STATE FUNDED ADULT INTENSIVE SERVICES, is found on page 37-7261 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA
IMP: 53-20-203, 53-20-209, MCA

37.34.221 ELIGIBILITY: STATE FUNDED SENIOR SERVICES, is found on page 37-7267 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA
IMP: 53-20-203, 53-20-209, MCA

5. REASONABLE NECESSITY: The Developmental Disabilities Program, Developmental Services Division, Department of Public Health and Human Services "the program" proposes converting services currently funded through the state general fund to Medicaid funding. This conversion process will result in savings to the state general fund of approximately 2.017 million dollars. The savings are necessary for the department to administer the program within budget limitations.

The program has the option of using state general fund monies to fully fund services for individuals, and in the past has exercised this option for individuals who were ineligible to receive Medicaid or who were unwilling to apply for Medicaid. In the case of individuals who were not eligible for Medicaid funding, the department adopted rules identifying service categories for adult as well as children's services which could be funded with state general fund monies.

However, the department has determined that it no longer can use state general fund monies to fund these services and meet its budget limitations. The department therefore proposes to repeal ARM 37.34.206, 37.34.215, 37.34.216, and 37.34.221. The repeal of these administrative rules will result in the termination of services in state-funded developmental disabilities programs. Individuals who are terminated from the services will have one of two options. Option one allows individuals who

are Medicaid eligible to convert to Medicaid waiver funded services. Option two may allow the individual to continue to receive developmental disability services and is contingent on Title XX funding being available. Access to those services will be determined based on an application for Title XX funding.

The department believes this is the best option to meet its budget limitations because it allows for the continued provision of services to most of the individuals who would be affected by this conversion to Medicaid funding. Where possible, the individuals' cost plans would be paid through the matching of state general fund monies to Medicaid monies allowing those individuals who can be converted to continue to receive needed services without interruption. At the same time, the state general fund liability is reduced by the amount of the matching funds.

The department has considered other options, including the elimination of other programs and services but has determined that those options would impose significant hardship. This option makes available Medicaid funded services for individuals who apply for and become Medicaid eligible, and for those not eligible for Medicaid a prioritized selection process for continuing services depending on available funding.

This rule is the culmination of an ongoing process. The process of converting individuals from general fund developmental disability programs to Medicaid is not new. In the past, the department has reviewed all available information and has converted to Medicaid funding large groups of individuals determined to be Medicaid eligible, and thereby realized significant savings to the state general fund liability, while continuing to provide services to those individuals without interruption.

New Rule I

This rule proposes to terminate developmental disability community services effective July 1, 2011 for individuals receiving those services as of February 28, 2011 if they are funded by state general funding in order to meet budget limitations. Services for individuals terminated pursuant to this policy may convert to Medicaid funding if, and only if, they apply for and are determined to be eligible for Medicaid.

By this rule the department also proposes to terminate services to individuals who, while initially determined to be eligible for developmental disabilities services, no longer meet the eligibility requirements. The rule describes the circumstances in which such individuals may become ineligible for and subject to termination of services by the department. This rule is necessary because the department will be providing services that are fully funded through Medicaid monies. Medicaid requires that all persons receiving services paid for by Medicaid must be and remain eligible for that program, and requires the department to repay any Medicaid funds expended on behalf of ineligible individuals. The department must have the authority to terminate services for any individuals who fail to meet or fail to continue to comply with Medicaid eligibility requirements in order to avoid having to repay Medicaid for funds expended on behalf of ineligible individuals.

The department anticipates this change will result in a net decrease in state general fund spending of 2.017 million dollars per year in this program which services 350 persons. The department estimates that 25-30 persons would not be eligible for Medicaid or Title XX funding under this change.

New Rule II

By this rule the department proposes to convert the funding source of an individual not eligible for Medicaid from state general funding to Title XX funding, if available, while the individual is receiving services. In this particular phase of fund conversion, a person's fund will be converted from state general fund to Title XX if such funding is available. The rule will assist both the department and the individual by helping prevent the loss of services if Title XX funding is available.

The rule is also necessary to allow the department to apply available Title XX funding to assist the individuals in maintaining eligibility and preventing termination of services, if possible. Some individuals currently in services will not be eligible for Medicaid but will still need services to remain in a community setting. Services for Title XX funded applicants are dependent upon availability of funding, and the department retains the authority to approve funding allocations for all Title XX funded applicants and service recipients. To ensure the department administers its program within budget limitations, the rule proposes to terminate services for individuals when Title XX funding is not available and those individuals are not Medicaid eligible.

Referenced in and incorporated by this new rule are two documents entitled "The Application for Title XX Funding" and "Directions for Title XX Funding" which have been developed to aid in the selection of those individuals who will be eligible to use Title XX funds if such funds are available and if the department approves funding allocations for Title XX applicants and service recipients. Copies of these documents are available from the Developmental Disabilities Program, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604 and at www.dphhs.mt.gov/dsd/ddp/forms.shtml.

The department anticipates this change will result in a net decrease in state general fund spending of 2.017 million dollars per year in this program which services 350 persons. The department estimates that 25-30 persons would not be eligible for Medicaid or Title XX funding under this change.

ARM 37.34.206

The department proposes to repeal this rule by which a child may be eligible for state-funded family education and support services because all family services will be funded with federal, Title XX, or Medicaid funds.

ARM 37.34.215

The department proposes to repeal this rule by which an individual may be eligible for state-funded adult services because all adult services will be funded with federal, Title XX, or Medicaid funds.

ARM 37.34.216

The department proposes to repeal this rule by which an individual may be eligible for state-funded adult services because all adult services will be funded with federal, Title XX, or Medicaid funds.

ARM 37.34.221

The department proposes to repeal this rule by which an individual may be eligible for state-funded senior services because all senior services will be funded with federal, Title XX, or Medicaid funds.

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: Gwen Knight, 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., April 18, 2011.

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/ Francis X. Clinch
Rule Reviewer

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

Certified to the Secretary of State February 28, 2011

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption NEW) CORRECTED NOTICE OF
RULES I through XIII, pertaining to) ADOPTION
approved construction techniques for)
fire mitigation)

TO: All Concerned Persons

1. On April 29, 2010, the Department of Labor and Industry (department) published MAR notice no. 24-320-245 regarding the proposed adoption of the above-stated rules, at page 980 of the 2010 Montana Administrative Register, issue no. 8.

2. On September 9, 2010, the department published the amended notice and extension of comment period on the proposed adoption of MAR notice no. 24-320-245 at page 1966 of the 2010 Montana Administrative Register, issue no. 17.

3. On February 24, 2011, the department published the notice of adoption of MAR notice no. 24-320-245 at page 237 of the 2011 Montana Administrative Register, issue no. 4.

4. In preparing replacement pages for the first quarter of 2011, a duplicate subchapter number was assigned to MAR notice no. 24-320-245 that had already been appropriated for a previous MAR. To avoid discrepancy, subchapter 320 will be amended as subchapter 321. The new rules, as adopted, will reflect the change as follows: NEW RULE I (24.321.301), NEW RULE II (24.321.302), NEW RULE III (24.321.303), NEW RULE IV (24.321.304), NEW RULE V (24.321.305), NEW RULE VI (24.321.306), NEW RULE VII (24.321.307), NEW RULE VIII (24.321.308), NEW RULE IX (24.321.309), NEW RULE X (24.321.310), NEW RULE XI (24.321.311), NEW RULE XII (24.321.312), and NEW RULE XIII (24.321.313).

5. The corrected replacement pages will be submitted to the Secretary of State's office on March 31, 2011.

/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 February 28, 2011

BEFORE THE BOARD OF LAND COMMISSIONERS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 36.11.402 and adoption of New) ADOPTION
Rules I and II regarding forest)
management rules for implementing)
conservation easements and habitat)
conservation plans)

To: All Concerned Persons

1. On November 26, 2010, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-147 regarding a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 2687 of the 2010 Montana Administrative Register, Issue No. 22.

2. The department has amended ARM 36.11.402 as proposed.

3. The department has amended New Rule I (36.11.470) and New Rule II (36.11.471) as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (36.11.470) LANDS SUBJECT TO A HABITAT CONSERVATION PLAN (1) For trust land parcels subject to a habitat conservation plan contractually entered by the department and the United States Fish and Wildlife Service (USFWS) pursuant to Section 10 of the Endangered Species Act (ESA), the department ~~must~~ shall implement the ~~conservation strategies identified in terms of~~ the habitat conservation plan.

(2) If there are conflicts between the conservation strategies in the habitat conservation plan and the administrative rules for forest management in this subchapter, the department ~~must~~ shall implement the terms of ~~follow the conservation strategies in the habitat conservation plan incidental take permit.~~

NEW RULE II (36.11.471) CONSERVATION EASEMENTS (1) For trust land parcels that have an appurtenant conservation easement that ~~addresses conservation strategies or~~ includes stipulations for forest management, the department ~~must~~ shall implement the terms ~~follow the conservation strategies or stipulations of the conservation easement.~~

(2) If there are conflicts between the ~~conservation strategies or~~ stipulations of the conservation easement and the administrative rules for forest management in this subchapter, the department ~~must~~ shall implement the terms of ~~follow the conservation strategies or stipulations of the conservation easement.~~

4. No written comments or oral testimony pertaining to the rulemaking were received.

/s/ Mary Sexton
MARY SEXTON
Director

/s/ Mark Phares
Mark Phares
Rule Reviewer

Certified to the Secretary of State February 28, 2011.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.89.103, 37.89.114,)
37.89.115, 37.89.125, 37.89.131,)
pertaining to provider reimbursement)
under the Mental Health Services)
Plan)

TO: All Concerned Persons

1. On December 9, 2010 the Department of Public Health and Human Services published MAR Notice No. 37-528 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2799 of the 2010 Montana Administrative Register, Issue Number 23.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State February 28, 2011

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.80.101, 37.80.102,)
37.80.201, 37.80.202, 37.80.205,)
37.80.301, 37.80.305, 37.80.306,)
37.80.316, and 37.80.501 pertaining)
to child care assistance)

TO: All Concerned Persons

1. On December 23, 2010, the Department of Public Health and Human Services published MAR Notice No. 37-531 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2925 of the 2010 Montana Administrative Register, Issue Number 24.

2. The department has amended ARM 37.80.101, 37.80.102, 37.80.201, 37.80.205, 37.80.301, and 37.80.305 as proposed.

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

37.80.202 FINANCIAL REQUIREMENTS FOR ELIGIBILITY; PAYMENT FOR CHILD CARE SERVICES; PARENT'S COPAYMENT (1) through (10) remain as proposed.

