

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 23

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

ADMINISTRATION, Department of, Title 2

2-55-42 (State Compensation Insurance Fund) Notice of Proposed Amendment - Classifications of Employments - Construction Industry Premium Credit Program. No Public Hearing Contemplated. 2427-2430

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-617 Notice of Public Hearing on Proposed Amendment - Children's Mental Health Utilization Review Manual - Fee Schedule. 2431-2434

37-618 Notice of Public Hearing on Proposed Amendment and Repeal - Developmental Disabilities Program - Regional Councils - Accreditation. 2435-2441

37-619 Notice of Public Hearing on Proposed Adoption, Amendment, and Repeal - Therapeutic Family Care - Therapeutic Foster Care. 2442-2455

37-620 Notice of Public Hearing on Proposed Amendment - Children's' Mental Health Non-Medicaid Respite. 2456-2458

RULE ADOPTION SECTION

TRANSPORTATION, Department of, Title 18

18-137 Notice of Adoption, Amendment, and Repeal - Motorist Information Signs. 2459-2463

LABOR AND INDUSTRY, Department of, Title 24

24-156-76 (Board of Medical Examiners) Notice of Amendment and Adoption - Testing Requirement - Reporting Obligations. 2464-2466

24-219-26 (Board of Social Work Examiners and Professional Counselors) Notice of Amendment - Fee Schedule. 2467-2474

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36-22-144 (Board of Land Commissioners and the Department) Notice of Adoption - State-Owned Navigable Waterways. 2475-2492

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-603 Notice of Amendment - Interstate Compact on the Placement of Children. 2493

37-604 Notice of Amendment - Durable Medical Equipment - Hearing Aids. 2494

37-605 Notice of Amendment - Maximum Big Sky RX Premium Change. 2495

REVENUE, Department of, Title 42

42-2-883 Notice of Amendment - Trended Depreciation Schedules for Valuing Property. 2496

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee. 2497-2498

How to Use ARM and MAR. 2499

Accumulative Table. 2500-2509

BEFORE THE STATE COMPENSATION INSURANCE FUND
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PROPOSED
2.55.320 and 2.55.327A, pertaining to	)	AMENDMENT
classifications of employments and the)	
construction industry premium credit	)	NO PUBLIC HEARING
program	)	CONTEMPLATED

TO: All Concerned Persons

1. On February 1, 2013, the Montana State Fund proposes to amend the above-stated rules.

2. The Montana State Fund will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Montana State Fund no later than 5:00 p.m. on December 31, 2012, to advise us of the nature of the accommodation that you need. Please contact Nancy Butler, Montana State Fund, P.O. Box 4759, 855 Front Street, Helena, Montana 59604-4759; telephone (406) 495-5138; fax (406) 495-5023; or e-mail nbutler@mt.gov.

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

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

(3) The State Fund staff shall assign its insureds to classifications contained in the classifications section of the State Compensation Insurance Fund Policy Services Underwriting Manual effective July 1, ~~2011~~ 2012, and assign new or changed classifications as approved by the board. That section of the manual is incorporated by reference. Copies of the classification section of the manual may be obtained from the Insurance Operations Support Department of the State Fund, 855 Front Street, P.O. Box 4759, Helena, Montana 59604-4759.

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

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

REASON: This amendment to ARM 2.55.320 is reasonably necessary at this time to reflect the updates to the State Fund's Underwriting Manual (manual), effective July 1, 2012.

Under 39-71-2316(1)(e), MCA, after rules have been adopted, the State Fund is not subject to the rulemaking provisions of the Montana Administrative Procedure Act when changing classifications and premium rates.

The underwriting manual is used by State Fund staff in their usual duties of assigning classifications to insured employers of the State Fund. Each of these classifications has a premium rate that is adopted by the State Fund board in accordance with the board's ratemaking authority. This amendment is made each year to adopt the current version of the manual, which includes new rates, values, and classification code updates effective July 1, 2012. The classification code updates may be those adopted by the Classification Review Committee established in Title 33, chapter 16, MCA, or by the State Fund board of directors. The entire underwriting manual is available on State Fund's web site at www.montanastatefund.com.

2.55.327A CONSTRUCTION INDUSTRY PREMIUM CREDIT PROGRAM

(1) and (2) remain the same.

(3) The following class codes are the construction codes eligible for the construction industry premium credit program:

<u>2799</u>	5057	5213	5443	5491	5645	6217	6400
3365	5059	5215	5445	5506	5703	6229	7538
3719	5069	5221	5462	5507	5705	6233	7605
3724	5102	5222	5472	5508	6003	6251	7855
3726	5146	5223	5473	5511	6005	6252	8227
5020	5160	5348	5474	5535	6017	6306	9521
5022	5183	5402	5478	5537	6018	6319	9534
5037	5188	5403	5479	5551	6045	6325	9552
5040	5190	5437	5480	5610	6204	6365	

(4) through (6) remain the same.

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

IMP: 39-71-2211, 39-71-2311, 39-71-2316, 39-71-2330, MCA

REASON: New class code 2799 (manufactured, modular, or prefab home setup, hookup, or installation at building site) is being added to the list of codes that are eligible for the construction industry premium credit program. Section 39-71-2211, MCA, establishes a construction industry premium credit program. The statute provides that State Fund may adopt the plan filed by the advisory organization designated in 33-16-1023, MCA, which is the National Council on Compensation Insurance (NCCI). The definition of "construction industry" contained in 39-71-116(9), MCA, requires the code to be in major group 23 in the North American Industry Classification System Manual. Code 2799 is in major group 23.

NCCI's research showed that new code 2799 establishes sufficient experience to determine its own loss cost or rate. While experience may be transferred from several other class codes, it is expected that most operations applicable to the new code 2799 were assigned to code 8380. Code 8380 is not a construction code, and applies to mobile, manufactured, modular, or prefabricated home dealers. New code 2799 applies to the setup or installation work of manufactured, modular, or prefabricated homes. The change was recommended by NCCI as part of its national

research project to ensure that the classification system remains healthy, viable, and responsive to the needs of the workers' compensation industry. The class code change was adopted by the Montana Classification Review Committee for use in Montana.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Nancy Butler, Montana State Fund, P.O. Box 4759, 855 Front Street, Helena, Montana 59604-4759; telephone (406) 495-5138; fax (406) 495-5023; or e-mail nbutler@mt.gov. Any comments must be received no later than 5:00 p.m., January 11, 2013.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments, orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments to Nancy Butler at the above address no later than 5:00 p.m., January 11, 2013.

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

7. The Montana State Fund maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail, and mailing address of the person and specifies that the person wishes to receive notices regarding the Montana State Fund. If you prefer to receive notices by e-mail, please indicate this in your request. Such written request may be mailed or delivered to Nancy Butler, Montana State Fund, P.O. Box 4759, 855 Front Street, Helena, Montana 59604-4759; faxed to the office at (406) 495-5023; e-mail nbutler@mt.gov; or may be made by completing a request form at any rules hearing held by the Montana State Fund.

