

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 21

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after print publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 444-2055.

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BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 8.111.602 and 8.111.603) PROPOSED AMENDMENT
pertaining to the low income housing)
tax credit program)

TO: All Concerned Persons

1. On November 28, 2012, at 9:00 a.m., the Department of Commerce will hold a public hearing in Room 504A of the Park Avenue Building at 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Commerce 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 Commerce no later than 5:00 p.m. on November 20, 2012, to advise us of the nature of the accommodation that you need. Please contact Paula Loving, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana, 59620-0528; telephone (406) 841-2840; fax (406) 841-2841; TDD (406) 841-2702; or e-mail ploving@mt.gov.

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

8.111.602 DEFINITIONS

(1) and (2) remain the same.

(3) "QAP" means the board's "Low Income Housing Tax Credit Program 2012 2013 Qualified Allocation Plan," which sets forth the application process, evaluation criteria, and selection criteria considerations used by the board for determining housing priorities and the evaluation and selection of projects to receive awards for allocation of tax credits for calendar year 2012 2013, copies of which may be obtained by contacting the Board of Housing by mail at P.O. Box 200528, Helena, MT 59620-0528, by telephone at (406) 841-2845 or (406) 841-2838, or at the board's web site www.housing.mt.gov.

(4) remains the same.

AUTH: 90-6-106, MCA

IMP: 90-6-104, MCA

REASON: The proposed amendments to ARM 8.111.602 are necessary to update the Qualified Allocation Plan (QAP) definition to reference the 2013 Qualified Allocation Plan for the Low Income Housing Tax Credit Program and to more accurately describe the contents of the QAP. Low income housing tax credits are

allocated by the federal government to the states, according to their population, for allocation to particular buildings by each state's housing credit agency. The Low Income Housing Tax Credit Program (Program) is administered and tax credits are allocated by a state's housing credit agency. The Montana Board of Housing is Montana's housing credit agency for purposes of the Program. Federal law requires that the tax credits allocated to the state by the federal government must be allocated by the state pursuant to a "qualified allocation plan" or "QAP".

Prior to publication of this notice, the board conducted several public meetings to consider suggestions and comments regarding the provisions of the 2013 QAP. Thereafter, at its August 16, 2012 meeting, the board considered and approved public notice and distribution of the proposed 2013 QAP. Public notice of the proposed 2013 QAP and of the opportunity for public comment was published and distributed on September 5, 2012. At its October 15, 2012 meeting in Missoula, Montana, after considering written and oral public comment on the proposed 2013 QAP and approving various changes in response to comments, the board approved the 2013 QAP for submission to and approval by the Montana Governor, as required by the federal tax credit statute, 26 U.S.C. § 42. The 2013 QAP was submitted to the Governor by the board on October 18, 2012 and was approved by the Governor.

A copy of the 2013 QAP is available on the internet at <http://housing.mt.gov/About/MF/lihtcallocation.mcp> or by requesting a copy from: Mary Bair, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana, 59620-0528; telephone (406) 841-2845; fax (406) 841-2841; or e-mail mbair@mt.gov.

In addition to considering comment and approving revisions in other areas, at its October 15, 2012 meeting, the board addressed one particularly urgent issue. The board received comment regarding the proposed 2013 QAP from applicants that were awarded tax credits in 2012. The viability of projects that received awards of 2012 tax credits has been seriously threatened as a result of the filing of a lawsuit by an unsuccessful 2012 applicant. Because of uncertainty resulting from the pending lawsuit, potential investors have declined to commit to or advance funds for the projects. If these projects are not able to move forward very soon, in some cases within the next 30 days, they may lose their window of opportunity to proceed. As a result, the corresponding 2012 tax credits could revert to the federal government and become unavailable for allocation in the state of Montana. It is unknown when the litigation will be resolved.

These commenters requested that language be added to the 2013 QAP to allow allocation of tax credits from a future year in the event that a court were to invalidate prior tax credit awards or order an award of tax credits to an unsuccessful applicant. One commenter provided an example of such a forward allocation provision from another state.

At its October 15, 2012 meeting, the board considered and approved 2013 QAP language providing a Corrective Award set-aside provision to make available sufficient additional credits for any award required by a court based upon a legal challenge to a prior award determination. This language creates a priority set-aside of credits to fund such awards, first using returned or unreserved credits from a prior year and then current year credits.

This set-aside language provides for an award of tax credits to a prior unsuccessful applicant that has obtained a court order requiring an award. The language also provides for an award from this set-aside to an applicant who previously received an award and entered into a reservation agreement with the board prior to the court order, where the prior award has been invalidated by a court. An award could be made to such applicant from the set-aside unless a court has determined that such applicant was not eligible or qualified to receive an award under the applicable QAP.

The language allows such awards to be made at any time during the year at a meeting of the board upon consideration of a final court order satisfying the criteria of the QAP set-aside language. Such an award is, of course, conditioned upon IRS authorization and allocation of tax credits for the state of Montana for the applicable year. The language also provides that the board will allocate credits in accordance with reservation agreements entered into by the board based upon prior awards, unless the board determines that it is precluded by court order from doing so.

This Corrective Award language is necessary to provide a mechanism and source of credits to address court challenges to tax credit awards. To meet the strict timelines for tax credit carryover and placement of projects in service, projects must move forward with development and construction quickly and diligently following an award of tax credits. These timelines cannot accommodate delay until litigation is resolved, which may take many months or even years. It is impractical at best to delay development and construction of projects receiving current awards until litigation is resolved. The Corrective Award addresses this problem by providing for an award from a future period to address the results of any legal challenge.

The Corrective Award language is also necessary to assure awardees and their investors to the greatest extent possible that successful awardees will receive tax credit allocations despite legal challenges brought by unsuccessful applicants. Although the board believes that the currently pending litigation lacks merit, the mere existence of such litigation and its attendant uncertainties has prevented projects from closing their investment transactions or receiving investor advances, effectively halting development and construction.

The approved language provides such assurance, first by making unawarded future credits available, so that there is no need to take previously awarded credits from a successful applicant so that the credits can be awarded to a challenger. The language provides further assurance by allowing the board to make a new allocation to previous successful awardees where the prior award has been invalidated by a court, unless the court has determined that such awardee did not meet the minimum

threshold requirements for an award. The language also assures that the board will allocate credits in accordance with prior reservation agreements, unless precluded by court order from doing so.

The Corrective Award set-aside provisions are available for review in the above-referenced 2013 QAP at pages 18-20 (Section 7, Set Asides), with related language included at page 18 (Section 5 under "Requesting Additional Credits" and Section 6 regarding committing tax credits from future years) and p. 31 (Section 9 under "Reservation").

This Corrective Award language is necessary to provide a mechanism and source of credits to address court challenges to tax credit awards, and to provide the assurances necessary for applicants awarded tax credits in 2012 to obtain the necessary investment and complete their projects in time to receive the tax credit allocations. Without such provisions, some or all of the projects awarded credits are unlikely to be built, resulting in loss of the additional housing units expected to be made available to low income Montanans through the awarded credits.

The proposed amendment is necessary to allow for the tax credit application and allocation process in 2013. The 2013 QAP will govern the tax credit application and award process for the 2013 tax credit application cycle.

8.111.603 TAX CREDIT ALLOCATION PROCEDURE

(1) through (4) remain the same.

(5) At its regularly scheduled board meeting in the month of April or May of each year, the board will hear public comment and hold a hearing to consider the allocation award of tax credits credit allocations in accordance with to those projects the applications for which meet the minimum criteria of the QAP. The award of tax credit allocations is not a contested case and the award hearing meeting is not a contested case hearing under Title 2, chapter 4, part 6, MCA.

(6) After scoring and formulation of recommendations by board staff, applicants will not be permitted to make additional presentations to the board but should be available to the board to answer questions regarding their respective applications and shall be provided an opportunity at the board meeting described in (5) to respond to any negative comments regarding their respective projects or applications.

(7) remains the same.

AUTH: 90-6-106, MCA

IMP: 90-6-104, MCA

REASON: The proposed amendments to ARM 8.111.603 are necessary to revise the award process to assure that applicants are provided an opportunity to respond to any negative comments presented to the board regarding their respective projects or applications. Without such an opportunity, negative comments may unfairly raise questions or suggest deficiencies regarding projects. Applicants should be provided

opportunity to respond to negative comments to assure that the board is provided with complete information regarding any such issues.

The proposed amendments are also necessary to clarify the nature of the tax credit award process. There is no provision of law that requires that tax credits be awarded through a contested case hearing under the Montana Administrative Procedure Act (MAPA) and the current rule specifically provides that the award is not a contested case hearing. However, one unsuccessful applicant has argued that the word "hearing" in this rule constitutes a legal requirement for a hearing within the meaning of the MAPA definition of "contested case" in Mont. Code Ann. § 2-4-102(4). The intent of the rule is to provide for a board meeting with an opportunity for public comment, rather than a litigation-type hearing under MAPA contested case procedures. Accordingly, the proposed changes removing the misconstrued term "hearing" are necessary to further clarify that the award process is not a MAPA contested case hearing.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Mary Bair, Board of Housing, Department of Commerce, 301 South Park Avenue, P.O. Box 200528, Helena, Montana, 59620-0528; telephone (406) 841-2845; fax (406) 841-2841; or e-mail mbair@mt.gov, and must be received no later than 5:00 p.m., December 6, 2012.