(11) The child care authorization and corresponding certification plan sets limits for child care benefits. Authorization and corresponding certification plans may change. The most recent authorization and corresponding certification plans are the effective plan. No further notice ~~is provided~~ must be provided when benefits expire at the end date of a authorization and corresponding certification plan.

(12) and (13) remain as proposed.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-212, 53-4-601, 53-4-611, MCA

37.80.306 LEGALLY CERTIFIED PROVIDERS: CERTIFICATION REQUIREMENTS AND PROCEDURES (1) Application to provide child care under this chapter as a legally certified provider may be made at the child care resource and referral agency handling the legally certified provider services.

(2) through (7) remain as proposed.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

37.80.316 REQUIREMENTS AND PROCEDURES FOR CHILD CARE PAYMENTS (1) Except as provided in (2) and (3), the provider will receive payment for child care services when the care is provided outside the child's home, ~~or w~~When the care is provided by a great-grandparent, grandparent, step-grandparent or step-great-grandparent, aunt, or uncle who resides in the parent or child's home or the care is provided in the parent or child's home. ~~If the parent and the provider both agree payment should be made to the parent,~~ payment may be made to the parent. (2) through (6) remain as proposed.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-711, 52-2-713, MCA

37.80.501 TERMINATION OF CHILD CARE ASSISTANCE (1) remains as proposed.

(2) When child care assistance is terminated due to the household's loss of eligibility, as specified in (1)(b), (c), (f), (g), or (i), notice of termination must be sent to both the parent and the provider at least 15 calendar days prior to the effective date of termination, except for (1)(f) in which a ten-calendar-day notice is required. No notice is required from the state when child care is terminated by the parent or provider, or for the other reasons specified in (1)(a), (d), (e), or (h).

(a) through (4) remain as proposed.

AUTH: 52-2-704, MCA

IMP: 52-2-704, MCA

4. The department has thoroughly considered the comments and testimony received. Most of the comments related to the Montana Child Care Manual which has been adopted and incorporated by reference. A summary of the comments received and the department's responses are as follows:

COMMENT #1: Regarding ARM 37.80.101(5), commenter states that: (1) Needs to clarify case open under parent/guardian since children can be on more than one open case in Child Care Under the Big Sky (CCUBS). (2) This would allow families to circumvent certain eligibility issues and receive multiple periods of child care assistance without following through on meeting requirements. The presumption of eligibility includes meeting child support guidelines. If found that the child support guidelines are not met, a case closes, but if there is no limit to the number of presumptive periods allowed, families could continue to avoid meeting child support requirements while receiving assistance for repeated spans of presumptive eligibility. This could be prevented by not permitting presumptive eligibility unless eligibility requirements that caused a previous case closure can be verified.

RESPONSE #1: "Households may benefit from 30 calendar days of presumptive eligibility, which is an option at any time an application is submitted and a case is not already open". 1) Presumptive eligibility is based on household eligibility and not children's need for care. If a child is on more than one case in CCUBS, one case

may be closed for any reason, and it will not affect the child's standing on the other case. 2) Presumptive eligibility requirements do not include meeting child support guidelines (Section 2-1, page 4 of 8). However, serial spans of presumptive eligibility are not acceptable. The department recognizes the need for additional language to prevent such occurrences. Therefore, the policy will also include the following language: "Should the Eligibility Specialist determine that the reason for not completing the application process is repeated in subsequent application submissions, the CCR&R Eligibility Specialist has the option of denying presumptive eligibility based on the apparent misuse of the benefit".

COMMENT #2: In ARM 37.80.102(15), "In loco parentis' means a person who lives with the child and has assumed the care and control of the child". Must this be recognized by authorities as a legal relationship? If so, how will it be verified?

RESPONSE #2: The applicant or participant must provide documentation such as those outlined in Section 2-2 "Household Requirements" as they pertain to the person designated "in loco parentis" in a court order, military, or other type of parenting plan. This definition and the subsequent procedures around its use has not changed from the prior policy; only its location in the list of definitions.

COMMENT #3: In regard to ARM 37.80.101(13)(b), a commenter asked, "The way this reads is mailed at least 15 days before the termination date, so a general correspondence that won't be mailed until the next business day would have to include extra days. For example, a notice created 1/14/11 before the 3-day weekend, would have to be dated for 2/2 to give 15 days from 1/18 when it should be mailed out of Helena. Other sections I found did not specifically say "mailed".

RESPONSE #3: The comment addresses a section of policy that is not a part of the current revisions submitted. However, the department agrees that the term "mailed" is inconsistent with other areas of the policy regarding the 15-calendar-day time frame. The policy wording "must be mailed" has been replaced with "will be given...".

COMMENT #4: The reference to Common Law Marriage in Section 2-2, on page 3, states "holding themselves out as 'married'". I believe they intended to mean "married".

RESPONSE #4: The department recognizes the typographical error and it has been corrected.

COMMENT #5: Regarding Section 2-2a of the manual, if compliance is not met after the 30 calendar day period, the case is closed until compliance is verified. A ten calendar day notice is required. All other notices have been changed to 15 calendar days. Is the ten day correct here?

RESPONSE #5: The department recognizes the error in not changing the working in this part of Section 2-2a to be in agreement with other areas of policy that the 15-

calendar-day time frame is required. Therefore, the language has been changed to "15 calendar day".

COMMENT #6: Regarding Section 2-3 of the manual, students are not eligible for Best Beginnings Child Care Scholarship during in-home study time. Beginning Child Care Scholarships to complete out-of-home lab work. Verification of this need will be necessary.

RESPONSE #6: The department has corrected the language to read as follows: Students are not eligible for Best Beginnings Child Care Scholarships during in-home study time. Students may use the Best Beginnings Child Care Scholarship to complete out-of-home lab work. The need for out-of-home lab work must be verified.

COMMENT #7: Why are we rounding down for bi-weekly factoring and not for the others?

RESPONSE #7: The department has not made a change to the prior use of 2.15 as the number used as part of the formula for figuring bi-weekly income. This figure is also used by the CCUBS database system in determining income eligibility. The effect of the difference between 2.15 and 2.17 has no detrimental effect on eligibility.

COMMENT #8: Section 2-5 the paragraph under the chart says "the last formula in Table (semi-monthly 13 week calculation should be used for the following". In the commenter's current manual it says the 13-week cannot be used for these. The commenter wonders if this is a typo or a policy change.

RESPONSE #8: The department recognizes the typographical error and it has been corrected to read "The last formula in Table 1 [Semi-monthly 13-week calculation] cannot be used for the following....".

COMMENT #9: Regarding Section 2-5, page 3, #1 on chart "Wage stubs must be consecutive". If consecutive wage stubs are not available, may year-to-date difference be used to determine missing stubs or are we denying families for this?

RESPONSE #9: The department has determined that, while year-to-date information may prove useful if only one consecutive wage stub is missing in determining what amount it was issued for, year-to-date information does not yield correct information if more than one wage stub is missing. Clarifying language has been added as follows: "If the applicant is unable to secure copies of wage stubs from their employer and more than one wage stub is missing, Eligibility Specialists should certify the applicant for 30 days until additional wage stubs can be produced. Consecutive wage stubs mean those which show earned income for the previous 60 days of work".

COMMENT #10: In Section 6-6, in Grace Period, last bullet under When a parent is approved: "The CCR&R Eligibility Specialist completes the Change Report form".

This was edited, originally said to mail the form to ECSB when we had used a different form. There is nothing for the Eligibility Specialist to complete on the current form.

RESPONSE #10: The department recognizes that the Change Report form has changed and the following language has been stricken from the policy: "The CCR&R Eligibility Specialist completes the Change Report form".

COMMENT #11: In ARM 37.80.202(11), "No further notice is provided when benefits expire at the end date..." This should read: "No further notice must be provided...". It should be acceptable to send a courtesy notice. The proposed amendment appears to prohibit it.

RESPONSE #11: The department agrees with the comment and the phrase "must be provided" will replace "is provided" as suggested.

COMMENT #12: In ARM 37.80.201(6)(a)(ii), is Child Care Certification Plan a Child Care Service Plan? This may cause adverse affect on families living far away from R&R where mailing in paperwork is their only option.

RESPONSE #12: The Child Care Certification Plan is not the same as the Child Care Service Plan. The distinction is clearly outlined in the CCUBS manual. The department only modified this rule to stipulate ten calendar days which is in coordination with TANF policy. Therefore, the department is making no additional modifications to this rule.

COMMENT #13: In ARM 37.80.306(1), "Application to provide child care under this chapter as a legally certified provider may be made at the nearest child care resource and referral agency". Early Childhood Services Bureau (ECSB) has chosen to centralize this service. Therefore, application should be made to that agency which was awarded the contract for services.

RESPONSE #13: The department agrees with the suggestion and will revise the wording as follows: "Application to provide child care under this chapter as a legally certified provider may be made at the child care resource and referral agency handling the legally certified provider services".

COMMENT #14: In ARM 37.80.316(1), does this mean any care provided by an In-Home Relative Caregiver can choose LCP payment status instead of LCI payment status, regardless of relationship to child?

RESPONSE #14: The provider term "In-Home Relative Caregiver" no longer exists in ARM or policy. ARM 37.80.316(2) of the rule stipulates: "Payment will be made to the parent when a care giver, who does not live with the parent or child, provides child care in the child's home". The department acknowledges that the rule is not in agreement with policy. Revision to the rule is as follows: "The provider will receive payment for child care services when the care is provided outside the child's home.

When the care is provided by a great-grandparent, grandparent, step-grandparent or step-great-grandparent, aunt, or uncle who resides in the parent or child's home or the care is provided in the parent or child's home, payment will be made to the parent".

COMMENT #15: In ARM 37.80.501(2), although 15 days is much better than ten, this will impact TANF sanctions. Are all programs changing to a 15 day notice in order to streamline work between agencies/department?

RESPONSE #15: The department acknowledges the error by including (2)(f) with the list of subsections to which the 15-calendar-day notice will now apply. Therefore, revisions to this section are as follows: "When child care assistance is terminated due to the household's loss of eligibility, as specified in (1)(b), (c), (f), (g), or (i), notice of termination must be sent to both the parent and the provider at least 15 calendar days prior to the effective date of termination, except for (f) in which a ten-calendar-day notice is required. No notice is required from the state when child care is terminated by the parent or provider, or for the other reasons specified in (1)(a), (d), (e), or (h)".