8. An electronic copy of this Notice of Proposed Amendment is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the 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/ Nancy Butler
Nancy Butler, General Counsel
Rule Reviewer

/s/ Elizabeth Best
Elizabeth Best
Chair of the Board

/s/ Michael P. Manion
Michael P. Manion, Chief Legal Counsel
and Rule Reviewer

Certified to the Secretary of State November 26, 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 37.87.901 and 37.87.903) PROPOSED AMENDMENT
pertaining to the children's mental)
health utilization review manual and)
fee schedule)

TO: All Concerned Persons

1. On December 26, 2012, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 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 December 19, 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:

37.87.901 MEDICAID MENTAL HEALTH SERVICES FOR YOUTH,
REIMBURSEMENT (1) Medicaid reimbursement for mental health services shall be the lowest of:

(a) remains the same.

(b) the rate established in the department's fee schedule. The department adopts and incorporates by reference the department's Medicaid Youth Mental Health Services Fee Schedule dated ~~July 1, 2012~~ January 31, 2013. A copy of the fee schedule may be obtained from the Department of Public Health and Human Services, Developmental Services Division, Children's Mental Health Bureau, 111 Sanders, P.O. Box 4210, Helena, MT 59604 or at www.mt.medicaid.org.

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

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

37.87.903 MEDICAID MENTAL HEALTH SERVICES FOR YOUTH,
AUTHORIZATION REQUIREMENTS (1) through (7) remain the same.

(8) Review of authorization requests and retrospective reviews by the department or its designee will be made with consideration of the department's clinical management guidelines. The department adopts and incorporates by reference the Children's Mental Health Bureau's Provider Manual and Clinical Guidelines for Utilization Management dated ~~October 1, 2012~~ January 31, 2013. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Developmental Services Division, Children's Mental Health Bureau, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 or at www.dphhs.mt.gov/mentalhealth/children/index.shtml.

(9) and (10) 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 (the department) is proposing the amendment of ARM 37.87.901 and 37.87.903 pertaining to the children's mental health utilization review manual and fee schedule.

ARM 37.87.901

The department is proposing to amend ARM 37.87.901 to correct the reimbursement rate in the "Medicaid Mental Health and Mental Health Services Plan, Individuals Under 18 Years of Age Fee Schedule," dated July 1, 2012, regarding respite care. This amendment is necessary to make sure that providers have current and correct information regarding reimbursement rates available to them. This amendment does not result in a fiscal impact because it corrects the information in the fee schedule to reflect the current billable amount in the Medicaid Management Information System (MMIS) billing system.

ARM 37.87.903

The department is proposing to amend ARM 37.87.903 pertaining to Medicaid authorization for mental health services for youths. The Children's Mental Health Bureau (CMHB) recently completed a review of the therapeutic family care program and as a result of substantial changes to that program, including a name change, these proposed amendments are necessary to align the manual that is adopted and incorporated into this rule with the changes. CMHB is proposing to update the current provider manual, "Children's Mental Health Bureau's Provider Manual and Clinical Guidelines for Utilization Management" dated October 1, 2012 and the administrative rule language. The proposed changes to ARM 37.87.903 and the "Children's Mental Health Bureau's Provider Manual and Clinical Guidelines for Utilization Management" are described below. This manual can be found at the following web site: www.dphhs.mt.gov/mentalhealth/children/index.shtml. The department is proposing an effective date of January 31, 2013 for the "Children's Mental Health Bureau's Provider Manual and Clinical Guidelines for Utilization

Management." This is necessary in order to adopt and incorporate the revised manual into rule.

Manual

The department is proposing adoption and incorporation into rule a revised "Provider Manual for Clinical Management Guidelines" to align with administrative rule changes to therapeutic family care, including changing the program name to home support services (HSS), which is anticipated to be concurrent with this rule change.

The department is proposing to remove service definitions from the manual. This is necessary to prevent duplication with those in rule and to minimize potential discrepancies which have the potential to be confusing for providers.

The department is proposing to remove the Psychiatric Residential Treatment Facilities (PRTF) Waiver section from this manual. This is necessary because the PRTF Waiver has been replaced with the new "Bridge" Waiver. Medical necessity criteria are being added for the following services: Home Support Services (HSS); Comprehensive School and Community Treatment (CSCT); Bridge Waiver; and Montana iHome (pending). This is necessary because of changes to existing programs and the addition of two new programs. Home support services, previously known as therapeutic family care, is referenced in the manual as therapeutic family care, therefore it is necessary to update the name change. The current CSCT program moved to the Children's Mental Health Bureau (CMHB) from the Health Resources Division. As the program is now under CMHB, the medical necessity criteria needs to be added to the manual. CMHB has also added to new services, the Bridge Waiver and the Montana iHome (pending CMS approval) which are reflected in the revised manual.

The department is proposing new language for the following services: Outpatient concurrent with Therapeutic Group Home (TGH); Therapeutic Foster Care, Permanency; Community-Based Psychiatric Rehabilitation and Support (CBPRS); and The Appeal Process. The change to the language for these services is necessary to be consistent with current rule changes.

The department is also proposing to move the Medicaid Mental Health Plan and Mental Health Services Plan for Youth Services Excluded from Simultaneous Reimbursement (Service Matrix) adopted and incorporated in ARM 37.87.903 to the utilization review manual as appendix A. The department is creating a new matrix of community-based services and instructions for medical necessity documentation. This is necessary to bring current the information contained therein.

Fiscal Impact

There is no expected fiscal impact as a result of these rule amendments.

5. These rule amendments are effective January 31, 2013.

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: 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., January 3, 2013.

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

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State November 26, 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 37.34.101, 37.34.102,	)	PROPOSED AMENDMENT AND
37.34.105, 37.34.108, and 37.34.109	)	REPEAL
and the repeal of ARM 37.34.1601,)	
37.34.1701, 37.34.1801, and)	
37.34.1802 pertaining to the)	
developmental disabilities program,)	
regional councils, and accreditation)	

TO: All Concerned Persons

1. On December 26, 2012, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on December 19, 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:

37.34.101 PURPOSE OF THE DEVELOPMENTAL DISABILITIES PROGRAM (1) The purpose of the developmental disabilities program is to provide quality community-based services in the least restrictive environment which promotes the principle of normalization for ~~citizens~~ persons who are developmentally disabled.

AUTH: 53-20-204, MCA
IMP: 53-20-305, MCA

37.34.102 DEFINITIONS For purposes of this chapter, the following definitions apply:

(1) "Abuse" means the infliction of physical or mental injury or the deprivation of food, shelter, clothing or services necessary to maintain the physical or mental health of an older person or a person with a developmental disability without lawful

authority, as described in 52-3-803, MCA. A declaration made pursuant to 50-9-103, MCA constitutes lawful authority.