5. Mary Bair, Department of Commerce, has been designated to preside over and conduct this hearing.

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

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

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

/s/ MARTY TUTTLE
Marty Tuttle
Rule Reviewer

/s/ DORE SCHWINDEN
DORE SCHWINDEN
Director
Department of Commerce

Certified to the Secretary of State October 30, 2012.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	AMENDED NOTICE OF PUBLIC
17.38.106 pertaining to fees and the)	HEARING ON PROPOSED
adoption of New Rule I pertaining to)	AMENDMENT AND ADOPTION
significant deficiency)	
)	(PUBLIC WATER AND SEWAGE
)	SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On October 11, 2012, the Board of Environmental Review published MAR Notice No. 17-340 regarding a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 1906, 2012 Montana Administrative Register, issue number 19. The board is publishing this amended notice to set a new public hearing date to allow for notice to interested persons as required by 2-4-302(2)(a), MCA. On November 28, 2012, at 1:30 p.m., the Board of Environmental Review will hold a public hearing in Room 35, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules. The rules remain as proposed in the original notice of public hearing.

2. The board 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 Elois Johnson, Paralegal, no later than 5:00 p.m., November 19, 2012, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. 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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., December 6, 2012. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

4. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

5. The board 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 that the

person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. 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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden

JAMES M. MADDEN

Rule Reviewer

BY: /s/ Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.,

Chairman

Certified to the Secretary of State, October 29, 2012.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 20.7.801, 20.7.810, and) PROPOSED AMENDMENT
20.7.813 pertaining to Eastmont)
Chemical Dependency Treatment)
Center)

TO: All Concerned Persons

1. On December 11, 2012, at 6:00 p.m., the Department of Corrections will hold a public hearing in Community Room of Dawson County Library, at Glendive, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Corrections 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 Corrections no later than 12:00 p.m. on December 7, 2012, to advise us of the nature of the accommodation that you need. Please contact Rick Deady, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59620; telephone (406) 444-4902; fax (406) 444-7909; or e-mail rdeady@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The department has established two alcohol treatment programs for persons who have been convicted of felony driving under the influence (DUI) and been sentenced pursuant to 61-8-731, MCA; one in Glendive, Montana and the other in Warm Springs, Montana. The department established the program in Warm Springs first; and it is limited to male offenders. The department established the program in Glendive after the Legislature transferred the former Eastmont Human Services campus to the department. The program in Glendive was established to serve primarily female offenders, but also serves male offenders from Eastern Montana. The substantive programs at the two facilities are identical, but the administrative rules 20.7.801 through 20.7.816 demand the Glendive facility treat offenders differently in some aspects; for instance, offenders in Warm Springs are not limited to one color of clothing, and sex and violent offenders are not automatically precluded from the program in Warm Springs. The department, with these amendments, seeks to erase the differences between the two facilities, especially since it seeks to eradicate any appearance of disparate treatment of females.

Accordingly, the department has determined that reasonable necessity exists to generally amend these rules at this time. Where a different or additional basis for a proposed amendment exists, the department will identify the reason immediately following that rule.

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

20.7.801 DEFINITIONS As used in this subchapter, the following definitions apply:

- (1) remains the same.
- (2) "Center" means the chemical dependency treatment center established in the former Eastmont ~~h~~Human ~~s~~Services ~~e~~Center in Glendive, Montana.
- (3) and (4) remain the same.
- (5) "Eligible offender" means an offender who has been convicted of a fourth or subsequent offense of driving under the influence of alcohol or drugs or driving with excessive alcohol concentration and has been sentenced under 61-8-731, MCA. ~~The term excludes persons convicted of a sexual or violent offense as defined in 46-23-502, MCA.~~
- (6) "Facility" means the department-owned buildings and real property that comprise the former Eastmont ~~h~~Human ~~s~~Services campus.
- (7) "Outdoor recreation area" means the fenced space between buildings one and two.
- ~~(7)~~(8) "Program" means the chemical dependency treatment program established in the former Eastmont ~~h~~Human ~~s~~Services ~~e~~Center in Glendive, Montana.
- (8) remains the same but renumbered (9).

AUTH: 53-1-203, MCA

IMP: 53-1-210, 61-8-731, MCA

STATEMENT OF REASONABLE NECESSITY: For the reason enumerated in the general statement of reasonable necessity, the department has deleted the requirement that persons who are defined as sex or violent offenders are prohibited from participating in the alcohol treatment program that is the subject of these rules. The Warm Springs facility does not have a similar prohibition.

The department proposes to add a definition for outdoor recreation area. The amendment is necessary to provide meaning to the proposed amendment of ARM 20.7.810 concerning the need to remove reference to the term "courtyard."

27.7.810 REQUIREMENT AFFECTING USE OF FACILITY (1) thru (1)(c) remain the same.

(d) program participants' sleeping quarters in building one must be restricted to rooms whose windows face the interior ~~courtyard~~ recreation area or other fenced areas;

(e) program participants must be restricted from all outside areas except for the ~~courtyard~~ outdoor recreation area, and when escorted off-grounds by security staff. The contractor shall provide direct supervision whenever participants are in the ~~courtyard~~ recreation area; and

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

(b) improve or install exit alarms on all doors and windows that do not face a fenced area and enhance security on all doors and windows that do not face the ~~courtyard~~ recreation area.

(c) fence the ~~courtyard~~ recreation area to provide heightened security from escape and reduce visual contact with the public; and

(d) through (4) remain the same.

AUTH: 53-1-203, MCA
IMP: 53-1-210, 61-8-731, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes the amendment to (1)(e) to clarify the area that offenders may use for outdoor recreation. The map that is appended to the rule reflects only a small area between buildings one and two that is denominated the "courtyard." There is a larger area, however, that is fenced and that is utilized by offenders for outdoor recreation. The department had two options: change the map to have the map reflect the larger area as the "courtyard," or delete the word "courtyard" from these rules and replace it with a phrase that would signify the larger area. The department decided the more reasonable approach was to leave the map as demarcated and call the area that encompasses the courtyard the outdoor recreation area. The department deleted the reference in this rule to "courtyard."

As to the addition of the phrase, "when escorted off-grounds by security staff," the department proposes to add the phrase because the facility must take offenders off-site for various reasons, such as medical appointments, and the current rule does not allow that. Also, the department would like to be able to have offenders in the chemical dependency program perform community service. The current rule does not allow that. The department elected to add the phrase to reflect that need. There was no other way to accomplish the desired purpose.

20.7.813 REQUIREMENTS AFFECTING PROGRAM PARTICIPANTS AND VISITORS (1) remains the same.

~~(a) program participants must wear clothing of an easily identifiable style and color, of which the contractor shall notify the public;~~

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

~~(e) (b) approved visitors may only visit program participants on Sundays unless otherwise approved by the department. Approved visitors may only access the facility via transportation provided by the contractor from an approved central Glendive city location.~~

(2) remains the same.

AUTH: 53-1-203, MCA
IMP: 53-1-210, 61-8-731, MCA

STATEMENT OF REASONABLE NECESSITY: The amendments to this rule reflect two changes: one, to delete the requirement that program participants all wear one distinctive color and style of clothing; and, two, to delete the requirement that visitors be transported to the facility from an approved location. These are two restrictions offenders and visitors do not face at the WATCh program in Warm Springs, therefore, the department seeks to remove them.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be

submitted to: Rick Deady, Department of Corrections, 5 South Last Chance Gulch, Helena, MT 59620; telephone (406) 444-4902 fax (406) 444-7909 or e-mail rdeady@mt.gov, and must be received no later than 5:00 p.m., December 12, 2012.

6. Diana L. Koch, Department of Corrections, has been designated to preside over and conduct this hearing.

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 Myrna Omholt-Mason, Department of Corrections, 5 South Last chance Gulch, Helena, Montana, 59620; telephone (406) 444-3911, fax (406) 444-4920, or e-mail momholt-mason@mt.gov 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/ Diana L. Koch
Diana L. Koch
Rule Reviewer

/s/ Mike Ferriter
Mike Ferriter
Director
Department of Corrections

Certified to the Secretary of State October 29, 2012.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rule I and II, the amendment of ARM)	PROPOSED ADOPTION,
20.9.101, and the amendment and)	AMENDMENT, AND AMENDMENT
transfer of 20.9.129 and 20.9.135)	AND TRANSFER
pertaining to youth placement)	
committees)	

TO: All Concerned Persons

1. On November 30, 2012, at 10:00 a.m., the Department of Corrections will hold a public hearing in Room 3-65 of 5 South Last Chance Gulch, at Helena, Montana, to consider the proposed adoption, amendment, and amendment and transfer of the above-stated rules.

2. The Department of Corrections 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 Corrections no later than 5:00 p.m. on November 22, 2012, to advise us of the nature of the accommodation that you need. Please contact Jeff Christofferson, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59620; telephone (406) 444-6551; fax (406) 444-0522; or e-mail jchristofferson@mt.gov.

3. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS For the purposes of this subchapter, the following definitions apply:

- (1) "CAPS" means child and adult protective services, the online statewide management system maintained by DPHHS.
- (2) "Cost containment pool" means funds retained by the department under 41-5-132, MCA, for disbursement by the cost containment review panel.
- (3) "Cost containment review panel" means the panel established in 41-5-131, MCA.
- (4) "Department" means the Department of Corrections as authorized in 2-15-2301, MCA.
- (5) "DPHHS" means the Department of Public Health and Human Services.
- (6) "Juvenile delinquency intervention act" (JDIP) means the act established by the Montana Legislature and implemented by the Department of Corrections to more effectively manage juvenile placement services and funding.
- (7) "Mental disorder" has the meaning found in 53-21-102, MCA.
- (8) "Youth correction facility" means a facility for the habilitation of delinquent youth such as the Pine Hills Youth Correctional Facility, Riverside Youth Correctional Facility, or a youth correctional facility under contract with the Department of Corrections.

AUTH: 41-5-2006, MCA

IMP: 41-5-130, 41-5-131, 41-5-132, 41-5-2003, 41-5-2006, MCA

STATEMENT OF REASONABLE NECESSITY: New Rule I is necessary to define terms used in this subchapter.