COMMENT #16: In Section 1-3, #5 of the manual, "Authorization of Service" means the span of time, number of hours per week, and schedule that an eligibility child is approved for care at a particular provider's facility. In addition, it indicates the monthly payment amount that the family is approved to receive for the indicated child at the indicated facility. The authorization of services is used to create the certification plan. This is confusing. The certification plan is the document that indicates the time span, hours, schedule, etc. for which a participating family has been approved for assistance.

RESPONSE #16: In Section 1-3, #5, the definition for Authorization of Service is correct.

- 1) Authorization of Services is a screen set up in the Child Care Under the Big Sky database system which authorizes child care services and stipulates the span of time, number of hours/week, and schedule that an eligibility child is approved for care at a particular provider's facility. In addition, it indicates the monthly payment amount that the family is approved to receive for the indicated child at the indicated facility.
- 2) Then, a certification plan is generated from the CCUBS system using the information from the Authorization of Services and distributed to the parent and provider. There is no certification plan without an Authorization of Services completed.

The wording is to clarify the relationship between the two.

COMMENT #17: In Section 1-3 #19, authorization plan should be based on the schedule of the parent applying for and receiving assistance since this parent's activities hours are used for eligibility determination and child care would only be covered while child is in custody of eligible parent. A majority of absent parents are

not in the same area, region, city or state as the custodial parent. Authorizing child care should be based on each situation from case to case, depending on the situation. Payment can be adjusted to meet the parenting plan split of child care costs but the authorizations may differ.

RESPONSE #17: The department believes this definition is clear and provides the support needed for parents meeting the criteria stipulated in the definition.

COMMENT #18: In Section 1-3 #26 of the manual, "Significant Other" means domestic partner, a person, not necessarily a spouse, who is in a co-habiting relationship. Is there a definition of co-habiting? Do roommates count or must it be a romantic relationship? Are best friends eligible? Cousins? Siblings?

RESPONSE #18: The department did not change this definition from previous versions of the manual. There is currently no definition for co-habiting.

COMMENT #19: In Section 1-4a, for consistency's sake, the commenter feels all notices and requests should be 15 days. Not only would it take care of the possibility of weekend and holiday issues but it would be easier for all workers involved to have one time limit to remember, no matter the program.

RESPONSE #19: The department appreciates the feedback and will take this under advisement as policy continues to be clarified or updated.

COMMENT #20: In Section 1-6 of the manual, "Needs to clarify verification" is for adults in household. Is it required for all adults in household or only the head of household/applicant?

RESPONSE #20: The department recognizes that clarification is needed. Therefore, additional language is added as follows: "All adults in the household who are identified as household members to establish eligibility for the Best Beginnings Child Care Scholarship must meet the residency requirements outlined in the policy".

COMMENT #21: Commenter was pleased with the added language to help prevent the fraudulent alteration of documents. Commenter would like to see more protections to help prevent collusion between scholarship recipients and child care providers.

RESPONSE #21: The department thanks the commenter and continues to look at provisions to assure proper use of funds and will take this under advisement as we continue to update and clarify policy.

COMMENT #22: In Section 1-10, there is a need to assure there are no TANF sanctions issued with the change from 10 to 15 day notices.

RESPONSE #22: The department agrees. ARM 37.80.501(2) has been revised back to the original language to keep the ten-calendar-day notice for TANF as

follows: "When child care assistance is terminated due to the household's loss of eligibility, as specified in (1)(b), (c), (f), (g), or (i), notice of termination must be sent to both the parent and the provider at least ~~ten~~ 15 calendar days prior to the effective date of termination except for paragraph (f) in which a 10-calendar-day notice is required." Revisions to section 1-10 in the manual are as follows: "When a parent, who was participating in a TANF funded cash assistance program or WoRC Program, is no longer a participant in that program and is not otherwise eligible for a Best Beginnings child care scholarship will be given a ten calendar day notice to remain consistent with the TANF closure policy".

COMMENT #23: In Section 2-1 of the manual, language has been added to ensure that completed application documents will be reviewed with three days of submission as part of the timely processing policy and, presumably "with" is a typographical error and "within" is the intended word.

RESPONSE #23: The department recognizes the typographical error and it has been corrected to read "within...". In addition, the department is revising the days of submission from three days to seven calendar days in order to allow for challenges with weekend and holiday scheduling not originally accounted for when the department proposed this change.

COMMENT #24: In Section 2-4a, more clarification is needed. It is a hardship to clients starting new businesses to not be eligible for assistance because they have no income. There needs to be a grace period for start-up. This program is meant to help parents become self-sufficient; not allowing a grace period for business start up is setting them up to fail. In addition, although it is very easy to take advantage of the Best Beginnings Child Care Scholarship through claiming self-employment, there are many instances where it is not being taken advantage of. For instance, a stylist may be renting a booth in a salon. If the stylist is not available to take walk-in clients, she will never be able to build a client base and become successful and self-sufficient. However, it is not feasible to keep her child(ren) with her while she waits for walk-in business.

RESPONSE #24: The department recognizes that a hardship may exist for those just starting. In Section 2-4a, page 4 of 8, it states: "If self-employment is too new for business records, a statement of estimated income and expenses must be submitted with the scholarship application. Eligibility will be determined for no more than a three month period to allow actual income and expense receipts to be gathered".

COMMENT #25: In Section 6-2, the original policy has this wording as well but it was 60 days from license approval. Which will it be, application date or approval date? I would also like to see policy regarding resuming LUP applications when a parent's case has closed but re-opened a couple months later. Policy is also needed regarding re-opening licenses due to failure to attend orientation. Does the provider need to re-apply or can they be re-opened with the orientation date as the effective date?

RESPONSE #25: The department has determined that the wording is misleading and will clarify that the 60 days of orientation must occur within 60 days from the date of approval. In addition, current policy states: "The CCR&R staff must offer the applicant the opportunity to attend orientation during the period background checks are being completed. This will allow time to complete background checks and reduce the incidence of certifications being terminated because an Legally Certified Providers (LCP) or Legally Certified In-home Provider (LCI) failed to complete orientation within 60 days of approval". Current policy also allows for LCP/LCI certifications to be issued for 12 months reducing the number of closures and re-openings. The department will continue to review and update policy as the centralization of the LCP/LCI certification process completes the transition period.

COMMENT #26: Section 6-9 of the manual is not worded well. A case cannot be closed and then placed in pending closure status. Care may be terminated without closing the case. In addition, CCUBS does not required a case to be open, resumed, pending, or in pending closure status for overpayment payments to be recorded on the case event summary screen. A case may be closed in CCUBS and these payments can still be entered. Keeping cases in a pending closure status solely for the sake of entering overpayment payments skews stats and reports.

RESPONSE #26: The department acknowledges that CCUBS currently does not have a "pending closure" status option which will streamline this procedure. Enhancements in CCUBS will allow for this option. Until then, the current policy language "If the case is to be closed and an overpayment balance remains, put the case in pending closure status to allow for entry of payments on the overpayment tab" will remain.

COMMENT #27: In regard to Section 2-4a of the manual, as the Director of an agency that administers the child care assistance/scholarship program as a DPHHS ECSB contractor, I am concerned that the proposed rules related to self-employment which require that the self-employment wage equal the federal minimum wage may present a hardship for some families. Many businesses are not initially profitable and yet will be in time. This is not limited to business ventures started by individuals with low income. I encourage ECSB to consider alternatives while still seeking to streamline eligibility determination for self-employed individuals.

RESPONSE #27: The department recognizes that the initial requirement to meet minimum wage may pose a challenge for some self-employed families. The following additional language has been added to ameliorate that challenge: "Self-employed applicants at the time of application may choose one of three expense options: 1) 35% of their gross income for expenses, 2) actual expenses as indicated on the Self-Employment Income Verification Form, or 3) no expenses. Only one option may be selected with the application. If option one (1) is selected by the applicant and they are determined to be ineligible, the applicant may request to submit expense receipts instead. If applicants select option two (2) or (3) and are found ineligible, they may not then request option one."

5. The department intends to make the revisions to the Montana Child Care Manual and to apply these rules retroactively to February 1, 2011.

/s/ Lisa A. Swanson
Rule Reviewer

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

Certified to the Secretary of State February 28, 2011

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.108.507 pertaining to)
Components of Quality Assessment)
Activities)

TO: All Concerned Persons

1. On January 13, 2011 the Department of Public Health and Human Services published MAR Notice No. 37-532 pertaining to the proposed amendment of the above-stated rule at page 36 of the 2011 Montana Administrative Register, Issue Number 1.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

4. The department intends the rule amendment to be applied retroactively to January 1, 2011. There is no negative impact to the affected health insurance companies by applying the rule amendment retroactively.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State February 28, 2011

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.20.107, relating to the)
valuation methods for commercial)
properties)

TO: All Concerned Persons

1. On October 28, 2010, the department published MAR Notice No. 42-2-854 regarding the proposed amendment of the above-stated rule at page 2544 of the 2010 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 17, 2010, to consider the proposed amendment. Ms. Mary Whittinghill, President of the Montana Taxpayers Association, appeared and testified at the hearing. Oral testimony received at the hearing is summarized as follows along with the response of the department.

COMMENT NO. 1: Ms. Whittinghill asked for clarification on 15-8-111, MCA. Specifically, she asks why the department feels it is necessary to list one section out of their rules and refer to one section of the IAAO Standards, when these standards are used throughout. She questions why someone wouldn't be able to locate answers to their questions by looking at the statute referencing market value standard along with the previously adopted Montana Appraisal Manual. Would they now need to go to the rules for those answers?

RESPONSE NO. 1: The department appreciates Ms. Whittinghill's comments on this rulemaking action. This rule amendment is being adopted in response to discussions with, and a commitment made to, the legislative Revenue and Transportation Interim Committee. It addresses the department's decision-making practices with regard to the specific issue of the choice of methods for valuing each commercial property. We are amending ARM 42.20.107 in order to make clear that the department follows the IAAO appraisal standards in choosing among alternative appraisal methods.

3. The department adopts ARM 42.20.107 as proposed.

4. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Locate "Legal Resources" in the left hand column, select the "Rules" link and view the options under the "Notice of Proposed Rulemaking" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be

aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State February 28, 2011

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.19.401, 42.19.406, and)
42.19.501, relating to property tax)
assistance programs for the disabled)
veterans and elderly homeowners)

TO: All Concerned Persons

1. On October 28, 2010, the department published MAR Notice No. 42-2-855 regarding the proposed amendment of the above-stated rules at page 2546 of the 2010 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 17, 2010, to consider the proposed amendment. No oral comments were received during the hearing. Written comments received at, and subsequent to, the hearing are summarized as follows along with the response of the department:

COMMENT NO. 1: Ms. Karen Powell, Chairwoman of the State Tax Appeal Board, provided written comments on ARM 42.19.401(9) and 42.19.501(9) stating that these new sections impermissibly attempt to exert department authority over the State Tax Appeal Board (STAB) by attempting to limit which appeals the STAB may accept, and specifically referenced the language "In no case shall an appeal be accepted more than 37 days after the date of the department's determination letter." Ms. Powell explained that this is in contravention to statute, which sets out that an appeal may be filed with the board within 30 days after the taxpayer receives the notice (15-2-302, MCA).