~~(2) "Accreditation organization" means an organization recognized by rule which establishes and publishes standards relating to the quality of services provided by contractors of services to persons with a developmental disability, analyzes compliance with those standards and accredits contractors based on those standards.~~

~~(3) "Accredited program" means a program recognized and accredited, as provided in ARM 37.34.1801, et seq., by either the accreditation council on services for people with disabilities (AC) or by the commission on accreditation of rehabilitation facilities (CARF) for academic and professional preparation program.~~

~~(4) "Accreditation report" means a report produced after a survey of a contractor by an accreditation organization which states the extent of the contractor's compliance with the standards of the accreditation organization and presents the determination of the accreditation organization as to whether the contractor is accredited.~~

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

~~(9) "Client, individual, or recipient" means a person with a developmental disability who is receiving developmental disabilities services.~~

~~(10) through (19) remain the same, but are renumbered (6) through (15).~~

~~(20) "Field services specialist" means a person employed by the division in a field-based position to assist corporations in the delivery of services.~~

~~(21) and (22) remain the same, but are renumbered (16) and (17).~~

~~(23) "Individual plan" means a written plan identifying the supports and services that are necessary to achieve independence, dignity, and personal fulfillment, developed for a person with developmental disabilities by the individual planning team on the basis of a skill assessment and determination of the strengths and needs of the individual.~~

~~(24) "Individual planning team" means an interdisciplinary team composed of those persons specified in ARM 37.34.1107 that identifies and evaluates the needs of an individual receiving services, develops an individual plan to meet those needs, periodically reviews the individual's response to the plan and revises the plan accordingly.~~

~~(25) "Individual program plan" means the written strategy for meeting an objective of an individual plan.~~

~~(26) and (27) remain the same, but are renumbered (18) and (19).~~

~~(28) "Life management" means obtaining services, assistance or information necessary for an individual to undertake the everyday tasks of life. Examples of these tasks include making medical appointments, maintaining financial arrangements with government agencies for SSI payments or food stamps, banks for saving or checking accounts, developing a budget, balancing a checkbook, completing income tax forms, paying bills, going to the barber or beauty shop, getting a bicycle repaired, etc.~~

~~(29) and (30) remain the same, but are renumbered (20) and (21).~~

(22) "Plan of care" means a written plan identifying the supports and services that are necessary to achieve independence, dignity, and personal fulfillment, developed for a person with developmental disabilities by the planning team on the

basis of a skill assessment and determination of the strengths and needs of the person.

(23) "Planning team" means an interdisciplinary team composed of those persons specified in ARM 37.34.1107 that identifies and evaluates the needs of a person receiving services, develops a plan of care to meet those needs, periodically reviews the person's response to the plan and revises the plan accordingly.

(31) remains the same, but is renumbered (24).

~~(32)~~ (25) "Positive programming behavior support" means the application of a variety of behavior modification procedures and techniques to change undesirable behaviors, with an emphasis on minimizing the use of punishers and aversive programming.

(33) through (36) remain the same, but are renumbered (26) through (29).

~~(37) "Survey" means a review of the contractor's services by an accreditation organization for the purposes of determining the extent of compliance with the standards of the accreditation organization and for accrediting the contractor's services.~~

AUTH: 53-2-201, 53-20-204, MCA

IMP: 53-20-203, 53-20-204, 53-20-205, MCA

37.34.105 EVALUATION SERVICES (1) The division ~~shall~~ must provide for the evaluation of any person eligible for diagnostic and evaluation services either through services funded by the department or by referral to another agency.

(2) Under ARM 37.34.1101 et seq., Within within 30 calendar days of the enrollment of a developmentally disabled person in a provider service program, with the exception of respite and transportation services, the provider ~~shall~~ must perform a comprehensive skill assessment for that person. Each assessment ~~shall~~ must be reviewed annually by the provider. Results of the assessment ~~shall~~ must be provided to the ~~client's~~ person's individual habilitation planning team, including the ~~individual~~ person receiving services.

AUTH: 53-20-203, MCA

IMP: 53-20-203, MCA

37.34.108 CONFIDENTIALITY OF INFORMATION (1) Confidential information, for purposes of this chapter, includes the following information about any ~~applicant or client~~ person applying for or receiving services through the developmental disabilities program:

(a) through (g) remain the same.

(2) The department and the provider ~~shall~~ must not disclose confidential information concerning any ~~applicant or client~~ the person except to department staff and providers who assist in eligibility determination, referral, or the provision of services to the ~~applicant or client~~ person.

(3) Information, as specified, may be disclosed upon the written consent of:

(a) the ~~applicant or client~~ person if a legally competent adult; or

(b) the ~~client's~~ person's parents, if legally responsible for the ~~applicant or client~~ person, or the legal guardian representative of the ~~applicant or client~~ person.

(4) Information may be disclosed if it is in summary, statistical, or any other form which does not identify and cannot be used to identify ~~any applicant or client the person.~~

(5) through (7) remain the same.

~~(8) The provisions of the department's confidentiality policy, except where contrary to a specific provision of this rule, provide the standards for the protection, management and release of confidential information. The department's confidentiality policy, adopted October 1, 1988, and published in the Department of Social and Rehabilitation Services Policy Manual ADM 102 is hereby adopted and incorporated by reference. Copies of the policy may be obtained from the Department of Public Health and Human Services, Office of Legal Affairs, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.~~

(8) The disclosure of any information related to the person will be governed by requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the requirements of Title 45 Part 160 and 164 of the Code of Federal Regulations (CFR) and all other applicable state and federal laws protecting the person's privacy.

AUTH: 53-20-204, MCA

IMP: 53-20-204, 53-20-205, MCA

37.34.109 CLIENT GRIEVANCE PROCEDURE (1) A provider shall maintain a written grievance procedure by which a client may file a complaint. A current copy of such procedure must be approved by the department. Providers must have a written grievance procedure, approved in writing by the department prior to implementation, for resolution of grievances brought by persons receiving developmental disabilities services.

(2) The procedure must provide for resolution of a grievance within 45 days of receipt of the grievance. Resolution may be extended beyond 45 days only with written approval by the department.

(3) The person must exhaust the provider's grievance procedure before appeal of the matter may be made to the department under the provisions of ARM 37.5.304, 37.5.305, 37.5.307, 37.5.311, 37.5.313, 37.5.316, 37.5.318, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337.

~~(2) (4) Upon entry into a program and at least every 6 months annually thereafter, a client must be advised by the provider must advise the person of the their right to present grievances. The provider shall must assist clients persons, as may be necessary, in utilizing the grievance procedure.~~

~~(3) If the outcome of the grievance procedure is adverse to a client, the provider shall notify the person of his or her right to appeal to the department under the department's fair hearing procedure.~~

AUTH: 53-20-204, MCA

IMP: 53-20-205, MCA

4. The department proposes to repeal the following rules:

37.34.1601 REGIONAL COUNCILS, is found on page 37-7547 of the Administrative Rules of Montana.

AUTH: 53-20-207, MCA
IMP: 53-20-203, MCA

37.34.1701 PREPARATION OF MONTANA DEVELOPMENTAL DISABILITIES STATE PLAN, is found on page 37-7561 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA
IMP: 53-20-203, 53-20-206, MCA

37.34.1801 ACCREDITATION STANDARDS FOR PROVIDER PROGRAMS OF SERVICES: ADOPTION AND APPLICABILITY, is found on page 37-7581 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA
IMP: 53-20-203, 53-20-205, MCA

37.34.1802 ACCREDITATION STANDARDS FOR PROVIDER PROGRAMS OF SERVICES: DEPARTMENT ASSISTANCE, is found on page 37-7584 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA
IMP: 53-20-203, 53-20-205, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing to amend ARM 37.34.101, 37.34.102, 37.34.105, 37.34.108, and 37.34.109 and to repeal subchapters 16, 17, and 18. The rules in Title 37, chapter 34, subchapters 1, 16, and 17 were enacted in 1979. Subchapter 18 was last amended in 2000. Substantial changes made to the program since then make it necessary for the department to update the current rule language. The proposed amendments are summarized below.