NEW RULE II REMOVING A YOUTH WITH A MENTAL DISORDER FROM A STATE YOUTH CORRECTIONAL FACILITY (1) A youth correctional facility must remove a youth committed to it if the facility learns that the youth suffers from a mental disorder and, because of the mental disorder, the youth:

(a) is substantially unable to provide for the youth's own basic needs including the youth's health or safety; i.e., cannot provide for the youth's hygiene;

(b) has recently caused self-injury or injury to others;

(c) presents an imminent threat of injury to himself/herself or others; or

(d) the youth's disorder will, if untreated, predictably deteriorate to the point the youth will become a danger to himself/herself or to others.

(2) Treatment staff in a youth correctional facility will assess youth at the following times to determine if the youth suffers from a mental disorder and the youth meets any of the criteria in (1)(a) through (d):

(a) at the time of the admission to the facility;

(b) at regular intervals if the youth has been diagnosed with a mental disorder or if the youth has been prescribed psychotropic medications for a mental disorder; and

(c) if the youth's behavior suddenly changes and the youth becomes aggressive, assaultive, self-injurious, or dangerous.

(3) If, after assessment by the correctional facility treatment staff, the facility has reason to believe the youth suffers from a mental disorder and meets one of the criteria in (1)(a) through (d), the facility will obtain an evaluation of the youth by a medical doctor, an advanced practice registered nurse with a clinical specialty in psychiatric mental health nursing, a licensed psychologist, or a person who has been certified by the Department of Public Health and Human Services.

(4) If the person listed in (3) certifies that the youth suffers from a mental disorder and meets one of the criteria in (1)(a) through (d), the facility will make application to Medicaid and to in-state psychiatric residential treatment facilities for residential psychiatric treatment of the youth. If no in-state psychiatric residential treatment facilities will accept the youth, the facility will make application to out-of-state psychiatric residential treatment facilities.

(5) When a youth correctional facility places a youth in a psychiatric residential treatment facility, it will periodically discuss the youth's progress with the treatment facility. If the youth makes sufficient progress so the youth no longer suffers from a mental disorder or no longer meets any of the criteria in (1)(a) through (d), the youth correctional facility will take the youth back in the facility, or may release the youth to juvenile parole.

AUTH: 41-5-2006, MCA

IMP: 41-5-1504, 41-5-2006, MCA

STATEMENT OF REASONABLE NECESSITY: The principal reason for this rule is to comply with a statutory mandate to adopt a rule necessary to perform the department's duties under the Juvenile Delinquency Intervention Act including a rule regarding removing youth with a mental disorder from state youth correctional facilities. There is presently no rule for which an amendment would suffice to carry out the purpose of this statutory mandate, therefore the department elected to promulgate a new rule.

The statute the rule implements, 41-5-1504, MCA, mandates that a youth who has a mental disorder and meets the criteria in 53-21-126, MCA, must be removed from the facility and moved to a more appropriate placement in response to the youth's mental health needs. In addition to suffering from a mental disorder, the youth must, because of the mental disorder:

- (a) be substantially unable to provide for the youth's own basic needs including the youth's health or safety;
- (b) recently caused self-injury or injury to others;
- (c) present an imminent threat of injury to himself/herself or others; or
- (d) if untreated, predictably deteriorate to the point the youth will become a danger to himself/herself or to others.

The department enumerated the above-listed criteria in the rule as a reference.

The department had to first define when it needed to assess youth to determine if the youth must be removed from the youth correctional facility. The department determined that it was appropriate to first assess every youth when he/she arrives at a facility. The department concluded, based on youth services professionals' experience with youth in correctional facilities, that youth who have been previously diagnosed with a mental disorder and youth who have been prescribed psychotropic medications for a mental disorder should be assessed at regular intervals after they enter the facility because there is a risk such youth's mental status could deteriorate. The professionals also determined that a youth should be assessed if the youth's behavior suddenly changes to aggressive, assaultive, self-injurious, or dangerous.

The department determined that facility treatment staff is in the best position to make an initial determination/assessment about a youth's mental status. If the staff's initial assessment reveals a youth suffers from a mental disorder and possibly meets one of the criteria listed in 53-21-126, MCA, the facility will obtain an evaluation of the youth from a professional person. The department decided the persons appropriate to perform evaluations were the same professionals listed in 53-21-102(16), MCA, as "professional persons" for purposes of performing evaluations for Department of Public Health and Human Services: a medical doctor, an advanced practice registered nurse with a clinical specialty in psychiatric mental health nursing, a licensed psychologist, or a person who has been certified by the Department of Public Health and Human Services. If the professional determines a youth suffers from a mental disorder and meets one of the criteria listed in 53-21-126, MCA, the youth must be removed from the facility and placed in a more appropriate placement.

The department ascertained that the only suitable placements for a youth who suffers from a mental disorder and meets one of the criteria for placement out of a

youth correctional facility are psychiatric residential treatment facilities for residential psychiatric treatment of youth. The department deemed it important to first attempt to find a more suitable placement for the youth within the state of Montana as Montana facilities are more cost effective, it is in the youth's best interest, and optimal for the youth's recovery to be as close as possible to the youth's support network of friends and family. If the department, however, cannot find an acceptable in-state psychiatric residential treatment facility that will accept the youth, it is necessary to find a treatment facility out-of-state and the department will make application for such out-of-state placement.

Finally, the department determined it needs to make periodic inquiries to determine if the youth should be returned to the youth correctional facility. The department determined the best approach to take to fulfill that requirement is for the youth correctional facility that removed the youth to stay in contact with the facility where it placed the youth and periodically discuss the youth's progress. If the youth can be placed back in the youth correctional facility, the facility will make those arrangements, or the Montana Department of Corrections Youth Services Division may release the youth to juvenile parole.

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

20.9.101 DEFINITIONS For the purposes of this ~~rule~~ subchapter, the following definitions apply:

~~(1) "Allocation account" means an account created by the department for each judicial district pursuant to 41-5-130, MCA, regardless of the district's decision to participate in the juvenile delinquency intervention program.~~

~~(2) "CAPS" means child and adult protective services, the online statewide management system maintained by DPHHS.~~

~~(3) "Change in placement" means the transfer or physical movement of an offender from a previously approved residential placement to another placement at a higher level of supervision. It does not include an emergency placement of 45 days or less.~~

~~(4)~~(1) "Committee" means a youth placement committee appointed by the youth court judge pursuant to 41-5-121, MCA.

~~(5) "Committee chair" means the chief juvenile probation officer or designee from the juvenile probation staff who is a member of the youth placement committee.~~

~~(6)~~(2) "Committee records" means written documents submitted to the committee by the juvenile probation or parole officer, but does not include recording or documents required by the department for audits or monitoring of the committee process as required by 41-5-2006, MCA.

~~(7) "Cost containment fund" means funds retained by the department under 4-5-132, MCA, for disbursement by the cost containment review panel.~~

~~(8) "Cost containment review panel" means the panel established in 41-5-131, MCA.~~

~~(9) "Community alternatives" means programs, placements, or services provided or funded through the youth court probation office within the community or~~

residence of the youth's parents or guardian, but does not include pre-adjudicatory detention.

~~(10) "Deficit" for the purpose of these rules means the point in time when a district's allocation account for a given year is over-encumbered.~~

~~(11)(3) "Department" means the Department of Corrections as authorized in 2-15-2301, MCA.~~

~~(12) "DPHHS" means the department of public health and human services.~~

~~(13) "Early intervention" means provision of supervision or services to a youth by the youth court upon initial referral to the youth court for a misdemeanor offense or services intended to prevent first offenders from further involvement in the juvenile justice system.~~

~~(14) "Juvenile delinquency intervention program" means the program established by the Montana Legislature and implemented by the department of corrections to more effectively manage juvenile placement services and funding.~~

~~(15) "Mental health professional" means a psychiatrist, psychologist or a professional person certified pursuant to 53-21-106, MCA.~~

~~(16) "Non-participating district" means a Montana judicial district that has elected not to participate in the juvenile delinquency intervention program.~~

~~(17) "Placement" has the same meaning as "out-of-home placement" as defined in 41-5-103, MCA, and used throughout these rules but may include shelter care, detention, and emergency placements of less than 45 days.~~

~~(18) "Participating district" means a Montana judicial district that has elected to participate in the juvenile delinquency intervention program.~~

~~(19) "Referral packet" means written or electronic information provided to the committee by a juvenile probation or parole officer for the purpose of supporting a recommendation as provided for in 41-5-121 and 41-5-122, MCA.~~

~~(20) "Referred to the youth court or department" means the process of submission from the chair of a youth placement committee to the youth court judge or the department's representative of a written request for placement of a youth in out-of-home care intended to last longer than 45 days.~~

~~(21) "Referring worker" means the youth court probation officer or case manager charges with supervision and case management of an offender at the time of referral.~~

~~(22) "Residential placement" means placement in a youth care facility other than a state youth correctional facility.~~

~~(23) "Residential treatment" means any psychiatric, medical, behavioral or social treatment provided to a youth in residence by a licensed youth care facility or a child placing agency approved by the department of public health and human services to provide intensive treatment to youth who are suffering from a mental disorder.~~

~~(24) "Surplus funds" means funds remaining in the participating district's account from the initial budget allocation at the end of a fiscal year.~~

~~(25) "Unused cost containment funds" means funds allocated to the cost containment fund which remain in the cost containment fund at the end of a fiscal year or funds allocated by the cost containment review panel to a participating or non-participating district which remain in the district's allocation account at the end of a fiscal year.~~

~~(26) "Youth correction facility" means a facility for the rehabilitation of delinquent youth such as the pine hills youth correctional facility, riverside youth correctional facility, or a youth correctional facility under contract with the department of corrections.~~

AUTH: ~~41-5-125 41-5-2006, 53-1-203, MCA~~

IMP: ~~41-5-121, 41-5-122 41-5-123, 41-5-124, 41-5-125, 41-5-130, 41-5-131, 41-5-132 and, 53-1-203, MCA~~

STATEMENT OF REASONABLE NECESSITY: The department repealed all but one of the rules in this subchapter; it, therefore, deleted all the definitions that were only applicable to the repealed rules.