Ms. Powell further commented that the authorization the department lists for this amendment fails to reference the filing statutes and also fails to provide any authority for the department to control the determination of the STAB and, she referenced 15-2-101, MCA, in her explanation that STAB has sole jurisdiction over tax appeals and is the proper entity to determine which appeals may qualify for acceptance; and that it is the duty of the STAB to hear appeals from decisions of the department. She added that it is improper for the department to attempt to usurp the authority of the agency which reviews its determinations, and commented that the STAB strongly opposes this language and requests the removal of new section 9 from both of these rules.

RESPONSE NO. 1: The department appreciates and agrees with Ms. Powell's comments. To address her concerns, the department has stricken the portion of the rules that reads "In no case shall an appeal be accepted more than 37 days after the date of the department's determination letter." It was never the intent of the department to usurp the STAB's authority with these rule amendments. The department apologizes to the STAB for creating any perception in that regard.

COMMENT NO. 2: Ms. Powell commented that there is an additional conflict within the current notification methods and deadlines used for the property tax assistance program (PTAP). She cited an example that while April 15 filing requirements are set out in statute for the PTAP, a taxpayer may also receive notification of the effects of the PTAP application on their assessment notice; and the same scenario may occur with the disabled veterans program (DAV). She explained that because there may also be a change listed on the assessment notice, there may be some ambiguity as to whether that will trigger an additional appeal process. She added that the STAB specifically makes no determination about this notification matter, but want to notify the department of this potential issue. She further stated that the STAB has been notified that taxpayers may be filing AB-26s relating to PTAP filings, after receiving an assessment notice.

RESPONSE NO. 2: The department currently notifies the taxpayers via decision letter. Additionally, however, the taxpayer may also receive an assessment notice, as the department is required to provide one whenever a change in classification occurs on a taxpayer's property. For example, if the taxpayer qualifies for a benefit percentage that differs from the prior year, the result would be a change in class code and an assessment notice is generated. However, because the letters are the department's final agency decision regarding the application, they are the department's official notice to taxpayers on the matter. A taxpayer's right to appeal begins to accrue with this notice of a final agency decision. To address Ms. Powell's concerns and eliminate taxpayer confusion, we are currently amending the language in the letters and on the assessment notices.

COMMENT NO. 3: Relative to ARM 42.19.401(7), Ms. Powell commented that the department's requirement of low-income taxpayers to submit documentation to provide the lack of income is a concern, and suggested that it would be better to develop a mechanism to allow certain low or no income taxpayers to attest or certify to the lack of income, rather than require them to provide documentation.

RESPONSE NO. 3: Because the PTAP is income-based, when one taxpayer qualifies for and receives property tax relief, a portion of their property tax burden shifts to other taxpayers. To ensure that a taxpayer is qualified, and at the same time administer this income-based relief program in a manner that is fair to all who pay property tax in Montana, it is important that the department obtain verifiable information upon which to base its qualification determinations.

COMMENT NO. 4: Ms. Powell also commented that for each of the rules in this notice, the department proposes requiring the application to be received before April 15, yet the applications require that the income tax filings also be submitted, and income tax filings are considered timely if postmarked by April 15. She pointed out that because the department is requiring property tax exemptions to be received prior to the time required for income tax filings, there may be instances where taxpayers have not completed the required income tax forms before the deadline for property tax filings. Ms. Powell added that this is not the best practice and may prevent eligible taxpayers from timely filing their application.

RESPONSE NO. 4: Ms. Powell is correct. Many taxpayers do request extensions for the filing of their income tax returns. As a result, the department has withdrawn the proposal to change the requirement for a PTAP or DAV application to be received by April 15 and amending the rule to continue the practice of requiring the application to be postmarked by April 15, which was in the current rules prior to these amendments. That change will eliminate the conflict that Ms. Powell noted concerning applications being due on April 15.

COMMENT NO. 5: Ms. Mary Whittinghill, President of the Montana Taxpayers Association, provided a written comment on the language in ARM 42.19.401(1)(b), recommending that "January 1" be removed and replaced with "immediately prior to" or some other similar language.

RESPONSE NO. 5: The department appreciates Ms. Whittinghill's comments. Because the PTAP has the effect of shifting a qualifying individual's property tax burden to others, it is important that those individuals apply for the benefit in a timely manner. Because some individuals may not be able to timely apply for property tax assistance, as a result of a medical condition for example, the language of ARM 42.19.401(1)9(b), allows the department to review certain applications that are not timely received. It is the applicant's responsibility to provide documentation that he or she could not have filed an application at any time between January 1 and April 15 of a given year. The department has amended the rule to reflect Ms. Whittinghill's concerns.

COMMENT NO. 6: Mr. Rich Bechtel, Director of the Office of Taxpayer Assistance at Montana Department of Revenue, provided written comments on this rulemaking action in his role as an advocate for taxpayers, and in this case specifically for senior citizens and disabled veterans. He commented that he has seen many instances where these taxpayers have had difficulty understanding and complying with the eligibility process for the department's PTAP, and provided two recommendations.

In reference to ARM 42.19.401(1)(b) and 42.19.501(1)(b), Mr. Bechtel recommended inserting a new sentence which reads "The department may waive this requirement and renew eligibility on a case-by-case basis where an applicant participated in the program in the prior year, would meet income requirements in the current year, and confusion due to infirmity may have arisen." His reasoning, he explained, is that the April 15 application deadline, which is also the due date for income tax filing, can cause confusion with Montana's elderly homeowner and renter tax credit, which applies to the income tax but not the property tax. He added that, despite the department's attempt to distinguish between these programs by mailing out assistance program applications in January, many taxpayers still have misplaced or not understood the applications and not applied in a timely fashion. Mr. Bechtel further commented that he recognizes the need for deadlines, but added that as people simply become infirm, not necessarily ill or bedridden, they may find it difficult to comply with such programs.

Mr. Bechtel also commented that vigor in all its forms can decline as

individuals age and confusion can easily arise as a result, yet the need for the exemption often increases in retirement while the ramification for not paying property taxes can lead to the loss of a home and he suggested the department needs flexibility to better serve taxpayers and recognize the realities they may face.

Additionally, Mr. Bechtel suggested that in some cases, taxpayers do not realize that they have failed to qualify or reapply for the assistance program until they receive their property tax bill from the county treasurer, which is long after the April 15 application deadline.

RESPONSE NO. 6: The department appreciates Mr. Bechtel's comments on these rules and further understands and agrees with many of his suggestions. The department has added the waiver language that he recommended, along with additional text explaining that the taxpayer will be responsible for providing a written statement, plus any documentation, explaining their circumstances upon which the department may base its determination.

The rules allow for an extension to July 1 if certain circumstance exist and this time period is necessary because of the timing of the annual certification process for submitting property tax values to local governments. The department will take under consideration the request to extend the application period beyond July 1 for unique circumstances in a potential future rulemaking process.

COMMENT NO. 7: Mr. Bechtel further recommended ARM 42.19.401(8) be amended by adding the sentence "A decision to deny such an application due to inability to provide sufficient information will be reviewed by a supervisor" to the end; and, similarly, ARM 42.19.501(4) be amended by inserting the sentence "A decision to deny an application by a non-filer due to the inability to provide sufficient information will be reviewed by a supervisor," also at the end.

Mr. Bechtel included comments that both rules are a wonderful improvement over current practice, in that it is very difficult to prove a negative, as in the case of providing a lack of income, and the new rules require instead the submission of documents in support of the income that is reported. He noted, however, that this can still prove to be a challenge for citizens who earn income below the federal and state income tax thresholds and, as a result, do not file income tax returns.

RESPONSE NO. 7: The department appreciates Mr. Bechtel's concerns and recommendations. In order to administer this income-based relief program in a manner that is fair to all who pay property tax in Montana, the department must have the opportunity to review the applying taxpayer's income. The department recognizes that providing documentation may be difficult in instances where a return has not been filed and, therefore, provides a list of alternative sources of documentation the taxpayer can use to identify and report his or her income.

The department understands that there are unique situations where documenting income may be difficult and in those cases, the application shall be reviewed by an area manager or regional manager for a final determination.

3. Based on the comments received, and the proposed edits presented at the hearing by the Property Assessment Division, the department amends ARM

42.19.401, 42.19.406, and ARM 42.19.501 as follows, stricken matter interlined, new matter underlined.

42.19.401 PROPERTY TAX ASSISTANCE PROGRAM (1) The property owner of record or the property owner's agent must make annual application through the local department office, in order to receive the benefit provided for in 15-6-134, MCA. An application must be filed on a form available from the local department office on or before April 15 of the year for which the benefit is sought. Applications ~~received~~ postmarked after April 15 will not be considered for that year unless ~~the department determines the following conditions were met:~~

(a) the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness; ~~and~~

(b) ~~these~~ the taxpayer can demonstrate the impediments must be demonstrated to have listed above, while not necessarily continuous, existed at significant sufficient levels from in the period of January 1 of the current year to the time of application, but in no case later than July 1 to April 15 to prevent timely filing of the reporting form. The department may waive this requirement, on a case-by-case basis, and upon receipt of a written statement, plus any documentation explaining circumstances where:

(i) an applicant who participated in the program in the prior year, would meet income requirements in the current year; and

(ii) confusion due to infirmity may have arisen; and

(c) The department may waive this requirement on a case-by-case basis, if:

(i) the applicant qualified for the program in the prior year; and

(ii) upon receipt of a written statement, plus any documents explaining the circumstances of why the applicant failed to meet the deadline.

(2) ~~Telephone extensions and written extensions will be granted through~~ The department may accept and process the application and proof of income if submitted or postmarked no later than July 1 of the current year for the above-listed reasons which benefit is sought. Willful misrepresentation of facts pertaining to income or the impediments that prevent timely application filing will result in the automatic rejection of the application.