ARM 37.34.101

The department is proposing to amend this rule in order to update terminology to make it consistent with the rules in Title 37. It is necessary to amend this rule to provide consistency throughout the developmental disabilities program.

ARM 37.34.102

The department is proposing to amend this rule to remove terminology no longer in use in the developmental disabilities program.

ARM 37.34.105

The department is proposing to amend this rule in order to update terminology, to make it consistent with the rules in Title 37, chapter 34, and to provide consistency throughout the developmental disabilities program.

ARM 37.34.108

The department is proposing to amend this rule in order to update terminology and to make it consistent with the rules in Title 37, chapter 34. It is necessary to amend this rule to provide consistency throughout the developmental disabilities program. The department is also proposing to remove the reference to the department's confidentiality policy, adopted October 1, 1988, and published in the Department of Social and Rehabilitation Services Policy Manual ADM 102. This is necessary because it is obsolete and no longer a valid reference.

ARM 37.34.109

The department is proposing to amend this rule to update the requirements for the grievance procedure that providers are required to have. Currently the rule requires notice to the person receiving services every six months. The department believes that annual notice is sufficient. The proposed rule change is also necessary to place a cap on the length of time of the grievance procedure in order to ensure that disputes and issues relating to the person's services do not go unresolved to the extent it becomes a detriment to the person receiving services.

ARM 37.34.1601, 37.34.1701, 37.34.1801, and 37.34.1802

The department is proposing to repeal ARM 37.34.1601, 37.34.1701, 37.34.1801, and 37.34.1802. Since these rules were enacted there have been substantial changes to the program. The councils referenced in ARM 37.34.1601 and 37.34.1701 no longer exist and the accreditation standards in ARM 37.34.1801 and 1802 no longer apply. It is necessary to repeal these rules because substantial changes to the program render these regulations obsolete.

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: 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., January 3, 2013.

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

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State November 26, 2012.

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

In the matter of the adoption of New Rules I through X, the amendment of ARM 37.87.703, and the repeal of ARM 37.37.301, 37.37.303, 37.37.310, 37.37.311, 37.37.316, 37.37.318, 37.37.323, 37.37.330, 37.37.336, 37.87.1021, 37.87.1023, and 37.87.1025, pertaining to therapeutic family care and therapeutic foster care) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On December 26, 2012, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on December 19, 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 adopted provide as follows:

NEW RULE I HOME SUPPORT SERVICES AND THERAPEUTIC FOSTER CARE, SERVICES REIMBURSEMENT (1) Reimbursement for the therapeutic portion of home support services (HSS) and therapeutic foster care (TFC) services is the lesser of:

(a) the amount specified in the department's fee schedule adopted in ARM 37.87.901; or

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

(2) HSS and TFC providers must use the procedure codes designated by the department, in the fee schedule referred to in (1)(a) to be reimbursed for HSS and TFC.

(3) HSS and TFC providers are reimbursed a daily or patient day rate. Patient day means a whole 24-hour period that a youth is present and receiving HSS

or TFC services. Even though a youth may not be present for a whole 24-hour period, the day of admission is a patient day. The day of discharge is not a patient day.

(4) Medicaid will not reimburse for room, board, maintenance, or any other nontherapeutic component of HSS or TFC treatment, including when this service is delivered in a foster home.

(5) Targeted case management will not be reimbursed concurrently with HSS or TFC.

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

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

NEW RULE II HOME SUPPORT SERVICES (HSS) AND THERAPEUTIC FOSTER CARE (TFC), DEFINITIONS

(1) "Behavioral Aide" means for therapeutic foster care permanency, an unlicensed employee of the mental health center who works under the supervision of the licensed mental health professional. All behavioral aides must have, at a minimum, a high school diploma and at least two years of experience working with emotionally disturbed youth or providing direct services in a human services field. Aides may only provide services for which they have demonstrated competency and which are not limited to the scope and practice of the licensed mental health professional.

(2) "Caregiver" means a person responsible for the well-being of the youth on a day-to-day basis with written permission from the legal representative of the youth, when applicable.

(3) "Clinical lead" means a person who is an employee of the provider agency who is responsible for the supervision and overall provision of treatment services to youth in HSS and TFC. Effective January 31, 2014, the clinical lead must be a licensed mental health professional as defined in ARM 37.87.702 or an in-training practitioner as defined in ARM 37.88.901.

(4) "Concurrent" means any time during the 90-day period of the individualized treatment plan for HSS and TFC, unless the youth is discharged from service.

(5) "Home support services (HSS)" and "therapeutic foster care (TFC)" means medically necessary, intensive in-home services delivered by providers with specialized training and experience working with caregivers and youth in their homes, with temporary services available when a youth is homeless for less than 90 days.

(6) "Home support services specialist" means a person who is an employee of the provider agency who provides therapeutic interventions to youth who are receiving HSS and TFC. The home support services specialist (HSS-S) must have a bachelor's degree in a human services field, or a combination of experience and education equivalent to a bachelor's degree. For a HSS-S, six years of human services experience equates to a bachelor's degree and each year of post-secondary education in human services equates to one year experience.

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

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

NEW RULE III HOME SUPPORT SERVICES (HSS) AND THERAPEUTIC FOSTER CARE (TFC), INDIVIDUALIZED TREATMENT PLAN

(1) The individualized treatment plan (ITP) must be developed in accordance with ARM 37.106.1916 and based upon a strengths, needs, and cultural assessment of the caregiver and the youth.

(2) The caregiver may select the members of the ITP team.

(3) Providers must inform the youth and their caregiver that Medicaid requires coordination of HSS and TFC with comprehensive school and community treatment (CSCT) planning, when applicable.

(4) The licensed person on each treatment team must sign the ITP of other services the youth, caregiver, or both are receiving.

(5) The ITP is in place for 90 days unless the youth is discharged.

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

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

NEW RULE IV HOME SUPPORT SERVICES (HSS) AND THERAPEUTIC FOSTER CARE (TFC), ASSESSMENTS

(1) A clinical assessment consistent with ARM 37.106.1915 must be completed for each youth documenting the youth has a severe emotional disturbance as defined in ARM 37.87.303.

(2) If a youth has received a clinical assessment as described in (1) within the past 12 months, a copy of the clinical assessment will be accepted.

(3) A clinical assessment must be completed annually.

(4) A functional assessment identifying potential crisis situations must be completed for each youth within the first 14 days after intake. The functional assessment must:

(a) include a specific plan to respond to each identified crisis; and

(b) be updated every 90 days.

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

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

NEW RULE V HOME SUPPORT SERVICES (HSS) AND THERAPEUTIC FOSTER CARE (TFC), PROVISIONS OF SERVICE

(1) The main focus of the service is to address the mental health needs and strengthen the structure and support for youth and the caregivers. HSS and TFC serve the youth and the caregivers in their home and community environment through understanding the needs of the youth and the dynamics of the caregivers. HSS and TFC requires a structured, consistent, strength based therapeutic relationship between the provider and the youth and the caregiver for the purpose of treating the behavioral health needs of the youth, including improving the caregiver's ability to provide effective support for the youth and to promote healthy functioning.