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

20.9.129 (20.9.204) ALLOCATION OF JUVENILE PLACEMENT FUNDS TO THE OFFICE OF COURT ADMINISTRATOR, JUVENILE PAROLE, JUDICIAL DISTRICTS, AND COST CONTAINMENT FUND POOL ~~(1) The department shall allocate funds to each participating and non-participating district for the treatment or placement of youth based on the adolescent population of each district for fiscal year 2002.~~

~~(2) Beginning in fiscal year 2002, the cost containment review panel shall determine the allocation formula for juvenile placement funds by April 30 for each subsequent fiscal year. The allocation formula may use, but is not limited to, number of at risk youth in each district, crime statistics, per capita income averages, percentage of youth placed in state youth correctional facilities, referrals, probation officer case loads, poverty level index, and district placement history.~~

~~(3) The department may not allocate less than \$1 million to the cost containment fund each fiscal year from the juvenile placement fund.~~

~~(a) The department shall allocate \$1 million to the cost containment fund for fiscal year 2002.~~

~~(b) The department, after reviewing recommendations from the cost containment review panel, shall determine any allocation beyond the statutory minimum to the cost containment fund for fiscal year 2003 and all subsequent fiscal years. The additional allocation amount shall be determined by April 30th of the preceding fiscal year.~~

(1) For each fiscal year, out of the money appropriated by the Legislature for juvenile placement funds, the department will allocate money to the Office of Court Administrator, the cost containment pool, and the juvenile parole in the following manner and amounts:

(a) The department will allocate \$25,000 to the Office of Court Administrator for evaluations of out-of-home placements, programs, and services.

(b) The department will allocate at least \$1 million to the cost containment pool. The cost containment review panel will recommend to the department an amount to be allocated to the cost containment pool. After considering the recommendation of the cost containment review panel, the department shall

determine if it will allocate more than \$1 million to the cost containment pool. If the cost containment pool expenditures exceed \$900,000 in the previous fiscal year, the department will allocate at least an amount equal to the amount over \$900,000 of pool expenditures in addition to \$1 million to the pool for the next fiscal year; the department may allocate additional funds.

(c) After funds have been allocated as indicated in (1)(a) and (b), the department will allocate 11 percent of appropriated juvenile placement funds to juvenile parole for out-of-home placements, programs, and services for youth on juvenile parole.

(2) After funds have been allocated as indicated in (1)(a) through (c), the department shall allocate the remaining funds to judicial districts for out-of-home placements, programs, and services for youth. The cost containment review panel will determine the formula the department must use to establish the amount of funds allocated to each judicial district.

(3) After the cost containment review panel has determined the allocation formula to be used to compute the amount of funds to be distributed to each judicial district, the department will use the formula to calculate the amount allocated to each judicial district.

(4) By no later than July 15 of each year, the department will notify each judicial district of the following:

(a) the total amount of funds appropriated by the Legislature for the juvenile placements, the amount of funds allocated to the Office of Court Administrator for evaluations, the amount allocated to juvenile parole, the amount allocated to the cost containment pool, and the amount remaining that will be allocated to the judicial districts;

(b) the allocation formula the cost containment review panel established; and

(c) the amount the department has calculated the judicial district will receive from the remaining appropriated funds using the formula established by the cost containment review panel.

AUTH: 41-5-2006, MCA

IMP: 41-5-130, 41-5-131, and 41-5-132, MCA

STATEMENT OF REASONABLE NECESSITY: Because the Legislature made fundamental changes in the Juvenile Delinquency Intervention Act (JDIP), most of the existing rule was no longer statutorily correct: therefore, the department elected to delete the substance of the rule and start over. The name and purpose of the existing rule, however, was still appropriate; hence, the department made changes within the existing rule number.

Each biennium the Legislature appropriates a sum of money for juvenile placements to implement the Juvenile Delinquency Intervention Act (JDIP). This rule implements 41-5-130, MCA, that authorizes the department to allocate the legislatively appropriated funds to the Office of Court Administrator for evaluation of JDIP programs; to juvenile parole for out-of-home placements, programs, and services; to the cost containment pool; and, finally, to the judicial districts. The department took the approach as written in the rule because the total allotment of funds has to be allocated in a certain sequence. First, it must allocate \$25,000 to

the Office of Court Administrator; then an amount (at least \$1 million) to the cost containment pool; followed by 11 percent of the funds to the department for juvenile parole, and lastly, all of the remaining funds to the judicial districts. The department, therefore, drafted the rule to reflect that order.

Subsection (1)(a) reflects the statutory duty to allocate \$25,000 to the Office of Court Administrator for evaluations of out-of-home placements, programs, and services.

Subsection (1)(b) reflects the department's duty in 41-5-132, MCA, to allocate money to the cost containment pool. The department must allocate at least \$1 million to the cost containment pool, but has the discretion to increase the allocation. To decide if it should allocate additional funds, the department must consider the recommendation of the cost containment review panel. The department decided to look at the history of expenditures from the cost containment pool to predict how much the pool would need in the next fiscal year. If the cost containment review panel expended more than \$900,000 from the pool in the previous fiscal year, the department would fund the pool with at least \$1 million in addition to the amount over \$900,000 of expenditures from the pool. The department determined this approach would achieve the desired purpose of funding the pool with money adequate to provide a safety net to judicial districts for unexpected expenditures for out-of-home placements.

Thirdly, the department is statutorily obligated, after it has allocated \$25,000 to the Office of Court Administrator, and after it has allocated money to the cost containment pool, to allocate 11 percent of the funds to juvenile parole for out-of-home placements, programs, and services for youth on juvenile parole; thus, it drafted (1)(c) to reflect that statutory obligation.

Finally, the department must allocate the remaining funds to the judicial districts. The department must utilize the formula adopted by the cost containment review panel to allocate the funds to the judicial districts. The department decided to continue to use current practice and advise each judicial district in writing how much the judicial district will receive in JDIP funds. The department decided to take the approach in (4) because it deemed it important for each judicial district to have complete information about how the department allocated the legislatively appropriated funds. It is important, the department decided, for each judicial district to know how much total money the Legislature appropriated for the JDIP program; the amount of funds the department allocated to the Office of Court Administrator for evaluations; the amount of funds the department allocated, using the statutory formula, to juvenile parole; and, the amount the department allocated to the cost containment pool. The department also determined it was appropriate, in the interest of full disclosure, to advise each judicial district of the formula established by the cost containment review panel to apportion the remaining funds to the judicial districts and, utilizing the formula, the amount of money the department calculated the judicial district will receive.

20.9.135 (20.9.207) MONITORING AND AUDITING OF PARTICIPATING AND NON-PARTICIPATING JUDICIAL DISTRICTS AND PROCESSING PAYMENTS (1) ~~Each participating district shall keep an accurate accounting of the expenditure of funds which are not required to be entered into the CAPS system for~~

services provided to youth from their account. judicial district and the department shall monitor the judicial district's annual allocation to ensure the judicial district does not exceed its annual allocation.

(2) In order to properly monitor the judicial district's annual allocation, Each participating and non-participating the judicial district shall input costs for services to youth into the CAPS system or alternative system of payment processing. If a judicial district has extenuating circumstances that require an expenditure outside the CAPS system or alternative system of payment processing, the judicial district shall obtain the department's approval prior to the expenditure.

(a) With department approval, participating districts may expend funds which the department agrees are not able to be processed through the CAPS system. Participating districts shall provide the department copies of the expenditures of all non-CAPS payments within 10 days of incurring the expense.

(b) Non-participating districts may not expend any funds from their allocation account for services which cannot be processed through the CAPS system. In non-participating districts, the department is prohibited from paying any bill for services incurred while a youth is in residence with a custodial parent or guardian, or which are not directly part of an out-of-home, shelter care, or emergency placement.

(3) The department will provide technical assistance to any judicial district that requests assistance with monitoring its annual allocation.

(4) The department shall prepare a monthly budget status report that indicates the amount each judicial district has expended or committed to expend from its annual allocation and the amount remaining in the allocation.

(a) The department shall submit the monthly budget status report to each judicial district and to the cost containment review panel.

(b) If it appears to the department that the judicial district will exceed its annual allocation, the department will notify the judicial district and the cost containment review panel of the judicial district's expected excess and advise the judicial district of appropriate procedures and actions it should take to come into compliance with the spending authority it has or procedures with which it must comply to receive additional funds from the cost containment pool.

(c)(5) The department shall conduct desk reviews of reconcile allocations with expenses for all judicial districts. If the department encounters an error or irregularity in a judicial district's account, the department shall request the Office of Court Administrator review the error or irregularity to determine if an audit from the department's internal auditor or shall contract with a reputable auditor to conduct an audit of the judicial district's account is necessary. After consultation with the department, if the Office of Court Administrator elects to pursue an audit of the judicial district's account, the department will assist with the audit as necessary.

(6) The department will process payments to providers after expenditures have been properly entered into the CAPS system or have been approved as indicated in (2).

(a) The department financial and program chief will approve expenditures that are appropriately documented and entered within 30 days of commencement of service or within five working days of changes of placement or closure of services.

(b) The department will generate payments within 30 days of approval by the department's financial and program chief.