(3) The applicant is required to list total household income from all sources, excluding losses, depletion, and depreciation, that is attributable to all owner occupants who are applying for the assistance. Total household income includes, but is not limited to:

~~(a) net business income modified to exclude losses, depletion, and depreciation; and~~

~~(b) income of all other owners of the property.~~

(4) Income includes, but is not limited to:

(a) wages, salaries, and tips;

(b) taxable interest;

(c) ordinary and qualified dividends;

(d) alimony received;

(e) capital gains;

(f) other gains;

(g) taxable refunds, credits, or offsets of state and local income taxes;

- (h) business and/or farm income excluding losses, depreciation, and depletion;
- (i) taxable amounts of IRA distributions, pensions, and annuities;
- (j) rent, royalty, partnership, S corporation, and trust income before subtracting losses, depletion, or depreciation;
- (k) unemployment compensation;
- (l) taxable amounts of social security benefits; and
- (m) other income reported or reportable on the tax return or returns required by Title 15, chapter 30 or 31 of the Montana Code Annotated.

(5) through (7) remain as proposed.

(8) The department will review the application and any supporting documents. The department may review income tax records to determine accuracy of information. The department will approve or deny the application. A decision to deny such an application due to the inability to provide sufficient information will be forwarded to and reviewed by an area manager or regional manager.

(9) The department will advise the applicant of its decision in writing. The date the taxpayer receives the department's determination shall be calculated by adding seven days to the date on the determination letter. An applicant aggrieved by the department's determination may appeal the determination to the State Tax Appeal Board within 30 days of receipt as defined in this section. ~~In no case shall an appeal be accepted more than 37 days after the date of the department's determination letter.~~

(10) remains as proposed.

(11) For purposes of this benefit, the land beneath and immediately adjacent to the residence shall not include any separately described or assessed parcels of land, regardless of whether the parcel is contiguous with or adjacent to the parcel upon which the qualified residence is located. In those cases in which the qualified residence is a mobile home that is assessed separately from the land, the benefit will apply to the land upon which the qualified residence is located only if the land and the mobile home are owned by the applicant.

AUTH: 15-1-201, MCA

IMP: 15-6-134, MCA

42.19.406 EXTENDED PROPERTY TAX ASSISTANCE PROGRAM

(1) through (3) remain as proposed.

(4) In order to receive the tax rate adjustment, the qualified residence property owner of record, the qualified residence property owner's agent, or a qualifying entity of a qualified residence must annually complete and forward an application to the Department of Revenue, P.O. Box ~~6469~~ 8018, Helena, Montana 59604-~~6469~~ -8018. Beginning with tax year 2010 and all subsequent tax years, the completed application must be ~~received by the department on or before~~ postmarked no later than April 15 in order for an applicant to receive the tax rate adjustment for the year the tax rate adjustment is sought. Applications ~~received~~ postmarked after April 15 will not be considered for the tax rate adjustment provided for under this section- unless:

(a) the applicant was unable to apply for the current year due to

hospitalization, physical illness, infirmity, or mental illness;

(b) the taxpayer can demonstrate the impediments listed above, while not necessarily continuous, existed at sufficient levels in the period of January 1 to April 15 to prevent timely filing of the reporting form. The department may waive this requirement, on a case-by-case basis, and upon receipt of a written statement, plus any documentation explaining circumstances where:

(i) an applicant who participated in the program in the prior year, would meet income requirements in the current year; and

(ii) confusion due to infirmity may have arisen; and

(c) The department may waive this requirement on a case-by-case basis, if:

(i) the applicant qualified for the program in the prior year; and

(ii) upon receipt of a written statement, plus any documents explaining the circumstances of why the applicant failed to meet the deadline.

(5) through (15) remain as proposed.

(16) The department will advise the applicant of its decision in writing. The date the taxpayer receives the department's determination shall be calculated by adding seven days to the date on the determination letter. An applicant aggrieved by the department's determination may appeal the determination to the State Tax Appeal Board within 30 days of receipt as defined in this section.

(16) through (19) remain as proposed but are renumbered (17) through (20).

AUTH: 15-1-201, MCA

IMP: 15-6-193, MCA

42.19.501 PROPERTY TAX EXEMPTION FOR QUALIFIED DISABLED VETERANS

(1) The property owner of record or the property owner's agent must make application to the local department office, in order to obtain a property tax exemption. An application must be filed, on a form available from the local department office, on or before April 15 of the year for which the exemption is sought. Applications received postmarked after April 15 will not be considered for that tax year unless the agent of the department determines the following conditions are met:

(a) the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness; ~~and~~

~~(b) these the taxpayer can demonstrate the impediments must be demonstrated to have~~ listed above, while not necessarily continuous, existed at significant sufficient levels from in the period of January 1 of the current year to the time of application, but in no case later than July 1 to April 15 to prevent timely filing of the reporting form. The department may waive this requirement, on a case-by-case basis, and upon receipt of a written statement, plus any documentation explaining circumstances where:

(i) an applicant who participated in the program in the prior year, would meet income requirements in the current year; and

(ii) confusion due to infirmity may have arisen; and

(c) The department may waive this requirement on a case-by-case basis, if:

(i) the applicant qualified for the program in the prior year; and

(ii) upon receipt of a written statement, plus any documents explaining the circumstances of why the applicant failed to meet the deadline.

~~(2) Telephone extensions and written extensions will be granted through~~ The department may accept and process the applications and proof of income if submitted or postmarked no later than July 1 of the current year for the above-listed reasons which the benefit is sought. Willful misrepresentation of facts pertaining to income or the impediments that prevent timely application filing will result in the automatic rejection of the application.

(3) The following documents must accompany the application:

(a) letter from the Veterans' Administration which verifies that the applicant is currently rated 100% percent disabled or is paid at the 100% percent disabled rate. If the disability is permanent, the letter need be submitted only once;

(b) copies of the applicant's completed federal income tax return for the preceding calendar year, including all schedules;

~~(c) if applicable, an extension of time to file the applicant's income tax return, along with the completed individual estimated income tax worksheet (ESW) for the tax year immediately preceding the year of the application~~ the applicant has applied for an extension of time to file the applicant's income tax return, the applicant must provide a completed individual estimated income tax worksheet (ESW) for the tax year immediately preceding the year of the application; and

(d) if the applicant is not required to file an income tax return, the applicant must provide documentation that identifies the applicant's income. Examples of the required documentation include, but are not limited to:

- (i) social security statements;
- (ii) pension statements; or
- (iii) bank statements.

(4) The department or its agent will review the application and the supporting documents and may perform a field evaluation. The department or its agent will approve or deny the application. A decision to deny such an application due to the inability to provide sufficient information will be forwarded to and reviewed by an area manager or regional manager.

(5) and (6) remain as proposed.

(7) The department will advise the applicant of its decision in writing. The date the taxpayer receives the department's determination shall be calculated by adding seven days to the date on the determination letter. An applicant aggrieved by the department's determination may appeal the determination to the State Tax Appeal Board within 30 days of receipt as defined in this section. ~~In no case shall an appeal be accepted more than 37 days after the date of the department's determination letter.~~

(8) through (12) remain as proposed.

AUTH: 15-1-201, MCA

IMP: 15-6-211, MCA

4. Therefore, the department amends ARM 42.19.401, 42.19.406, and 42.19.501 as shown above.

5. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Locate "Legal Resources" in the left hand column, select the "Rules" link and view the options under the "Notice of Proposed Rulemaking" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State February 28, 2011

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New)
Rule I (42.21.165) and amendment of) NOTICE OF ADOPTION AND
ARM 42.21.140 and 42.21.158) AMENDMENT
relating to property taxes)

TO: All Concerned Persons

1. On October 28, 2010, the department published MAR Notice No. 42-2-856 regarding the proposed adoption and amendment of the above-stated rules at page 2554 of the 2010 Montana Administrative Register, issue no. 20.

2. A public hearing was held on November 17, 2010, to consider the proposed adoption and amendment. Oral and written testimony received at and subsequent to the hearing is summarized as follows along with the response of the department:

COMMENT NO. 1: Ms. Mary Whittinghill, President, Montana Taxpayers Association, commented on the department's recommended revisions to the original proposal language provided at the hearing, that she likes the consistent use of the word "postmark" and that the estimating language is also okay, particularly that it spells it out and splits it into two rules.

Ms. Whittinghill also commented on the department's additional proposed new language for New Rule I (5)(a) and (b), which addresses a taxpayer's inability to timely comply with reporting requirements under certain circumstances, and asked where, in other parts of the administrative rules, has it ever mentioned that these conditions existed at significant levels from January 1 to February 15. She further explained that, in her view, a lot of people will wait until right before the form is due to submit it, so to imply that they have to be sick the entire period doesn't make sense and would be a difficult level for the taxpayer to achieve. She suggested the department change that language.

RESPONSE NO. 1: The department appreciates Ms. Whittinghill's comments on these rules. The language in New Rule I (5)(a) and (b) is consistent with language in ARM 42.19.401 and 42.19.501 and is intended to make an allowance for taxpayers who have missed the reporting deadline due to illness. In response, the department has modified the language in the rules to address Ms. Whittinghill's concerns regarding the need for the illness to have existed at significant levels from January 1 to February 15.

COMMENT NO. 2: Ms. Whittinghill also commented on the personal property reporting forms. She first asked why the date is being changed from March 15 to February 15 and testified that, with the exception of livestock, as she recalls the reason the March 15 date was chosen was to provide consistent dates for taxpayers to submit their reports.

Ms. Whittinghill questioned the department's attempt to gather information on all personal property in the state through this means. She stated that initially, when there was a new business that filed with the Secretary of State, that there was some coordination with the department in order to locate the new taxpayer and notify them of their potential filing obligation. She further explained that because there isn't really a real property form, per se, the department uses this as an attempt to work as a business register under the One Stop Licensing concept to get the necessary reports to the taxpayer so they know what their reporting requirements are.

Ms. Whittinghill additionally commented that, if it's not a date certain anymore, just whenever the department decides they want a full population again (and that she doesn't know if this is based on the Governor's new announcement to exempt personal property and wanting more accurate information), but that it is not consistent with how people have understood the process to be since the personal property was first exempt to a certain level. She also commented that the whole purpose was to reduce the reporting requirements of businesses throughout Montana.

Ms. Whittinghill further commented that she would like to know if the department plans to increase its efforts to correspond with the affected taxpayers so they will have some type of notification about this change, because they are not typically going to be looking for this form if they have not been reporting this in the past. Further, there would need to be significant advertising to let people know they have this filing obligation and this additional correspondence would be a cost to the Property Assessment Division, and also added that the March 15 and February 15 is going to be confusing.