(2) The following must be available and provided as clinically indicated by a mental health professional and in accordance with ARM 37.87.903:

(a) conduct a treatment team meeting with the caregiver to develop an individualized treatment plan in accordance with [New Rule II];

(b) write treatment summaries at a minimum of every month describing progress and changes in the strengths and needs of the youth and the caregiver to inform service provisions; and

(c) develop a crisis plan with the caregiver that identifies a range of potential crisis situations with a range of corresponding responses including direct (face-to-face) and telephonic responses 24/7.

(3) The following services, identified in the individualized treatment plan, must be available and provided as clinically indicated:

(a) individualized therapeutic support to the youth and the caregiver based on strengths and needs;

(b) identification, coordination, and strengthening of formal and informal supports; and

(c) post-crisis consultation and crisis plan revision with the team and the caregiver, as needed.

(4) The following services must be available and provided as clinically indicated. The services must be identified in the ITP and include two of the following:

(a) skill building;

(b) assistance for the youth and the caregiver to identify resources to meet their needs;

(c) therapy delivered to the caregiver and family by the clinical lead;

(d) instruction for the caregiver on behavior management strategies; and

(e) psycho-educational programs.

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

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

NEW RULE VI HOME SUPPORT SERVICES (HSS) AND THERAPEUTIC FOSTER CARE (TFC), DISCHARGE PLANNING AND DOCUMENTATION (1) The youth may be discharged from this level of care based upon at least one the following criteria:

(a) the caregiver no longer needs this level of support or is actively using other formal and informal support networks;

(b) the treatment plan for the youth indicates the goals and objectives for the services have been substantially met;

(c) the caregiver is not engaged in the services. The lack of engagement is of such a degree that this type of support becomes ineffective or unsafe, despite documented attempts to address the engagement issues;

(d) the caregiver withdraws consent for the treatment;

(e) the youth is placed in a residential treatment setting with no plan for return to the home setting; or

(f) the youth has moved to an independent living situation and is no longer in or returning to the family setting.

(2) A discharge summary must be documented and indicate the reason for the discharge.

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

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

NEW RULE VII HOME SUPPORT SERVICES (HSS) AND THERAPEUTIC FOSTER CARE (TFC), PROVIDER REQUIREMENTS (1) HSS and TFC providers must be a mental health center as described in Title 37, chapter 106, subchapter 19.

(2) Providers of therapeutic foster care must also be a child placing agency.

(3) A full-time clinical lead is responsible for not more than five full-time home support services specialists (HSS-S).

(4) The clinical lead must:

(a) provide direction and consultation to the HSS-S to address the clinical needs of the youth and the caregiver as identified in the individualized treatment plan (ITP);

(b) provide therapy to the caregiver and family when identified as a need in the ITP;

(c) respond to the youth and the caregiver's needs when the HSS-S is not available;

(d) orient, train, and coach the HSS-S; and

(e) provide one-on-one supervision at least monthly to the HSS-S.

(5) A full-time HSS-S is responsible for not more than ten youths at a time.

(6) The following requirements must be met by either the clinical lead or the HSS-S or both:

(a) provide contacts at the frequency, location, and duration that are sufficient to meet the identified needs of the youth and the caregiver, the duration of the contacts are not limited;

(b) conduct a minimum of four scheduled contacts or sessions with the caregiver in each four-week period, two of which must be face-to-face, based on the needs of the caregiver and documented in the ITP; and

(c) conduct a minimum of two scheduled face-to-face treatment sessions with the youth in each four-week period, based on the needs of the youth and documented in the ITP.

(7) 24/7 face-to-face and telephonic crisis response is expected.

(8) Providers of HSS and TFC must use a research-based practice curriculum specific to provide family-based services. Staff training in the research-based practice must be documented in the provider personnel records.

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

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

NEW RULE VIII COMMUNITY-BASED PSYCHIATRIC REHABILITATION SUPPORT SERVICES: (1) Community-based psychiatric rehabilitation support

(CBPRS) services are provided on a face-to-face basis primarily with a youth, and may also include consultation on a face-to-face basis with family members, teachers, employers, or other key individuals in the youth's life when such contacts are clearly necessary to meet rehabilitation goals established in the youth's individual treatment plan. CBPRS services:

(a) may only be provided when the youth is receiving other mental health services;

(b) require prior authorization by the department or its designee when provided for a youth in the PRTF waiver during day treatment program hours;

(c) do not require prior authorization when provided on the same day as CSCT, Day Tx, or partial hospital services, if CBPRS is provided before or after program hours. This includes both individual and group CBPRS. Documentation of CBPRS must include time in and time out to show that CBPRS was not provided during program hours;

(d) are not allowed when the service to be provided is:

(i) during day treatment program hours unless the youth is in the PRTF waiver and CBPRS services are prior-authorized;

(ii) during CSCT or partial hospital program hours;

(iii) provided by a licensed mental health professional;

(iv) for the purpose of habilitation, academic instruction, recreation, vocational, or prevocational training;

(v) in a therapeutic group home, hospital, psychiatric residential treatment facility, or other residential facilities;

(vi) case planning activities such as attending meetings, completing paperwork, and other documentation requirements or travel time; and

(vii) solely for the purpose of safety.

(e) may not exceed the following limits for group:

(i) up to a maximum of two hours per day;

(ii) up to a maximum of eight youth per group; and

(iii) up to a staff ratio of four youth to one staff.

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

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

NEW RULE IX THERAPEUTIC FOSTER CARE PERMANENCY SERVICES, AUTHORIZATION REQUIREMENTS AND COVERED SERVICES

(1) The therapeutic and rehabilitative portion of medically necessary therapeutic foster care permanency (TFOC-P) services is covered if prior-authorized by the department or its designee according to the provisions of the Children's Mental Health Bureau's (CMHB) Provider Manual and Clinical Guidelines for Utilization Management incorporated in ARM 37.87.903 and this subchapter. TFOC-P providers are required to abide by the CMHB Provider Manual and Clinical Guidelines for Utilization Management.

(2) Medicaid reimbursement is not available for TFOC-P services unless the provider submits to the department or its designee in accordance with this subchapter and the CMHB Provider Manual and Clinical Guidelines for Utilization Management, a complete and accurate CON that certifies the level of care needed for the youth with a serious emotional disturbance (SED).

(3) For youth determined Medicaid eligible by the department at the time of admission to TFOC-P services, the CON required under (2) must be:

(a) completed, signed, and dated prior to, but no more than 30 days before, admission; and

(b) written by a team of health care professionals that has competence in diagnosis and treatment of mental illness, and that has knowledge of the youth's

situation, including the youth's psychiatric condition. The team must include a physician that has competence in diagnosis and treatment of mental illness, preferably in child psychiatry, and a licensed mental health professional as defined in ARM 37.87.102.

(4) All CONs required under (2) must actually and personally be signed by a minimum of two team members. Two of the signatures must be:

(a) a physician who has competence in diagnosis and treatment of mental illness, preferably child psychiatry, or a board-certified/board-eligible psychiatrist; and

(b) a licensed mental health professional. If a signature stamp is used, the team member must actually and personally initial the document over the signature stamp.

(5) The therapeutic portion of TFOC-P services, as defined by [New Rule V], is covered if provided by a TFOC-P agency licensed by and contracted with the department to provide TFOC-P services.

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

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

NEW RULE X THERAPEUTIC FOSTER CARE PERMANENCY SERVICES, PROVIDER PARTICIPATION (1) Therapeutic foster care permanency (TFOC-P) services must be provided in accordance with [New Rules I through VII] (HSS/TFC).