AUTH: 41-5-2006 and ~~53-1-203~~, MCA

IMP: ~~41-5-123, and 41-5-2006~~ 41-5-130, 41-5-2003, 41-5-2004, 41-5-2005, MCA

STATEMENT OF REASONABLE NECESSITY: The title of the rule changed because the authorizing statute, 41-5-2006, MCA, changed. As to (1), the department deleted "participating" because when the rule was originally adopted there were both participating and nonparticipating judicial districts, but now all judicial districts participate. The department deleted the first sentence of (1), and stated the purpose of the rule in the amended sentence.

Section 41-5-2006, MCA, requires each judicial district and the department to monitor the judicial district's expenditures. The department took the approach reflected in (2) after consulting with the Office of Court Administrator. The court administrator's office and the department realize that districts make most expenditures through the CAPS system, but some service providers are not in the CAPS system; hence, the rule needs to reflect both eventualities. Since this rule only applies to processing payments and not to the type of payments, the court administrator's office agreed the department should approve an alternative type of payment processing.

The department determined it was more appropriate to include all the material that was previously in (2)(a) and (b) in one subsection labeled (2) because (a) is more appropriately subsumed in (2) and (b) is no longer necessary as all judicial districts are participating.

Section (3) reflects the department's statutory duty in 41-5-2006, MCA, to provide technical assistance to judicial districts and is a recitation of the statute.

The department decided it would promulgate (4) to fulfill its statutory duty to monitor judicial districts to ensure judicial districts do not exceed their allocated placement funds. If it appears a judicial district will exceed its allocation, the department will aid the judicial district to stay within its allocation or inform the judicial district what it must do to apply for funds from the cost containment pool. The department took the approach indicated in the rule as it was the method that is the least intrusive on the autonomy of the judicial districts. The department will keep each judicial district informed as to the amount of allocated funds the judicial district has encumbered.

Section (5) completes the department's obligation to monitor each judicial district. The Office of Court Administrator and the department jointly agreed that if, while monitoring a judicial district, the department discovered what may be considered an irregularity, the department will inform the Office of Court Administrator. The Office of Court Administrator can decide how to proceed, and whether an audit is warranted. The department will be available to consult with the Office of Court Administrator concerning the irregularity and potential audit.

Section (6) reflects the department's statutory duty to administer the juvenile placement funds. The methodology in the rule expresses the current successful payment practice.

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: Diana L. Koch, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59620; telephone (406) 444-9593; fax (406) 444-4920; or e-mail dkoch@mt.gov, and must be received no later than 5:00 p.m., December 6, 2012.

7. Diana L. Koch, Department of Corrections, 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 Myrna Omholt-Mason, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59620; telephone (406) 444-3911, fax (406) 444-4920, or e-mail momholt-mason@mt.gov or may be made by completing a request form at any rules hearing held by the department.

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

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The undersigned rule reviewer spoke to the primary bill sponsor, Sen. Jim Shockley, by telephone on Tuesday, July 24, 2012.

/s/ Diana L. Koch
Diana L. Koch
Rule Reviewer

/s/ Mike Ferriter
Mike Ferriter
Director
Department of Corrections

Certified to the Secretary of State October 29, 2012.

BEFORE THE DEPARTMENT OF LABOR
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.17.127, pertaining to) PROPOSED AMENDMENT
prevailing wage rates for public works)
projects)

TO: All Concerned Persons

1. On November 30, 2012, at 10:30 a.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the second floor conference room (conference rooms A and B), 1805 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 26, 2012, to advise us of the nature of the accommodation that you need. Please contact the Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 201503, Helena, MT 59620-1503; telephone (406) 444-1741; fax (406) 444-7071; TDD (406) 444-0532; or e-mail mikesmith@mt.gov.

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

24.17.127 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

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

(e) The current building construction services rates are contained in the ~~2012~~ 2013 version of "Montana Prevailing Wage Rates for Building Construction Services" publication.

(f) The current nonconstruction services rates are contained in the ~~2012~~ 2013 version of "Montana Prevailing Wage Rates for Nonconstruction Services" publication.

(g) The current heavy construction services rates are contained in the 2011, ~~Revised June 24, 2011,~~ version of "Montana Prevailing Wage Rates for Heavy Construction Services" publication.

(h) The current highway construction services rates are contained in the ~~2012~~ 2013 version of "Montana Prevailing Wage Rates for Highway Construction Services" publication.

(2) and (3) remain the same.

AUTH: 2-4-307, 18-2-409, 18-2-431, MCA

IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-406, 18-2-411, 18-2-412, 18-2-413, 18-2-414, 18-2-415, 18-2-422, 18-2-431, MCA

REASON: There is reasonable necessity to update the prevailing wage rates for building construction services and nonconstruction services following the annual survey of wages that is provided for in 18-2-413 and 18-2-415, MCA, respectively. The department surveys employers and applies the methodologies provided by ARM 24.17.124 to determine those prevailing wage rates.

There is reasonable necessity to amend the prevailing wage rates for highway construction services in order to track with the most recently adopted federal Davis-Bacon Act wage rates, as provided by 18-2-414(2)(b), MCA. The department, in informal consultation with public agencies, employers, and labor organizations, has historically not surveyed for highway construction wage rates, and adopted by reference federal rates.

The department also believes that there is reasonable necessity not to amend at this time the heavy construction services rates provided for in ARM 24.17.127(1)(g). The department, following informal consultation with a number of interested parties, determined in spring 2012 that many users of prevailing wage rates for heavy construction services were not in favor of the department surveying employers and labor organizations for wage rates for heavy construction services. At that time, the department's customers generally appeared to prefer that the department follow its historic practice of adopting federal wage rates for heavy construction, as permitted by 18-2-414, MCA. There is, however, reasonable necessity to amend ARM 24.17.127(1)(g) to correct the reference to the edition of the 2011 heavy construction services publication. The reference to a revised edition is erroneous, as a revised version of the heavy construction rates was neither proposed nor adopted in 2011. See 2011 MAR issue no. 9, page 725, and 2011 MAR issue no. 12, page 1136.

Since that time, however, the federal Davis-Bacon Act wage rates for heavy construction services have been issued by the U.S. Department of Labor in a format that unexpectedly significantly varied from the historic form and format. As an example, the revised federal rates do not identify generally recognized work classifications in several occupations (such as equipment operators and laborers). The new federal rates do not appear to provide contracting agencies and employers a readily understandable basis for classifying workers. The new federal rates likewise do not appear to provide rates for certain occupations that the department knows are used in the heavy construction industry.

Additionally, the new federal rates have been issued on a county-by-county basis, rather than on a statewide basis. Section 18-2-414(3), MCA, appears to require that heavy construction rates be determined and adopted on a statewide basis. Accordingly, the department concludes that it cannot adopt the present federal rates for heavy construction. Section 18-2-414(2), MCA, allows the department a choice of either surveying for wage rates or of adopting the most recent federal rates. The department believes that under the circumstances, it should not propose a change to the heavy construction services rates until such time as the department can survey wages paid by employers on heavy construction projects in Montana. The department recognizes that not amending the heavy construction services rates will

have the effect of maintaining the 2011 rates in effect, but concludes that is a better alternative than adopting federal rates that will not meet the needs of Montana employers, workers, and contracting agencies, and that will not comply with statutory requirements.

4. A copy of the proposed 2013 publications, identified as "preliminary building construction rates", "preliminary highway construction rates", and "preliminary nonconstruction rates", are available and can be accessed on-line via the internet at: www.mtwagehourbopa.com.

5. A printed version of the proposed 2013 publications is also available by contacting Mike Smith at the address, e-mail, or telephone numbers listed in paragraph 2 of this notice.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 1503, Helena, MT 59620-1503; fax (406) 444-7071; TDD (406) 444-0532; or e-mailed to mikesmith@mt.gov, and must be received no later than 5:00 p.m., December 7, 2012.

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

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 or areas of law the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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

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

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State October 29, 2012.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.87.102, 37.87.1216,) PROPOSED AMENDMENT
37.87.1217, 37.87.1222, and)
37.87.1223 pertaining to psychiatric)
residential treatment facility (PRTF))

TO: All Concerned Persons

1. On November 28, 2012, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on November 21, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.87.102 MENTAL HEALTH SERVICES (MHS) FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED), DEFINITIONS As used in this chapter, the following terms apply:

(1) "Accredited secondary school" means a secondary school accredited in accordance with Montana Board of Public Education standards for secondary education.

(1) through (14) remain the same, but are renumbered (2) through (15).

~~(15)~~ (16) "Youth" means:

(a) for Medicaid services, a person 17 years of age and younger or a person who is up to 20 years of age and is enrolled in an accredited secondary school with the exception for PRTF services, a person 17 years of age or younger; or

(b) remains the same.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA

IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

37.87.1216 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, BENEFIT LIMITS, CERTIFICATION OF NEED FOR SERVICES, UTILIZATION REVIEW AND INSPECTIONS OF CARE REQUIREMENTS (1) and (2) remain the same.

(3) Medicaid reimbursement for PRTF services is not available for youth 18 years of age and older.

(3) and (4) remain the same, but are renumbered (4) and (5).

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) and (2) remain the same.

(3) A PRTF must submit a request for an eligibility determination to the department's developmental disability program (DDP) for youth suspected of having a developmental disability if a request has not already been made for youth 8 to 18 years of age. An eligibility determination for adult services may be requested for youth 16 years or older.

(a) the PRTF must complete and submit to the DDP a cover letter along with the psychological testing and assessments required by the DDP; and

(b) the PRTF must complete and submit additional documentation, if requested by the DDP.

(4) The PRTF must use a functional assessment approved by the department's children's mental health bureau for youth on admission and prior to discharge to assist in the development of the plan of care and the discharge plan.

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

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

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

37.87.1222 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY (PRTF) SERVICES, INTERIM RATE AND COST SETTLEMENT PROCESS (1) through (11) remain the same.