RESPONSE NO. 2: Stating a definite due date of February 15 makes the taxpayer's reporting responsibility clear. In the current rule, the deadline, "30 days from the date of receipt of any request for information," is ambiguous. Without the rule change it is impossible for the department to determine, with certainty, when a taxpayer received an item of correspondence and, likewise, the taxpayer may not know for certain when they received it. This could leave the taxpayer unsure of their responsibility. The amendments in (4) and (5) provide the taxpayer with:

- a clearly stated reporting deadline;
- relief from the burden of requesting a filing extension;
- a notice if they have missed a filing deadline;
- an explanation that they have until March 15 to file and avoid penalty; and
- an explanation that reporting forms postmarked after March 15 would be assessed a penalty.

As written, the current rule adopted in 2009 stated the department's plan to require a report of all class eight property in 2011. That full report is necessary to assist both the taxpayer and the department in ensuring that the legislatively established threshold for personal property valuation is complied with. A biennial reporting requirement would not be overly burdensome to the taxpayer, would keep taxpayers informed of, and familiar with, the reporting process and would enhance equity by keeping assessment records current. Taxpayers who haven't had a reporting obligation for several years can easily forget or neglect to report new

equipment.

Because the department adopted a rule in 2009 stating its intention to begin reporting requirements in 2011, the rule amendment that implements that intent on a biennial basis is unrelated to any recent events.

The department took many steps to inform business owners of this reporting obligation in 2011. For instance, the department provided informational flyers to all local Department of Revenue offices for display and distribution; utilized statewide radio stations to broadcast public service announcements; and published notices in newspapers statewide.

COMMENT NO. 3: Ms. Whittinghill further commented that she had recently visited with a member of the Montana Stockgrowers Association in regards to determining if this livestock reporting form could become the responsibility of the Department of Livestock and, because they expressed interest in pursuing this, she encouraged them to further visit with the Department of Revenue about it.

RESPONSE NO. 3: The department is definitely open to considering a move of these responsibilities to the Department of Livestock, where that agency would then obtain and maintain all livestock reporting.

COMMENT NO. 4: In addition to her oral testimony, Ms. Whittinghill provided a written comment at the hearing that the reporting period is not sufficient for industrial or large commercial properties.

RESPONSE NO. 4: The change in the reporting deadline from February 15 to March 15 will not impact personal property reporting for industrial property. Commercial property, such as chain stores, already comply with this class eight property filing requirement. Thus, this rule does not create a change for either industrial or large commercial properties.

COMMENT NO. 5: Mr. Harold Blattie, Executive Director, Montana Association of Counties (MACo), provided written comments. He stated that, under current ARM 42.21.158, taxpayers with class eight property valued under \$20,000 in the aggregate are not required to report that personal property, and that under the proposed amendments, it appears that taxpayers would be required to itemize all class eight property, including the property in the aggregate valued at less than \$20,000. He asked if it is the department's intent to require reporting of all class eight property, including property that is specifically exempt under 15-6-219, MCA, or only property that is not specifically exempt, and offered the following three examples:

Example 1. A taxpayer owns \$40,000 of hand tools. Under 15-6-219(2) MCA, the first \$15,000 is exempt. Is the department's intent that a taxpayer report only those tools having a value over \$15,000, or all hand tools?

Example 2. 15-6-219(3), MCA, exempts bicycles. Would bicycle owners now be required to report them if used as a part of a business?

Example 3. 15-6-219(3), MCA, exempts household goods and furniture. Would household goods and furniture now be subject to reporting if owned by a

"business" pursuant to 15-6-122 MCA? Many farms and ranches own household furnishings such as appliances. Would those now be subject to reporting by virtue of ownership pursuant to 15-6-122, MCA?

Mr. Blattie stated that while the rule appears to be well intentioned, it also appears that the proposed rule would create significantly increased reporting of items that are exempt from taxation, and asked if taxpayers will be required to list hand tools down to each wrench, socket and saw, etc.

In citing 15-8-301(2), MCA, Mr. Blattie recommended that the proposed rule be amended to include a minimum value for property to be reported, such as individual tools valued at less than \$500 or \$1,000, to reduce the reporting burden on taxpayers and the administrative burden on the department. He stated that without a minimum value for each item, it appears the department would spend dollars chasing pennies.

RESPONSE NO. 5: The department appreciates Mr. Blattie's comments. It is important to note that current practices are not changing. ARM 42.21.158(2), as currently written, provides language allowing for the department to require a report of all class eight properties for tax year 2011 and, if judged necessary, for additional future tax years. This includes property that is currently valued below the \$20,000 threshold. Property that is specifically exempt under 15-6-219, MCA, only needs to be reported to the extent that it enables the department to determine whether or not it meets the exemption definitions. The following are the department's responses per example:

Example 1. All hand-held tools must be reported so that the department can determine the market value of the property, 15-8-301(2), MCA. This is current practice.

Example 2. The exemption in 15-6-219(4), MCA, is specific to bicycles used by the owner for personal transportation. If the bicycles are business equipment, for example, rented to the public or used for making deliveries, they should be reported. This is also current practice.

Example 3. Many types of household goods and furniture can also be found in businesses. Refrigerators and lounge chairs for example. The exemption in 15-6-219(3), MCA, applies to items used by the owner for personal and domestic purposes or for furnishing the family residence. Household goods and furniture that are owned by a business and used for business purposes should be reported.

As previously noted, current practices are not changing. Hand-held tools are typically reported as a total dollar amount acquired in a given year. The instructions for hand-held tools will be further explained in the reporting form instructions.

Section 15-8-301(2), MCA, provides that the department determine the market value of the property. The department, not the taxpayer, determines assessed value the property for the various types of personal property based upon the guidelines provided in law, including applying the exemptions after the taxpayer has reported. Taxpayers with more than \$20,000 reportable value, including the exemption portion, report annually. Taxpayers with less than \$20,000 reportable value, report biennially. The existence of exemptions, either in the past or in the future, does not relieve the taxpayer of the reporting requirement.

3. Based on the comments received, and the proposed edits presented at the hearing by the Property Assessment Division, the department amends New Rule I (42.21.165); and further amends ARM 42.21.140 and 42.21.158 as follows, stricken matter interlined, new matter underlined:

NEW RULE I (42.21.165) LIVESTOCK REPORTING REQUIREMENTS

(1) A taxpayer who raises livestock in the state of Montana subject to the per capita fees under 15-24-921 MCA, and the requirement of a written statement under 15-24-903, MCA, must ~~reply to the department's request for information~~ submit a completed livestock reporting form.

(2) The department must receive the completed statement postmarked no later than February 15. If a taxpayer fails to timely return a completed livestock reporting form, the department will issue written notice to the taxpayer advising the taxpayer of their obligation to return a completed livestock reporting form. The notice shall also advise the taxpayer that they are subject to penalty under the provisions of 15-8-309 and 15-24-904, MCA, for failure to return the reporting form within ten days of receiving the reminder notice.

(3) If a taxpayer fails to return ~~the statement~~ a completed livestock reporting form during the timeframes set forth in (2), the department shall, after ten days' notice, assess a \$25 penalty under 15-8-309, and 15-24-904, MCA.

(4) If, after issuance of the notice required in (2), a taxpayer fails to return a completed livestock reporting form, the department will estimate livestock numbers based upon the best information available. The department may utilize previously reported livestock numbers, brand inspections, or other available information as a basis for its estimation.

(5) Statements postmarked after the deadline in (2) will be assessed a penalty unless:

(a) the taxpayer provides evidence of their inability to comply due to hospitalization, physical illness, infirmity, or mental illness; and

(b) evidence that this/these condition(s), while not necessarily continuous, existed at sufficient levels in the period of January 1 to March 15 to prevent timely filing of the reporting form.

AUTH: 15-1-201, MCA

IMP: 15-8-309, 15-24-903, 15-24-904, 15-24-921, MCA

42.21.140 OIL DRILLING RIGS (1) The department will obtain pricing information from manufacturers of oil drilling rigs. The pricing information obtained will be used to determine current replacement cost based on the depth ratings shown below. Each depth rating will consist of two replacement cost categories. One category will represent current replacement cost of a mechanical rig and the second category will represent current replacement cost of an electric rig. Each rig as it is assessed will be placed in a value category based on its depth.

DEPTH CATEGORIES

Class

Depth Capacity

1	.....	0 to 3,000 ft.
2	.....	3,001 ft. to 5,000 ft.
3	.....	5,001 ft. to 8,000 ft.
4	.....	7,501 ft. to 10,000 ft.
5	.....	10,001 ft. to 12,500 ft.
6	.....	12,501 ft. to 15,000 ft.
7	.....	15,001 ft. to 20,000 ft.
8	.....	20,001 ft. and over

<u>MANUFACTURER'S</u>	<u>SERVICE</u>	<u>WORKOVER</u>
<u>DEPTH RATING</u>	<u>ELECTRICAL</u>	<u>MECHANICAL</u>
	<u>RIG R.C.N</u>	<u>RIG R.C.N</u>
0 - 3,000 ft.	\$	\$ 285,209
3,001 ft. - 5,000 ft.		432,135
5,001 ft. - 7,500 ft.	868,250	654,750
7,501 ft. - 10,000 ft.	1,167,210	998,750
10,001 ft. - 12,500 ft.	1,265,500	1,130,600
12,501 ft. - 15,000 ft.	1,720,400	1,538,500
15,001 ft. - 20,000 ft.	1,990,100	
20,001 ft. and over	2,036,047	

The depth capacity for drilling rigs will be based on the "Manufacturers Depth Rating." These replacement costs will then be depreciated to arrive at market value according to the schedule mentioned in (2).

(2) through (4) remain as proposed.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, 15-24-921, 15-24-922, 15-24-925, MCA

42.21.158 PROPERTY REPORTING REQUIREMENTS (1) A taxpayer having property in the state of Montana on January 1 of each tax year, must complete the statement as provided in 15-8-301, MCA by submitting a completed personal property reporting form.

(2) If the statewide aggregate market value of a person or business entity's class eight property is \$20,000 or less as determined by the department, the person or business entity is exempt from class eight taxation. To ensure fair and accurate reporting of all taxable class eight property, the department may require all persons or business entities to report their class eight property periodically. ~~It is the~~ The department's ~~current plan to~~ requires biennial reporting of all class eight property beginning in tax year 2011.

(3) remains as proposed.

(4) The taxpayer's completed personal property statement as provided for in 15-8-301, MCA, must be returned to the department postmarked no later than ~~March~~ February 15. If a taxpayer fails to return a completed personal property statement by February 15, the department will provide a written notice to the taxpayer advising

the taxpayer of their obligation to return a completed personal property statement. The notice shall also advise the taxpayer that they are subject to penalty for refusing or neglecting to respond to the department's request for information under the provisions of 15-1-303 and 15-8-309, MCA, or any other applicable statute.