(2) TFOC-P must be provided by a child placement agency in accordance with ARM Title 37, chapter 93.

(3) TFOC-P is an intensive level of treatment for youth in a therapeutic foster family placement which is permanent and includes:

(a) individual, family, and group therapies;

(b) clinical supervision provided by a licensed psychologist on a 1:20 ratio;

(c) a treatment manager who is a masters or bachelors level social worker with three years' experience, on a 1:6 ratio;

(d) behavioral aide services averaging at least ten hours per week;

(e) respite care at least one weekend per month; and

(f) additional specialized training for families.

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

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

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

37.87.703 MENTAL HEALTH CENTER SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED), COVERED SERVICES (1) Mental health center services for youth with serious emotional disturbance include:

(a) Community-based psychiatric rehabilitation and support (CBPRS) services: as described in [New Rule VIII].

~~(i) are provided on a face-to-face basis primarily with a youth, and may also include consultation on a face-to-face basis with family members, teachers,~~

~~employers, or other key individuals in the youth's life when such contacts are clearly necessary to meet rehabilitation goals established in the youth's individual treatment plan;~~

~~(ii) may only be provided when the youth is receiving other mental health services;~~

~~(iii) require prior authorization by the department or its designee when provided for a youth in the PRTF waiver during day treatment program hours;~~

~~(iv) do not require prior authorization when provided on the same day as CSCT, Day Tx, or partial hospital services, if CBPRS is provided before or after program hours. This includes both individual and group CBPRS. Documentation of CBPRS must include time in and time out to show that CBPRS was not provided during program hours;~~

~~(v) are not allowed when the service to be provided is:~~

~~(A) during day treatment program hours unless the youth is in the PRTF waiver and CBPRS services are prior authorized;~~

~~(B) during CSCT or partial hospital program hours;~~

~~(C) provided by a licensed mental health professional;~~

~~(D) for the purpose of habilitation, academic instruction, recreation, vocational, or pre-vocational training;~~

~~(E) in a therapeutic group home, hospital, psychiatric residential treatment facility, or other residential facilities;~~

~~(F) case planning activities such as attending meetings, completing paperwork, and other documentation requirements or travel time; and~~

~~(G) solely for the purpose of safety.~~

~~(vi) may not exceed the following limits for group:~~

~~(A) up to a maximum of two hours per day;~~

~~(B) up to a maximum of eight youth per group; and~~

~~(C) up to a staff ratio of four youth to one staff.~~

~~(b) through (f) remain the same.~~

~~(g) Mental health professional services, which include the professional component of physician or psychiatrist services covered in ARM 37.86.101, 37.86.104, and 37.86.105;~~

~~(i) Mental health professional services are subject to the following limitations:~~

~~(A) (i) To the extent otherwise permitted by applicable Medicaid rules, such mental health professional services may be billed by the mental health center either as mental health center services or by the mental health professional under the applicable Medicaid category of service, but may not be billed as both mental health center services and mental health professional services.~~

~~(B) (ii) Mental health professional services may be covered and reimbursed by Medicaid only if the mental health professional is enrolled as a provider and the services are provided according to the Medicaid rules and requirements applicable to the mental health professional's category of service.~~

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

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

5. The department proposes to repeal the following rules:

37.37.301 THERAPEUTIC FAMILY CARE, DEFINITIONS, is found on page 37-8115 of the Administrative Rules of Montana.

AUTH: 41-3-1103, 52-1-103, 52-2-111, MCA
IMP: 41-3-1103, 41-3-1105, 41-3-1122, MCA

37.37.303 THERAPEUTIC FAMILY CARE, COMPLIANCE WITH APPLICABLE REQUIREMENTS, is found on page 37-8119 of the Administrative Rules of Montana.

AUTH: 41-3-1103, 52-1-103, 52-2-111, MCA
IMP: 41-3-1103, 41-3-1105, 41-3-1122, 52-1-103, MCA

37.37.310 THERAPEUTIC FAMILY CARE, LEVELS OF SERVICE, is found on page 37-8123 of the Administrative Rules of Montana.

AUTH: 41-3-1103, 52-1-103, 52-2-111, MCA
IMP: 41-3-1103, 41-3-1105, 41-3-1122, MCA

37.37.311 THERAPEUTIC FAMILY CARE, STAFF, is found on page 37-8125 of the Administrative Rules of Montana.

AUTH: 41-3-1103, 52-1-103, 52-2-111, MCA
IMP: 41-3-1103, 41-3-1105, 41-3-1122, MCA

37.37.316 THERAPEUTIC FAMILY CARE, TREATMENT PARENTS, is found on page 37-8129 of the Administrative Rules of Montana.

AUTH: 41-3-1103, 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 41-3-1103, 41-3-1105, 41-3-1122, 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.37.318 THERAPEUTIC FAMILY CARE, MEDICAL NECESSITY, ADDITIONAL TRAINING REQUIREMENTS, is found on page 37-8130 of the Administrative Rules of Montana.

AUTH: 41-3-1103, 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA
IMP: 41-3-1103, 41-3-1105, 41-3-1122, 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

37.37.323 THERAPEUTIC FAMILY CARE, INDIVIDUAL TREATMENT PLAN, is found on page 37-8135 of the Administrative Rules of Montana.

AUTH: 41-1-1103, 52-1-103, 52-2-111, MCA
IMP: 41-3-1103, 41-3-1105, 41-3-1122, MCA

37.37.330 THERAPEUTIC FAMILY CARE, WELL-CHILD SCREENING, AND CHEMOTHERAPY, is found on page 37-8143 of the Administrative Rules of Montana.

AUTH: 41-3-1103, 52-1-103, 52-2-111, MCA
IMP: 41-3-1103, 41-3-1105, 41-3-1122, MCA

37.37.336 THERAPEUTIC FAMILY CARE, MEDICAL NECESSITY, ADDITIONAL CASE RECORDS, is found on page 37-8149 of the Administrative Rules of Montana.

AUTH: 41-3-1103, 52-1-103, 52-2-111, MCA
IMP: 41-3-1103, 41-3-1105, 41-3-1122, MCA

37.87.1021 THERAPEUTIC FAMILY CARE (TFC) AND THERAPEUTIC FOSTER CARE (TFOC) SERVICES REIMBURSEMENT, is found on page 37-21356 of the Administrative Rules of Montana.

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

37.87.1023 THERAPEUTIC FAMILY CARE (TFC) AND THERAPEUTIC FOSTER CARE (TFOC) SERVICES, AUTHORIZATION REQUIREMENTS AND COVERED SERVICES, is found on page 37-21357 of the Administrative Rules of Montana.

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

37.87.1025 THERAPEUTIC FAMILY CARE (TFC) AND THERAPEUTIC FOSTER CARE (TFOC) SERVICES, DEFINITION OF PERMANENCY TFOC TREATMENT, is found on page 37-21359 of the Administrative Rules of Montana.