(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) through (d) remain the same.

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

(a) and (b) remain the same.

(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; and

(e) the out-of-state PRTF pays for transportation for youth on a therapeutic home visit from an out-of-state PRTF.

(14) through (16) remain the same.

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) and (2) remain the same.

(3) The statewide bundled per diem interim rate for 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~~ fee schedule, as adopted in ARM 37.87.901; or

(b) and (4) remain the same.

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

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing amendments defining a number of Psychiatric Residential Treatment Facility (PRTF) rules regarding the age youths can be served in a PRTF for purposes of Medicaid reimbursement and specifying that a secondary school in the definition of "youth" be accredited. The department is proposing amendments requiring PRTFs to use the functional assessment approved by the department's Children's Mental Health Bureau (CMHB), requiring PRTFs to refer youth suspected of having a developmental disability to the department's developmental disability program, allowing adult targeted case managers to be reimbursed for care coordination for transition age youth, and allowing therapeutic home visits for youth in out-of-state PRTFs. These proposed amendments are necessary for efficient management by the department and providers.

ARM 37.87.102 and ARM 37.87.1216

The department is proposing to amend ARM 37.87.102 and 37.87.1216, specifying the existing CMHB policy that PRTF services are only available to youth below the age of 18. Other mental health services are available for youth to age 20, if they are "enrolled in a secondary school." The "enrolled in a secondary school" language creates confusion for providers, parents/legal guardians, and other stakeholders as to what services are available to youth and when youth should be transitioned to adulthood or adult mental health services. We are also proposing to add the requirement that secondary schools be accredited in accordance with the Montana Board of Public Education (BPE) standards for secondary education. The department is proposing to add a definition for "accredited secondary school" that specifies the BPE standards are used for accreditation of secondary schools. These

changes are not expected to have any fiscal impact upon providers or youths. These amendments are necessary to improve communication between the department, providers, and parents/legal guardians.

ARM 37.87.1217

The department is proposing language to require PRTFs to use the same department-approved functional assessment in treatment and discharge planning, beginning July 1, 2013. This is necessary in order to communicate consistently and in a common language regarding the youth's functional needs. CMHB believes requiring the use of the same functional assessment will assist those involved in the youth's treatment and discharge planning. The intensity of active treatment and the adequacy of discharge planning currently vary by PRTF. The consistent functional assessment should also assist to better identify whether the youth is making progress and whether the treatment program is appropriate for the youth's needs.

Most of the enrolled PRTFs currently use a functional assessment. The department is not proposing to reimburse the PRTFs for completing this assessment. There may be a fiscal impact to the provider for completing this functional assessment if they are not currently using the one approved by the department.

The department is also proposing language that would require PRTFs to submit eligibility determination requests to the department's developmental disabilities program (DDP) for youth in their facility, ages 8 to 18, if they believe the youth has a developmental disability (DD). This is necessary to identify the number of youth with a developmental disability and will assist the department in planning for needed DD services. If the child is determined eligible for DD services a referral would then be required. If DD services are not available when a referral is made the youth may be placed on a waiting list. DD services may be the most appropriate services for the youth and determining whether a youth has a developmental disability will also assist the PRTF in individualizing the youth's treatment in their facility.

The department is not proposing to reimburse the PRTFs for completing the psychological testing and functional assessment used to determine DDP eligibility. Psychological testing is included in the per diem bundled psychiatric rate. There may be a small fiscal impact to the provider for completing the DDP functional assessment. There is not expected to have a fiscal impact for the department.

ARM 37.87.1222

The department is proposing to take modifier "HA" off the targeted case manager (TCM) code in ARM 37.87.1222. This is necessary so care coordination services provided by an adult TCM for youth transitioning to adult mental health services are reimbursed at the adult TCM rate.

The department is also proposing to allow 14 therapeutic home visit (THV) days for youth in out-of-state PRTFs. This is necessary to be consistent with the number of

THVs allowed for youth in in-state PRTFs. Fourteen days would be limited per state fiscal year (SFY). It is difficult to discharge youth from an out-of-state PRTF and THVs would help the youth and family to practice the clinical gains they have made in treatment, before discharge.

Adding THVs to out-of-state PRTFs is not expected to have a significant fiscal impact. Most youth are served by in-state PRTFs and the number of THVs to out-of-state PRTFs has been minimal. We are also proposing the out-of-state PRTF reimburse the travel expenses to and from Montana for out-of-state THVs.

ARM 37.87.1223

The department is proposing to amend ARM 37.87.1223 to update the title of the Medicaid Mental Health and Mental Health Services Fee Schedule, Individuals Under 18 Years of Age. This is necessary because effective July 1, 2012, the title for the above-mentioned fee schedule was changed to Medicaid Youth Mental Health Services Fee Schedule. This fee schedule is adopted and incorporated in ARM 37.87.901.

Fiscal Impact

While there is no fiscal impact to the department, there may be a small fiscal impact to providers. The department does not have enough data to calculate that fiscal impact at this time.

Number of Youth and PRTFs Affected

The unique caseload count for PRTF services so far for SFY 2013 is 166. The unique caseload count for SFY 2012 was 463. There are 3 in-state and 11 out-of-state PRTFs enrolled in the Montana Medicaid Program.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 6, 2012.

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

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 5 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/ John Koch
Rule Reviewer

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

Certified to the Secretary of State October 29, 2012

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.112.103, 37.112.108,) PROPOSED AMENDMENT
37.112.109, 37.112.116, 37.112.117,)
37.112.131, 37.112.133, 37.112.137,)
37.112.142, 37.112.144, 37.112.147,)
37.112.158, 37.112.159, and)
37.112.167 pertaining to body art and)
cosmetics)

TO: All Concerned Persons

1. On November 28, 2012, at 3:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on November 21, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.112.103 DEFINITIONS (1) through (4) remain the same.

(5) "Body modification" is the intentional altering of the human body for any nonmedical reason.

(5) through (9) remain the same, but are renumbered (6) through (10).

~~(40)~~ (11) "Disinfectant" means a substance or solution, registered with the United States Environmental Protection Agency (EPA), ~~that~~ which kills or inactivates viruses and pathogenic microorganisms, but not necessarily their spores.

(11) remains the same, but is renumbered (12).

(13) "Easily cleanable" means a characteristic of a surface that allows effective removal of soil by normal cleaning methods.

(12) remains the same, but is renumbered (14).

(15) "Implant" means an artificial object inserted into a person's body. Implants do not include microdermal anchors or two-point piercings.

(13) through (16) remain the same, but are renumbered (16) through (19).

(20) "Microdermal anchor" means a piece of jewelry defined in ARM 37.112.103(16) used for single-point piercings that has a foot no larger than 8mm in length.

(17) through (21) remain the same, but are renumbered (21) through (25).

(22) (26) "Sharps" means any discarded instrument or article that may be contaminated with blood or other bodily fluid and may cause punctures or cuts, including but not limited to needles, scalpel blades, uncovered razors, and broken glass. A disposable shaving razor with protective cap in place is not considered a sharp.

(27) "Single-point piercing" means a piercing that creates a hole in the skin that acts as both the entry and exit for a microdermal or transdermal anchor.

(23) through (27) remain the same, but are renumbered (28) through (32).

(33) "Transdermal anchor" means a piece of jewelry defined under ARM 37.112.103(16) used for single-point piercings that has a foot larger than 8mm in length.

(34) "Two-point piercing" means a piercing that punctures the skin creating a distinct entry and exit point.

(28) and (29) remain the same, but are renumbered (35) and (36).

AUTH: 50-48-103, MCA

IMP: 50-48-102, 50-48-103, MCA

37.112.108 GENERAL FACILITY REQUIREMENTS (1) Work rooms, cleaning rooms, restrooms, handwashing facilities, waiting areas, and all establishment areas to which clients have access must be kept clean and free of garbage, litter, unnecessary articles, dust, dirt, and sources of airborne dust or fumes.

(2) through (4) remain the same.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.109 WATER SUPPLY (1) remains the same.

(2) Before a license may be issued, an establishment using an individual, shared, or multiple user water supply must submit the following to the department or its designee:

(a) satisfactory coliform bacteria and nitrate test results as specified in ARM Title ~~37~~ 17, chapter 38, subchapter 2; and

(b) remains the same.

(3) A supplier of an individual, shared, or multiple user water supply shall ~~must~~ conduct a coliform bacteria test of the system at least twice a year with one sample collected between April 1 through June 30 and the second sample collected between August 1 through October 31, and ~~shall~~ must conduct a nitrate test of the system at least once every three years. Water tests must be analyzed at a certified laboratory. A supplier ~~shall~~ must keep sampling result records for at least three years.

(4) through (8) remain the same.

(9) Bottled and packaged potable water must be obtained from a licensed and approved source and shall must be handled and stored in a way that protects it from contamination.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.116 TOILETS AND HANDWASHING FACILITIES (1) and (2) remain the same.

(3) The toilet room must be ventilated ~~vented to the outside~~, well lit, and equipped with a ~~self-closing~~ door, toilet tissue, and waste receptacle.

(4) through (9) remain the same.

(10) Soap must be conveniently located to the handwashing sink.

(11) ~~Single-use towels~~ Each handwashing sink must be provided with individual, disposable towels that are kept clean ~~must be conveniently located~~ for drying hands and a waste receptacle.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.117 WORK ROOM REQUIREMENTS (1) through (5) remain the same.

(6) The work room must have adequate ventilation. ~~If heating ducts, vents, or air conditioners discharge into the work room, the intakes for such venting must be filtered, and the filters must be maintained to minimize airborne dust and insects.~~

(7) remains the same.

(8) The work rooms must have a handwashing facility unless there is a handwashing facility outside the work room within ten feet of the work room door.