~~(5) Statements postmarked after March 15 will not be considered for that year be assessed the penalty provided in (4) unless the department determines the following conditions were met:~~

~~(a) the taxpayer was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness provides evidence of their inability to comply with the timeframes set forth in (4) due to hospitalization, physical illness, infirmity, or mental illness; and~~

~~(b) these impediments must be demonstrated to have evidence that this/these condition(s), while not necessarily continuous, existed at significant sufficient levels from in the period of January 1 of the current year to the time of submitting the statement, but in no case no later than April 15 to March 15 to prevent timely filing of the reporting form.~~

~~(5) If the taxpayer fails to respond to the department's request for information during the timeframes set forth in (4) the department shall assess a penalty under the provisions of 15-1-303, and 15-8-309, MCA, or any other applicable statute.~~

~~(6) through (9) remain as proposed.~~

AUTH: 15-1-201, MCA

IMP: 15-1-303, 15-8-104, 15-8-301, 15-8-303, 15-8-309, 15-24-902, 15-24-903, 15-24-904, 15-24-905, MCA

4. Therefore, the department adopts New Rule I, (42.21.165) and amends ARM 42.21.140 and 42.21.158 with the amendments listed above.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State February 28, 2011

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 September 30, 2010. This table includes those rules adopted during the period October 1, 2010, through December 31, 2010, and any proposed rule action that was pending during the past 6-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 September 30, 2010, 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 2010 and 2011 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

1.2.419 Scheduled Dates for the 2011 Montana Administrative Register -
p. 1878, 2410

ADMINISTRATION, Department of, Title 2

I Examination Procedures, p. 1585, 1884
2.21.215 and other rules - Annual Leave Policy, p. 804, 1356, 1603
2.21.305 and other rules - Disaster and Emergency Leave Policy, p. 808, 1358,
1605
2.21.501 and other rules - Jury Duty - Witness Leave Policy, p. 1362, 1792
2.21.1701 and other rules - Overtime - Nonexempt Compensatory Time, p. 1365,
1793
2.21.1801 and other rules - Exempt Compensatory Time Policy, p. 811, 1360,
1606
2.21.3702 and other rules - Recruitment - Selection, p. 1368, 1633, 2208
2.21.3801 and other rules - Probation, p. 1382, 1794
2.59.1718 and other rules - Exemptions Under 32-9-104, MCA, Determining the
Amount of the Surety Bond Required for New Applicants - Date by
Which the Montana Test Must Be Completed in Order to Be Licensed
as a Mortgage Loan Originator in Montana - Temporary Licenses -
Transition Fees, p. 2627, 2956

(Public Employees' Retirement Board)

- 2.43.1306 Actuarial Rates - Assumptions, p. 1433, 1881
- 2.43.2105 Basic Period of Service, p. 132
- 2.43.3501 and other rule - Adoption by Reference of the State of Montana Public Employees Pooled Trust - Adoption by Reference of the State of Montana Public Employee Defined Contribution Plan Document - State of Montana Public Employee Deferred Compensation (457) Plan Document, p. 941, 1229, 1725
- 2.43.3502 and other rule - Investment Policy Statement for the Defined Contribution Retirement Plan - Investment Policy Statement for the 457 Deferred Compensation Plan, p. 937, 1227, 1724
- 2.43.3502 and other rule - Investment Policy Statement for the Defined Contribution Retirement Plan - Investment Policy Statement for the 457 Deferred Compensation Plan, p. 1831, 2571
- 2.43.5104 Adoption by Reference of the Declaration of Trust- State of Montana Public Employees Pooled Trust, p. 1920, 2572

(Teachers' Retirement System)

- 2.44.304 and other rule - Qualifications of the Actuary Engaged by the Teachers' Retirement System - Annual Report of Employment Earnings by Disabled Retirees of the Teachers' Retirement System, p. 1763, 2344

(State Compensation Insurance Fund)

- 2.55.320 Classifications of Employments, p. 2675, 142

(Burial Preservation Board)

- 2.65.102 and other rules - Repatriation of Human Skeletal Remains - Funerary Objects - Protection of Burial Sites - Scientific Analysis, p. 2276

AGRICULTURE, Department of, Title 4

- 4.5.210 Priority 3 Regulated Plants, p. 1588, 1985
- 4.12.102 and other rules - Apiculture, p. 2018, 2650
- 4.12.601 and other rules - Fertilizer Regulations, p. 1436, 1795
- 4.12.3503 and other rule - Certified Seed Potatoes, p. 2867, 232
- 4.14.303 Montana Agricultural Loan Authority, p. 2424, 2810
- 4.16.701 and other rules - Agricultural Marketing Development Program, p. 2633, 2957
- 4.17.103 and other rules - Organic Program, p. 1923, 2573

STATE AUDITOR, Title 6

- 6.6.2401 and other rules - Group Coordination of Benefits, p. 2426, 2958

COMMERCE, Department of, Title 8

- I Administration of the 2011-2012 Federal Community Development Block Grant (CDBG) Program, p. 2678
- 8.94.3726 Administration of the 2010-2011 Federal Community Development Block Grant (CDBG) Program, p. 1834, 2728
- 8.94.3726 Incorporation by Reference for the CDBG Program, p. 135
- 8.99.301 and other rules - Certified Regional Development Corporations Program, p. 1231, 1885
- 8.99.901 and other rules - Award of Grants and Loans Under the Big Sky Economic Development Program, p. 2281, 2811

(Board of Housing)

- 8.111.602 Low Income Housing Tax Credit Program, p. 2792

EDUCATION, Department of, Title 10

- 10.7.106A and other rules, School Finance, p. 1635, 1990

FISH, WILDLIFE AND PARKS, Department of, Title 12

- 12.10.103 and other rules - Shooting Range Development Grants, p. 2794, 101

(Fish, Wildlife and Parks Commission)

- 12.6.2201 and other rules, Exotic Species, p. 1643, 1928, 2812
- 12.11.202 and other rules - Recreational Water Use of the Beaverhead and Big Hole Rivers, p. 968, 1726
- 12.11.805 and other rules - Recreational Use Rules in Montana, p. 83

ENVIRONMENTAL QUALITY, Department of, Title 17

- 17.50.213 (Motor Vehicle Recycling and Disposal) Reimbursement Payments for Abandoned Vehicle Removal, p. 91
- 17.53.706 and other rules - Hazardous Waste and Underground Storage Tanks - Emergency Preparedness, Prevention, and Response at Transfer Facilities - Reporting of Suspected Releases - Reporting and Cleanup of Spills and Overfills - Reporting of Confirmed Releases, p. 25, 234
- 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, 2077, 816, 2346
- 17.56.101 and other rules - Underground Storage Tanks, p. 1450, 1888
- 17.56.102 and other rules - Underground Storage Tanks - Applicability - Compliance Inspections - Petroleum UST Systems - Fee Schedule - Permit Issuance - Anti-Siphon Requirements, p. 2899, 145

17.80.201 and other rules - Tax Certification - Pollution Control Equipment - Energy Facilities - Certification of Certain Energy Production or Development Facilities or Equipment for Property Tax Classification or Abatement - Monitoring of Compliance With Certification Criteria - Revocation of Certification, p. 2886, 233

(Board of Environmental Review)

17.8.102 Incorporation by Reference of Current Federal Regulations and Other Materials Into Air Quality Rules, p. 2636, 143
17.8.604 and other rules - Air Quality - Open Burning, p. 2880
17.8.763 Air Quality - Revocation of Permit, p. 2878
17.30.201 and other rule - Water Quality - Permit Application - Degradation Authorization - Annual Permit Fees - General Permits, p. 2870
17.30.502 and other rules - Department Circular DEQ-7, p. 818, 1385, 1796
17.30.617 and other rule - Water Quality - Outstanding Resource Water Designation for the Gallatin River, p. 2294, 328, 1398, 438, 1953, 162, 1324, 264, 1648, 89
17.38.204 Maximum Organic Chemical Contaminant Levels, p. 2639, 144
17.50.403 and other rule - Definitions - Annual Operating License Requirements, p. 833, 1799

(Petroleum Tank Release Compensation Board)

17.58.201 and other rules - Procedural and Substantive Rules - Petroleum Tank Release Compensation, p. 1

TRANSPORTATION, Department of, Title 18

18.2.101 and other rules - Incorporation of Model Rules - Contested Case Procedures, p. 1387, 1731
18.9.102 and other rules - Licensed Distributors - Special Fuel Users - Invoice Errors - Multi-Distributor Invoice Requirements, p. 2454, 2814, 2961
18.9.111 and other rules - Gasohol and Alcohol Blended Fuel, p. 2460, 2815
18.12.401 and other rules, Aeronautics Division, p. 1650, 1991

CORRECTIONS, Department of, Title 20

I & II Day Reporting Program, p. 29, 235
I & II Satellite-Based Monitoring Program, p. 33, 236
20.9.602 and other rules - Prison Rape Elimination Act - Licensure of Youth Detention Facilities, p. 183
20.25.101 and other rules - Board of Pardons and Parole, p. 2816

JUSTICE, Department of, Title 23

23.3.148 Release of Driving Records, p. 1237, 2213

(Gambling Control Division)

- 23.16.116 and other rule - Transfer of Interest Among Licensees - Loan Evaluation, p. 1393, 1732
- 23.16.120 Loans and Other Forms of Financing, p. 2903, 146

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

- I Carbon Monoxide Detector Standard, p. 978, 2385
- I-XIII Approved Construction Techniques for Fire Mitigation, p. 980, 1966, 237
- 24.7.301 and other rules - Board of Labor Appeals - Unemployment Insurance, p. 195
- 24.11.203 and other rules - Independent Contractor Exemption Certificates - Employment Status Determinations by the Department, p. 1139, 1608
- 24.16.7506 and other rules - Collective Bargaining Proceedings Heard by the Board of Personnel Appeals, p. 1652, 2841, 47
- 24.17.103 and other rules - Prevailing Wage Rates for Public Works Projects - Building Construction Services - Heavy Construction Services - Highway Construction Services - Nonconstruction Services, p. 2681, 102
- 24.21.401 and other rules - Apprenticeship Training Programs, p. 2466, 2962
- 24.29.1401 and other rules - Implementing Utilization and Treatment Guidelines - Medical Services Rules for Workers' Compensation Matters, p. 2025
- 24.29.1432 and other rules - Workers' Compensation Medical Fee Schedules, p. 2642
- 24.29.2701 and other rules - Silicosis Benefits - Subsequent Injury Fund, p. 2476, 2967
- 24.301.131 and other rules - Incorporation by Reference of International Building Code - Building Code Modifications - Incorporation by Reference of International Existing Building Code - Incorporation by Reference of International Mechanical Code - Incorporation by Reference of International Fuel Gas Code - Plumbing Requirements - Electrical Requirements - Inspection Fees - Refunds - Credits - Definitions, p. 1244, 1733