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

6. STATEMENT OF REASONABLE NECESSITY

Home Support Services

The Department of Public Health and Human Services (the department) is proposing rule changes to update outdated therapeutic foster care, moderate level; therapeutic foster care-permanency level; and therapeutic family care rules to align with the department's mission of supporting best practices and outcomes for youth and caregivers. The Children's Mental Health Bureau (CMHB) reviewed a sample of Therapeutic Foster Care (TFOC) and Therapeutic Family Care (TFC) services across the state beginning in April 2011. CMHB gathered information through a

semistructured, team-administered series of Service Review (SR) tools. The process began by gathering qualitative information through interviews with multiple stakeholders to better understand how TFC and TFOC programs are being provided.

CMHB convened a workgroup of department staff and provider stakeholders to develop proposed rule language and engage in dialogue regarding key policy decisions. CMHB conducted analysis of services through the claims payment system to understand current service utilization and cost analysis. Analysis included reviewing how current services are billed with other mental health state plan services. These proposed new rules, amendments, and repeals are necessary to implement the policies and billing practices.

The department is repealing multiple rules, reorganizing, and proposing new rules to provide clear guidelines of service expectations. The rule changes promote youth and caregiver's access to family therapy within current reimbursement and endorse youth and caregiver agreement to services. The department is changing the service names from therapeutic family care to home support services (HSS), and therapeutic foster care, moderate level to therapeutic foster care (TFC). Additionally, the proposed rules disallow for targeted case management (TCM) concurrent with HSS, TFC, and therapeutic foster care-permanency services. The proposed changes also allow HSS to be billed by a licensed mental health center.

New Rules I through VII, Home Support Services

The department is proposing new rules to the CMHB section of department rules Title 37, chapter 87 regarding home support services, formally therapeutic family care, and therapeutic foster care. The proposed rules promote youth and caregiver's access to family therapy within current reimbursement and endorse youth and caregiver agreement to services. The department is changing the service names from therapeutic family care (TFC) to Home Support Services (HSS), and therapeutic foster care-moderate (TFC-M) to TFOC. Additionally, the proposed rules close gaps of service duplication by proposing targeted case management (TCM) is not a reimbursable Medicaid service concurrent with HSS, TFC, and TFOC-P services.

New Rule I

The department proposes New Rule I to describe the requirements for reimbursement of home support services and therapeutic foster care. This is necessary to provide basic information for providers to follow regarding the reimbursement process.

New Rule II

The department is proposing New Rule II in order to define common terminology used in reference to home support services and therapeutic foster care. This is

necessary in order to ensure consistent use of common terminology and to avoid ambiguity that might confuse providers.

New Rule III

The department is proposing New Rule III which further describes the requirements for the individual treatment plan. ARM 37.106.1916 provides the minimum requirements for the individualized treatment plan. This rule is necessary to provide detailed requirements for this program.

New Rule IV

The department is proposing New Rule IV. This rule is necessary to provide guidance to providers on the required assessments for youth entering home support services and therapeutic foster care.

New Rule V

The department proposes New Rule V to address the provision of service. This rule is necessary to supply providers with the necessary service requirements so that they may provide the most valuable and appropriate services to the families they serve.

New Rule VI

The department is proposing New Rule VI regarding discharge planning and documentation. This rule is necessary to provide the criteria in which a youth may be discharged from the program and to explain to providers the documentation that is required in the event a youth is discharged.

New Rule VII

The department is proposing New Rule VII, provider requirements. This rule is necessary to establish the guidelines providers must adhere to in licensing as well as staffing requirements necessary for Medicaid reimbursement.

New Rule VIII

The department is proposing New Rule VIII in order to create a rule for community-based psychiatric rehabilitation and support (CBPRS) services. This language is currently located in ARM 37.87.703(1)(a) as a covered service. The department believes that by creating a separate rule for this service, providers and the public have improved accessibility to the information contained in the rule.

NEW RULES IX AND X, Therapeutic Foster Care-Permanency

The department is proposing New Rules IX and X to move the content of the current rules regarding therapeutic foster care-permanency in ARM 37.87.1021, 37.87.1023, and 37.87.1025 to the corresponding new program section in the CMHB subchapter for consistency and easy reference for all stakeholders.

ARM 37.37.301, 37.37.303, 37.37.310, 37.37.311, 37.37.316, 37.37.318, 37.37.323, 37.37.330, and 37.37.336

The department is proposing to repeal ARM 37.37.301, 37.37.303, 37.37.310, 37.37.311, 37.37.316, 37.37.318, 37.37.323, 37.37.330, and 37.37.336. The rules listed are inconsistent with Medicaid payment rules and focus on home-based foster services. Medicaid reimburses mental health services to both foster and biological families. Some requirements aimed at defining the service do not apply to biological families. CMHB administers the medically necessary mental health portion of home-based services and will administer payment rules in the CMHB chapter of department rules. These rules need to be updated to allow CMHB to administer the mental health component of home-based services without referencing rules that do not apply to the mental health service component. Child Protective Services and the Quality Assurance Division, who license child placement agencies, reviewed potential impacts and rule references to the above rules and agreed they should be repealed.

ARM 37.87.1021, 37.87.1023, and 37.87.1025

The department is proposing to repeal ARM 37.87.1021, 37.87.1023, and 37.87.1025 and to move the content of the rules to the corresponding new program section in the CMHB Title 37, chapter 87 for consistency and easy reference for all stakeholders.

ARM 37.87.703

The department is proposing amendments to ARM 37.87.703 to allow for HSS to be reimbursed by a licensed mental health center and also requires therapeutic foster care (TFC) and therapeutic foster care-permanency (TFOC-P) to be provided only by a provider that is both a licensed mental health center and a child placing agency (CPA). This is necessary because mental health centers (MHC) have minimum requirements promoting quality mental health services and should provide home-based mental health services to biological families and HSS services aimed at biological families. Child placing agency (CPA) rules are not aligned with mental health quality measures and are aimed at the foster care service. TFC and TFC-P need both foster service requirements and quality mental health measures and are thus required to be provided by an entity that is both a MHC and CPA.

Fiscal Impact for Home Support Services

1,350 plus clients received home support services (HSS), formerly therapeutic family care (TFC) in State Fiscal Year (SFY) 2012. Approximately 50% to 60% or about

700 youth received HHS and also receive family therapy outside the HHS and TFC bundle. Approximately 1,000 youth received HSS and targeted case management concurrently in SFY 2012. Ten of 18 mental health centers are currently enrolled Medicaid HSS/TFC providers; eight additional mental health centers could potentially start billing HSS services. The estimated combined expenditure for the proposed rule changes may be up to \$750,000.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: 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., January 3, 2013.

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

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 7 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State November 26, 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 37.87.2205 pertaining to) PROPOSED AMENDMENT
children's mental health non-Medicaid)
respite)

TO: All Concerned Persons

1. On December 26, 2012, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process 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 December 19, 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 rule as proposed to be amended provides as follows, 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) through (4) remain the same.

(5) CMHB non-Medicaid respite care services shall only be provided to youth who receive ~~therapeutic family care (TFC)~~ home support services (HSS) and ~~moderate-level therapeutic foster care (TFOG-moderate)~~ (TFC) services or upon authorization by the department or its designee.

(6) and (7) remain the same.

AUTH: 53-2-201, 53-6-101, 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 (the department) is proposing the amendment of ARM 37.87.2205 pertaining to children's mental health non-

Medicaid respite care. This amendment is necessary to maintain consistent and accurate terminology throughout the rules.