(a) remains the same.

(b) The handwashing station cannot be in the same room as the toilet.

(b) through (g) remain the same, but are renumbered (c) through (h).

~~(h) (i) Single-use towels~~ Individual, disposable towels must be conveniently located for drying hands.

(9) through (10) remain the same.

(11) The floor of the work room must be constructed of smooth and impervious materials and that are easily cleanable and in good condition. The floor must be wet-mopped daily.

(12) remains the same.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.131 STERILIZATION OF EQUIPMENT AND JEWELRY (1) remains the same.

(2) All jewelry must be sterilized ~~or disinfected~~ by at least one of the following methods:

(a) individually wrapped and autoclaved; or

- (b) come from the supplier individually wrapped and sterile; ~~or,~~
- ~~(c) be disinfected by complete immersion in 70% alcohol.~~
- (3) Whenever an autoclave is used, the following requirements apply:
 - (a) Autoclave packaging and a testing indicator for verifying temperatures must be used each time the autoclave is used.
 - (b) and (c) remain the same.
 - (d) Monthly biological monitoring must be conducted on the autoclave using standard spore units that are analyzed by a certified laboratory. The results of the testing must be provided to the health authority on a monthly basis and the monthly spore test must be posted in a conspicuous place.
 - (e) In the event of a failed spore test, the operator must immediately cease use of the autoclave and contact the health authority within one business day.
 - (e) remains the same, but is renumbered (f).
 - (4) remains the same.
 - ~~(5) Jewelry that is sterilized by a chemical sterilant using 70% alcohol for 10 minutes must be immediately inserted into the client to prevent possible contamination.~~

AUTH: 50-48-103, MCA
IMP: 50-48-103, MCA

37.112.133 SKIN PREPARATION, ASEPTIC TECHNIQUE, AND AFTERCARE (1) remains the same.

- (2) At all times during the tattooing or body piercing procedure, artists ~~shall~~ must use sterile instruments as specified in ARM 37.112.131 and aseptic techniques.
- (3) Before and after performing the tattooing or body piercing procedure, artists ~~shall~~ must thoroughly wash their hands, ~~and wrists, and lower arms~~ in warm running water with soap for at least 20 seconds, scrubbing around and under their fingernails, rinsing completely, and drying with a clean, ~~single-use towel~~ individual, disposable towels.
- (4) Artists ~~shall~~ must wear a clean outer garment. A hair restraint must be worn if necessary to prevent the artist's hair from contact with the client. All necklaces, bracelets, or other personal items of the artist either must be removed or covered by the outer garment or sterile gloves to prevent the item coming in contact with the client.
- (5) If it is necessary to shave the client's skin area to be tattooed or pierced, the artist ~~shall~~ must use single-use razors. Straight razors, electric razors, and replaceable blade units may not be used. After shaving the client's skin, the artist ~~shall~~ must:
 - (a) and (b) remain the same.
 - (6) If the artist wore gloves to wash or shave the client's skin, the artist ~~shall~~ must discard those gloves after completing those tasks. The artist ~~shall~~ must then put on a new pair of gloves before continuing the procedure.
 - (7) remains the same.
 - ~~(8) If it is necessary to use a marking device, the marking device must be used only once.~~ If it is necessary to use a marking device, the tip of the marking

device must be vigorously wiped with 70% alcohol or other approved disinfectant before and after use, or used only once.

(9) remains the same.

(10) If the artist's gloved hands become contaminated during the tattooing or body piercing procedure, then the artist shall must rewash hands and reglove before resuming the procedure.

(a) remains the same.

(b) If the artist sustains a needle stick, the artist shall must resume the tattooing or body ~~piecing~~ piercing procedure with clean and sterile equipment after rewashing hands and regloving.

(11) remains the same.

(12) Upon completion of the tattooing or piercing procedure, artists shall must apply an antiseptic solution to the procedure area with a clean single-use cotton ball, gauze, or tissue.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.137 HANDLING AND DISPOSAL OF INFECTIOUS MATERIAL

(1) Waste that may have been contaminated with blood or body fluids must be separated from other waste ~~in different~~ and stored in a containers with a biohazard warning label.

(2) An adequate supply of sharps containers must be maintained on the premises. A sharps container must:

(a) be leakproof, rigid, and strong enough to protect the handler and others from accidental cuts or puncture wounds; ~~and~~

(b) be closed or capped securely to prevent the loss of contents for disposal; and

(c) not be filled more than 3/4 full.

(3) remains the same.

(4) An artist shall must use adequate protections, such as a brush, dust pan, or tongs to pick up any broken glassware in the work room. After engaging in such cleaning, the artist shall must wash hands and reglove as described in ARM 37.112.133 before working with a client.

(5) and (6) remain the same.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.142 CLIENT RECORD (1) The operator must maintain a client record for each client. At a minimum, the client record must include:

(a) and (b) remain the same.

(c) the address, ~~and~~ telephone number, and name of the establishment;

(d) and (e) remain the same.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.144 CONSENT FORM (1) remains the same.

(2) The consent form must contain:

(a) remains the same.

(b) a description of potential complications and side-effects, including abscesses, allergies, excessive bleeding (from body piercing), heavy metal poisoning, infection, keloid formation, muscle paralysis, nerve paralysis, scarring, swelling, blood-borne pathogens, tongue swelling, throat closure, and tooth fracture (from oral piercing).

(c) remains the same.

(d) instructions to consult a ~~physician~~ licensed medical provider if symptoms of infection or other complications occur;

(e) remains the same.

(f) a statement by the client that the client:

(i) has been provided with the ~~preservice information~~ aftercare instructions, both in writing and verbally by the artist; and

(ii) remains the same.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.147 TRAINING (1) Operators and artists ~~shall~~ must complete formal training provided by the department or its designee that includes at least general sanitation, first aid, and universal precautions for preventing the transmission of blood-borne pathogens before licensure.

(2) ~~Operators shall complete formal training within one year prior to obtaining a license from the department, and at least once in each calendar year of license renewal thereafter. Artists shall complete formal training within 60 days of hire, contract, or apprenticeship with an operator, and at least once every calendar year thereafter. Operators and artists must maintain current training certification with approved providers for first aid, and universal precautions for preventing the transmission of blood-borne pathogens and follow certifying organizations guidelines for expiration and renewal.~~

(3) Guest artists and new artists must complete formal training and provide the inspecting authority with documentation of this training prior to working in a licensed facility. Guest artists must also provide documentation of experience to the body art health authority in the jurisdiction they wish to work.

(3) and (4) remain the same, but are renumbered (4) and (5).

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.158 RESTRICTIONS AND PROHIBITIONS (1) A tattooing or body piercing procedure may not occur if:

(a) either the artist ~~of~~ or the client is under the apparent influence of alcohol or other mind-altering drugs;

(b) through (4) remain the same.

AUTH: 50-48-103, MCA
IMP: 50-48-103, MCA

37.112.159 VARIANCE (1) A licensee may request a variance to waive or modify compliance with the health requirements of this subchapter by petitioning the department. An application for a variance must contain:

(a) through (2) remain the same.

~~(3) A licensee must continuously demonstrate compliance with the variance or modification granted by the department. The failure to comply to the department-approved variance or modification may be grounds for license revocation. The failure to continuously demonstrate compliance with a variance or modification may result in license revocation or nonvalidation.~~

(4) remains the same.

AUTH: 50-48-103, MCA
IMP: 50-48-103, 50-48-204, MCA

37.112.167 BODY PIERCING: EAR LOBE PIERCING EXEMPTIONS

(1) Establishments that perform ear lobe piercing only by using a mechanized presterilized ear-piercing system approved by the department or its designee may be exempted from ARM 37.112.116(2), 37.112.117(2), (5), and (8) as long as:

(a) and (b) remain the same.

(c) the artist and client must have convenient access to handwashing facilities. If the handwashing facility is not within the work room or within ten feet of the work room door, then an 70% alcohol-based hand sanitizer must be used in accordance with the U.S. Centers for Disease Control "Guideline for Hand Hygiene in Health-Care Settings" (Morbidity and Mortality Weekly Reports, 2002, Vol. 51, No. RR-16) immediately before putting on gloves and immediately after removal of the gloves. The department hereby adopts and incorporates by reference the U.S. Centers for Disease Control "Guideline for Hand Hygiene in Health-Care Settings" (Morbidity and Mortality Weekly Reports, 2002, Vol. 51, No. RR-16). Copies of this guideline may be obtained by contacting the Montana Department of Public Health and Human Services, Public Health and Safety Division, Food and Consumer Safety Section, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 50-48-103, MCA
IMP: 50-48-103, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to the body art rules to more accurately represent the purpose and intent of the rule. Many of the proposed amendments are simple clarifications, grammatical errors, or internal inconsistencies. There are some substantive changes that are specifically outlined below.

ARM 37.112.103

The department is proposing to amend and add new definitions to clearly explain terms used in these rules.

ARM 37.112.108

The department is proposing to add language to (1) to prevent cleaning rooms from becoming dirty or accumulating garbage or dust.

ARM 37.112.109

The department is proposing to correct an ARM title number and make grammatical changes to ensure the rule is consistent using the word "must."

ARM 37.112.116

The department is proposing to add language to (3) to make the toilet and handwashing facility requirements more attainable for new businesses while ensuring health standards are still met; and amend (11) to clarify the language regarding hand drying towels at the handwashing sink.

ARM 37.112.117

The department is proposing to remove language from (6) to create a more general statement about ventilation while still maintaining basic health standards; add language to (8) to make it clear that the handwashing sink used during a body art procedure cannot be in the same room as the toilet; change language in (8)(h) to standardize rule language within the department regarding the use of disposable towels in handwashing; and add language to (11) to ensure health standards are met regarding flooring in work areas.