(Board of Athletic Trainers)

- 24.101.413 and other rules - Renewal Dates and Requirements - Fee Schedule - Licensure of Athletic Trainers, p. 94

(Board of Barbers and Cosmetologists)

- 24.121.301 and other rules - Definitions - Implements - Equipment - Continuing Education - Unprofessional Conduct, p. 837, 2378

(Board of Chiropractors)

24.126.510 and other rules - Endorsement - Inactive Status and Conversion - Minimum Requirements for Impairment Evaluators - Prepaid Treatment Plans, p. 2284

(Board of Massage Therapy)

24.155.301 and other rules - Definitions - Continuing Education - Unprofessional Conduct, p. 1239, 2382

(Board of Medical Examiners)

I Qualification Criteria for Evaluation and Treatment Providers, p. 1467, 2729

(Board of Nursing)

24.159.301 and other rules - Definitions - Fees - Nursing Education Programs - LPN Practice Permit - LPN Licensure - LPN Foreign Requirements - RN Practice Permit - RN Licensure - RN Foreign Requirements - Delegation Practices - Nondisciplinary Track - Conduct of Nurses - Program Standards - Continuing Education - Clinical Practice Settings, p. 1930, 2651

(Board of Outfitters)

24.101.403 and other rules - Renewal Dates and Requirements - Fees, p. 1590, 2384
24.171.401 and other rules - Safety Provisions -Unprofessional Conduct - Misconduct - Provisional Guide License - Emergency Guide License, p. 1472, 1889

(Board of Pharmacy)

24.174.401 and other rules - Fee Schedule - Change in Address - Change of Pharmacist-in-Charge - Class IV Facility - Identification of Pharmacist-in-Charge - Wholesale Drug Distributor - Telepharmacy Operations - Dangerous Drugs - Cancer Drug Repository - Clinical Pharmacist Practitioner, p. 2041, 2968

(Board of Plumbers)

24.180.401 and other rule - Fee Schedule - Continuing Education Provider Qualifications, p. 974, 1609

(Board of Professional Engineers and Professional Land Surveyors)

I-IV Professional Land Surveyor Scope of Practice Activities, p. 2288

(Board of Public Accountants)

24.201.301 and other rules - Definitions - Fee Schedule - CPA/LPA Designation - Licensing Examinations - Professional Conduct Rules - Profession Monitoring Rules - Renewal and Continuing Education - Complaint Procedures - Exercise of Practice Privilege in Other Jurisdictions -

Profession Monitoring of Holders of Special Practice Permit -
Compliance With Continuing Education for Nonresidents - Renewal
and Continuing Education, p. 1836, 2574

(Board of Real Estate Appraisers)

24.207.401 and other rules - Fees - Application Requirements - Qualifying
Education Requirements - Qualifying Experience - Inactive License or
Certification - Inactive to Active License - Trainee Requirements -
Mentor Requirements - Continuing Education, p. 2905

LIVESTOCK, Department of, Title 32

32.3.108 and other rules - Game Farm Regulations - Deputy State
Veterinarians, p. 2492, 2974
32.3.220 and other rules - Semen Shipped Into Montana - Brucellosis
Definitions - Designated Surveillance Area - Penalties, p. 2485, 2797,
147
32.6.712 Food Safety - Inspection Service - Meat - Poultry, p. 2483, 2973
32.23.102 and other rule - Transactions Involving the Purchase and Resale of
Milk Within the State - Quota Transfers, p. 1477, 1800

(Board of Horse Racing)

32.28.801 and other rule - Eligibility for Maidens Over Seven Years Old -
Conditions Accompanying a Claim, p. 1594, 1992

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.11.111 and other rule - Export of Timber Harvested in the State - Maximum
Size of Nonadvertised Timber Permits, p. 988, 1269, 1735

(Board of Water Well Contractors)

36.21.410 and other rules - Board of Water Well Contractors, p. 843, 1614

(Board of Land Commissioners)

36.11.402 and other rules - Forest Management Rules for Implementing
Conservation Easements - Habitat Conservation Plans, p. 2687
36.25.205 Procedures for the Issuance of State Oil and Gas Leases, p. 858,
1617

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I-VI Medicaid for Workers with Disabilities, p. 1271, 2733
I-X Permissive Licensing of Drop-in Child Care Facilities, p. 1165, 2390
37.5.117 and other rules - Healthy Montana Kids Plan, p. 1768, 2217
37.27.128 and other rules - Emergency Care - Inpatient and Transitional Living
Chemical Dependency Programs, p. 2053, 2975
37.50.901 Interstate Compact on the Placement of Children, p. 2297, 106

- 37.70.115 and other rules - Low Income Energy Assistance Program (LIEAP), p. 2700, 108
- 37.78.102 Temporary Assistance for Needy Families (TANF), p. 1597, 2215
- 37.78.102 and other rule - Temporary Assistance for Needy Families (TANF), p. 2515, 107
- 37.79.102 and other rules - Healthy Montana Kids, p. 2521, 2845, 70
- 37.80.101 Child Care Assistance, p. 1600, 2216
- 37.80.101 and other rule - Child Care Assistance, p. 2171, 2661, 2743
- 37.80.101 and other rules - Child Care Assistance, p. 2925
- 37.81.304 and other rules - Big Sky RX Benefit - Medicaid Dental Services - Outpatient Drugs - Prescriptions for Durable Medical Equipment - Prosthetics and Orthotics (DMEPOS) - Early and Periodic Screening - Diagnostic and Treatment (EPSDT) - Qualified Medicare Beneficiaries Chiropractic Services, p. 2528, 2986
- 37.86.2206 and other rules - Provider Requirements - Reimbursement for Therapeutic Group Homes (TGH) - Therapeutic Family Care (TFC) - Therapeutic Foster Care (TFOC), p. 2085, 49
- 37.86.3515 Case Management Services for Adults With Severe Disabling Mental Illness - Reimbursement, p. 2807
- 37.87.1331 Home and Community-based Services (HCBS) for Youth With Serious Emotional Disturbance (SED), p. 2512, 2983
- 37.89.103 and other rules - Provider Reimbursement Under the Mental Health Services Plan, p. 2799
- 37.97.101 and other rules - Youth Care Facility (YCF) Licensure, p. 2108, 138
- 37.104.101 and other rule - Emergency Medical Services (EMS), p. 2915
- 37.106.1130 and other rules - Licensing Requirements for Outpatient Facilities for Primary Care, p. 2690
- 37.108.507 Components of Quality Assessment Activities, p. 36

PUBLIC SERVICE REGULATION, Department of, Title 38

- I Motor Carrier Authority Recognition, p. 2179, 2989
- I Nonproprietary Nature of Utility Executive Compensation, p. 875, 2397
- I-XIII Interconnection Standard Established by the Federal Energy Policy Act of 2005, p. 491, 1801
- 38.5.2202 and other rule - Pipeline Safety, p. 2537, 2992

REVENUE, Department of, Title 42

- I-III Insure Montana Tax Credit, p. 1779, 2231
- I-III Functions and Operation of the Office of Taxpayer Assistance, p. 2309, 2759
- I-IV Telecommunication Services for Corporation License Taxes, p. 1968, 2540
- I-V Montana School Districts' Election to Waive Protested Taxes, p. 1708, 2226
- I-XI Rental Vehicle Sales and Use Tax, p. 2200, 2755

- 42.2.325 Confidentiality of Tax Records, p. 1398, 2744
- 42.5.201 and other rules - Electronic Funds Filing and Remittance, p. 1717, 1995
- 42.11.104 and other rules - Liquor Vendors, p. 2563
- 42.12.206 and other rules - Liquor License Transfers, Suspension, and Revocation, p. 2303, 165
- 42.12.312 and other rules - Special Licenses and Permits, p. 1712, 2227
- 42.12.401 and other rules - Restaurant Beer and Wine Licenses - Lottery Process, p. 1701, 2225
- 42.13.101 Sale of Alcohol to a Minor - Sale to Intoxicated Persons, p. 734, 1994
- 42.14.101 and other rules - Lodging Facility Use Taxes - Sales Taxes, p. 2184, 2751
- 42.14.101 and other rule - Lodging Facility Use Tax, p. 44
- 42.14.1002 and other rule - Rental Vehicle Tax, p. 41
- 42.15.315 and other rules - Dependents Credits and Refunds, p. 2559, 3026
- 42.15.802 Family Education Savings Program, p. 2181, 2748
- 42.17.101 and other rule - Withholding Taxes, p. 1776, 2230
- 42.18.121 and other rule - Montana Appraisal Manual for Residential, Commercial, and Industrial Property, p. 1720, 2229
- 42.18.205 and other rules - Appraiser Certification, p. 1685, 2219
- 42.19.401 and other rules - Property Tax Assistance Programs for the Disabled Veterans and Elderly Homeowners, p. 2546
- 42.20.107 Valuation Methods for Commercial Properties, p. 2544
- 42.21.113 and other rules - Property Taxes - Trend Tables for Valuing Property, p. 2314, 3022
- 42.21.140 and other rules - Property Taxes, p. 2554
- 42.22.101 and other rules - Centrally Assessed Appraiser Certification Requirements, p. 1695, 2221
- 42.22.101 and other rules - Centrally Assessed Property, p. 1977, 2542, 2993
- 42.25.1801 and other rules - Oil and Gas Taxes, p. 1783
- 42.25.1801 and other rules - Oil and Gas Taxes, p. 1872, 2580
- 42.31.1002 Hospital Utilization Fee, p. 2301, 2847

SECRETARY OF STATE, Office of, Title 44

- 1.2.419 Scheduled Dates for the 2011 Montana Administrative Register - p. 1878, 2410
- 44.6.104 and other rule - Filing Fees Charged by the Business Services Division for Federal Tax Liens - Uniform Commercial Code Documents, p. 1789, 2232

(Commissioner of Political Practices)

- 44.12.204 Payment Threshold - Inflation Adjustment for Lobbyists, p. 1983, 2411
- 44.12.204 Payment Threshold - Inflation Adjustment for Lobbyists, p. 2726