ARM 37.112.131

The department is proposing to remove language from (2) to reflect the industry standard and bring the rule up to current health standards; add language to (3)(a) to clarify when a testing indicator should be used with the autoclave; add language to (3)(d) to ensure that autoclaves being used in body art facilities pass their monthly spore tests; and remove (5) to reflect the changes proposed in (2).

ARM 37.112.133

The department is proposing to add wording to (3) to reflect current handwashing standards; add wording to (5) because electric razors cannot be cleaned adequately between clients to meet hygienic standards; revise the wording of (8) to allow the

reuse of marking devices if they are disinfected properly between uses; and revise the wording of (9)(b) to correct a spelling mistake changing "piecing" to "piercing".

ARM 37.112.137

The department is proposing to add new language to clarify the contents of a sharps container and change the wording of (1) to clarify the intention of this section of the rule.

ARM 37.112.142

The department is proposing to add wording to (1)(c) to ensure that the name of the establishment is included on all approved consent forms.

ARM 37.112.144

The department is proposing to add wording to (2)(b) to include hepatitis, AIDS, other blood-borne pathogens, tongue swelling, and throat closure to the list of potential complications and side effects on the consent form; change the wording to (2)(d) from physician to licensed medical provider to more accurately reflect who should be contacted in case symptoms of infection occur as a result of a body art procedure; and change the wording to (2)(i) to more accurately reflect the accepted language used by industry professionals.

ARM 37.112.147

The department is proposing language that will ensure that any piercer or tattooist working legally in the state of Montana has met basic first aid, blood-borne pathogen, and general sanitation training requirements before they begin working.

The department is proposing to change the training requirements in (2) so that the department's training renewal requirements reflect those of the training providers.

ARM 37.112.158

The department is proposing to change the wording of (1)(a) from "of" to "or" to reflect a spelling mistake that was made.

ARM 37.112.159

The department is proposing to change the wording of (3) to clarify and more accurately reflect the results of failing to comply with a granted variance.

ARM 37.112.167

The department is proposing to add the wording "70%" to (1)(c) because this concentration of alcohol-based hand sanitizer has been shown to be the best for inactivation of microorganisms.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., December 6, 2012.

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

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 5 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/ Shannon L. McDonald
Rule Reviewer

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

Certified to the Secretary of State October 29, 2012

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 37.87.2202, 37.87.2205, and)
37.87.2225 pertaining to non-)
Medicaid respite care services)

TO: All Concerned Persons

1. On July 12, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-592 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1338 of the 2012 Montana Administrative Register, Issue Number 13. On August 23, 2012, the Department of Public Health and Human Services published an Amended Notice of Public Hearing on Proposed Amendment at page 1659 of the 2012 Montana Administrative Register, Issue Number 16.

2. The department has amended ARM 37.87.2202 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:

37.87.2205 MENTAL HEALTH SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED) NON-MEDICAID RESPITE CARE SERVICES, LIMITATIONS (1) Children's Mental Health Bureau (CMHB) ~~Non~~ non-Medicaid respite care services may be provided only on a short-term basis.

(2) CMHB ~~Non~~ non-Medicaid respite care services may not be provided in a psychiatric residential treatment facility.

(3) CMHB ~~Non~~ non-Medicaid respite care services are limited to available funding each state fiscal year.

(a) Retroactive funds for CMHB non-Medicaid respite care services are not available.

(4) Youth must meet SED criteria and must also be receiving Medicaid funded mental health services.

(5) CMHB ~~Non~~ non-Medicaid respite care services shall only be provided to youth who receive ~~T~~therapeutic ~~F~~family ~~C~~care (TFC) and moderate level therapeutic foster care (TFOC moderate) services or upon authorization by the department or its designee.

(6) For youth who qualify and receive CMHB non-Medicaid respite care services, the individualized treatment plan must document CMHB non-Medicaid respite care in accordance with ARM 37.106.1916(c).

(7) CMHB ~~Non~~ non-Medicaid respite care services are available to a youth 17 years or age or younger.

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

37.87.2225 MENTAL HEALTH SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED) NON-MEDICAID RESPITE CARE SERVICES, PROVIDER PARTICIPATION (1) Licensed and enrolled mental health centers may provide Children's Mental Health Bureau (CMHB) non-Medicaid respite care services upon approval by the department, provided they meet the requirements of this subchapter.

(2) Persons delivering CMHB non-Medicaid respite care services must be employed by a provider agency or a therapeutic foster parent in the state of Montana who meets all the requirements found in ARM 37.51.603.

(3) through (5) remain as proposed.

(6) The provider of CMHB non-Medicaid respite care services must ensure that its employees or a licensed therapeutic foster parent providing the services are:

(a) through (e) remain as proposed.

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

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

COMMENT #1: Several commenters expressed concern relating to the addition of concurrent Therapeutic Family Care as an eligibility requirement to receive non-Medicaid respite care services. The commenters are concerned that this limitation will prevent other families who benefit from non-Medicaid respite from getting the service.

RESPONSE #1: The department appreciates the comments and understands the frustration with limiting Children's Mental Health Bureau (CMHB) non-Medicaid respite services. The department considered many options in order to balance the need for this respite service with the budgetary constraints that exist. Limiting CMHB non-Medicaid respite services to those receiving therapeutic family care provides for those youth and families who are in higher levels of care. While the department recognizes the benefits this service could provide for those with a lower level of need, it is our practice to serve youth with greater need first, even if it means serving fewer people.

COMMENT #2: Several commenters opposed the requirement for respite care services to be provided only by employees of provider agencies. The commenters feel this requirement will pose financial as well as liability issues for the provider.

RESPONSE #2: The department is aware that the current language in the rule has created some confusion as to who can provide CMHB non-Medicaid respite services. The proposed rule attempts to only make clear the current rule's intent.

The reason for this requirement is to ensure that those providing respite care are adequately trained to meet the youth's needs. The department has added "licensed therapeutic foster parent in the state of Montana," found in ARM Title 37, chapter 51, as a provider type for CMHB non-Medicaid respite. The department is also researching other options to provide and manage this service while maintaining responsible stewardship. One option may be utilizing self-directed respite. The department appreciates the creative ideas submitted and will be addressing respite reform in the near future.

COMMENT #3: A commenter asked for clarification on whether the reference to therapeutic family care also included therapeutic foster care as well.

RESPONSE #3: The initial proposed rule excluded therapeutic foster care moderate by mistake due to upcoming programmatic changes. An amended proposed rule was published on August 23, 2012 which corrected this error.

COMMENT #4: Several commenters stated that the term "non-Medicaid respite care services" causes confusion and possible conflicts with regulations through Child and Family Services who also provide non-Medicaid respite for therapeutic foster care services through child placing agencies.

RESPONSE #4: The department acknowledges this potential problem and has added Children's Mental Health Bureau (CMHB) to the term in ARM 37.87.2205 to discern between the two sets of regulations. Other divisions within DPHHS such as Child and Family services and the Developmental Disability Program offer non-Medicaid respite. This rule pertains only to CMHB non-Medicaid respite.

COMMENT #5: One commenter asked about CMHB's understanding of what respite is reimbursable through the Affordable Care Act and asked whether CMHB reverted money back to general fund last state fiscal year. They also inquired if there was any effort to request additional funds from the state's surplus to increase the respite appropriation.

RESPONSE #5: Funding for this CMHB non-Medicaid respite service is a general fund appropriation. CMHB did not revert any funds back to the general fund and in fact, spent approximately \$200,000 more on respite than what was appropriated. The department is committed to staying within current appropriation this fiscal year. Access to the state surplus is through legislative appropriations. The Affordable Care Act only allows reimbursement for respite through a 1915i state plan amendment or a waiver.

COMMENT #6: One commenter asked that concurrent be defined.

RESPONSE #6: The department defines concurrent as "any time during the 90-day period the individualized treatment plan is in place, unless the youth is discharged from the service." As it applies to this rule, the youth must have an individualized

treatment plan in place for therapeutic family care or moderate level therapeutic foster care in order to be eligible for CMHB non-Medicaid respite.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State October 29, 2012

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 37.86.2401 and 37.86.2501)
pertaining to specialized)
nonemergency medical transportation)

TO: All Concerned Persons

1. On September 6, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-600 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1756 of the 2012 Montana Administrative Register, Issue Number 17.

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

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

COMMENT #1: A commenter offered support of the proposed amendment and agreed with the department's testimony provided at the public hearing and with the statement of reasonable necessity contained in MAR Notice 37-600. The commenter further supported the proposed amendment by stating it conforms to the requirements of the Indian Health Care Improvement Act and also cited the applicable section of the Act. The commenter stated "As a practical matter the adoption of the proposed amendment will eliminate the final barrier for tribal health programs to becoming a non-emergency medical provider in Montana's Medicaid program."

RESPONSE #1: The department appreciates the comment and thanks the commenter for supporting the rule.

COMMENT #2: A commenter concurred with commenter #1 and added "The proposed amendment would remove an unnecessary barrier to specialized non-emergency medical transports under Medicaid. These transports are to and from medical centers both on and off the reservation. Over 96% of our patients receive advanced and specialty medical care outside the reservation boundaries. The local medical centers are located at least three to five hours from any metropolitan area." The commenter further stated that their Tribal Health Department collaborate and seek partnership with the State of Montana Medicaid office to maximize its funding streams and enhance the quality and access to health care for its people.

RESPONSE #2: The department appreciates the comment and thanks the commenter for supporting the rule.

/s/ Kurt R. Moser
Rule Reviewer

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

Certified to the Secretary of State October 29, 2012.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2012. This table includes those rules adopted during the period July 1, 2012, through September 30, 2012, 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 June 30, 2012, 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 2012 Montana Administrative Register.

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

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