ARM 37.87.2205

This rule guides non-Medicaid respite care services for youth with serious emotional disturbance (SED). The Children's Mental Health Bureau (CMHB) recently completed a review of the therapeutic family care program and as a result of substantial changes to that program, including a name change. The department proposes to amend this rule in order update the name of therapeutic family care to home support services.

Fiscal Impact

No fiscal impact is expected with this rule change.

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., January 3, 2013.

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 November 26, 2012.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF ADOPTION,
Rule I, the amendment of ARM	)	AMENDMENT, AND REPEAL
18.6.402, 18.6.403, 18.6.404,)	
18.6.405, 18.6.406, 18.6.407,)	
18.6.408, 18.6.409, 18.6.420,)	
18.6.421, 18.6.422, 18.6.423,)	
18.6.430, 18.6.431, 18.6.432,)	
18.6.433, 18.6.434, 18.6.435,)	
18.6.436, and repeal of ARM)	
18.6.401 pertaining to Motorist)	
Information Signs)	

TO: All Concerned Persons

1. On October 11, 2012 the Department of Transportation published MAR Notice No. 18-137 pertaining to the proposed adoption, amendment, and repeal of the above-stated rules at page 1912 of the 2012 Montana Administrative Register, Issue Number 19.

2. The department has amended the following rules as proposed: ARM 18.6.402, 18.6.403, 18.6.404, 18.6.405, 18.6.406, 18.6.408, 18.6.409, 18.6.421, 18.6.423, 18.6.430, 18.6.431, 18.6.433, 18.6.434, 18.6.435, and 18.6.436.

3. The department has adopted New Rule I (18.6.410) as proposed.

4. The department has repealed ARM 18.6.401 as proposed.

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

18.6.407 SPECIFIC SERVICE RAMP SIGNS (1) remains as proposed.

(2) Where the qualified business is located more than one mile from the interchange, mileage may also be given on the specific service ramp sign. ~~Specific service ramp signs should include distances to the services facilities.~~

(3) through (5) remain as proposed.

AUTH: 60-5-503, MCA

IMP: 60-5-513, MCA

18.6.420 TOURIST-ORIENTED DIRECTIONAL SIGNS (TODS) – GENERAL

(1) remains as proposed.

~~(2) Tourist-oriented directional signs (TODS) are guide signs with one or more sign panels that display the business identification of and directional information for eligible business, service and activity facilities.~~

(3) through (7) remain as proposed, but are renumbered (2) through (6).

AUTH: 60-5-503, MCA

IMP: 60-5-519, 60-5-520, 60-5-521, MCA

18.6.422 DESIGN OF TOURIST-ORIENTED DIRECTIONAL SIGNS (TODS) AND PANELS (1) ~~Tourist-oriented directional signs (TODS) shall have one or more sign panels for the purpose of displaying the business identification of and directional information for eligible facilities.~~ The content of the legend on each sign panel shall be limited to the identification and directional information for no more than one eligible business, service, or activity facility. The legends shall not include promotional advertising.

(2) through (6) remain as proposed.

AUTH: 60-5-503, MCA

IMP: 60-5-521, MCA

18.6.432 MAINTENANCE (1) through (4) remain as proposed.

(5) The department, at its cost, shall remove a motorist information sign if the location of the sign is required for highway purposes or activities including construction, reconstruction or maintenance. The department may re-erect any motorist information sign removed for highway purposes, at an approved substitute location, if possible, but has no obligation to relocate a sign or compensate for its removal.

~~(5)~~(6) The department must notify the franchisee 30 days prior to any highway maintenance, highway construction, or reconstruction project being let, or construction operations highway purposes of any kind which will require removal of any motorist information signs. After completion of the maintenance or construction operations, and relocation of the signs by the department, where possible, the department will notify the franchisee that the signs may be replaced the franchisee shall resume responsibility for maintenance of the sign.

~~(6) The franchisee shall be responsible for the cost of the relocation of any of the signs for highway improvements, maintenance, or construction, and shall complete the removal within 30 days after notification that the sign must be removed. The department's project manager will coordinate removal times with the franchisee.~~

(7) The department shall remove a motorist information sign if the department determines the placement or condition of the motorist information sign endangers the health, safety, or welfare of the public, or in the event the motorist information sign has become inconsistent or in violation of statute or administrative rule. The department has no obligation to compensate for a motorist information sign removal.

AUTH: 60-5-503, MCA

IMP: 60-5-505, MCA

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

COMMENT #1: One comment was received stating ARM §18.6.402(1) and (20) and ARM §18.6.409(1) should be consistent in how they define "business sign" or "logo sign panel." Consistency should also be used in the terms "specific service signs" or "specific information sign" within ARM 18.6.409.

RESPONSE #1: The department notes the definitions of "Business sign" and "Specific information sign" are contained in statute at Mont. Code Ann. Sec. 60-5-502(1) and (7), and are repeated verbatim in the administrative rule at ARM 18.6.402(1) and (20). The department cannot change statutory wording in administrative rules. The department is aware, however, that the Federal Highway Administration Manual on Uniform Traffic Control Devices (MUTCD) does not use identical wording to the Montana statutes, therefore the department sought, in the proposed rule language, to coordinate the two sources and use both statutory terms and MUTCD terms which refer to the same items. The department notes the resulting rule language is not "inconsistent," but rather more broadly worded in using both statutory terms and MUTCD terms for the same items or concepts. ARM 18.6.409(1) uses the term "specific service sign," which is the MUTCD term for what is called "specific information sign" in Montana Code Annotated, but the two terms are synonymous, merely from different sources.

COMMENT #2: One comment was received stating ARM 18.6.402(23), 18.6.420(2) and 18.6.422(1) should be consistent in defining or describing the term "tourist-oriented directional sign" and "TODS."

RESPONSE #2: The department agrees with the comment, insofar as the cited rules use both statutory and MUTCD language for the same item, that of a tourist-oriented directional sign. The department must adhere to statutory language, thus ARM 18.6.420(23) cannot be changed. However, the department will amend ARM 18.6.420(2) and 18.6.422(1) as shown above to delete the MUTCD language describing or defining a TODS, as the term has already been defined in rule using statutory language at ARM 18.6.402(23), and the MUTCD descriptions are therefore not necessary and may create confusion.

COMMENT #3: One comment was received stating ARM 18.6.407(2) is confusing in stating that if the business is further than one mile, the mileage may be given on the ramp sign, while later stating the ramp signs should include distances to all facilities. The comment stated the language is confusing as to whether the mileage should only be given if the facility is more than one mile or whether an attempt should be made to always indicate mileage to the facility.

RESPONSE #3: The department agrees with the comment and will amend the rule as shown above.

COMMENT #4: One comment was received stating that ARM 18.6.408(3) states the number of logo sign panels shall be limited to four, which is in conformity with the current Manual on Uniform Traffic Control Devices (MUTCD), however the National Committee on Uniform Traffic Control Devices (NCUTCD) has recommended to the Federal Highway Administration (FHWA) that this language be amended in the next edition of the MUTCD to increase the number of logo sign panels from four to six. The comment stated the department may consider amending the language in ARM 18.6.408(3) to state the number of logo sign panels shall conform to the requirements of the current MUTCD, to avoid having to revise this section at a later date.

RESPONSE #4: The department notes it must adhere to the current 2009 MUTCD, as this manual has been adopted by the department. If the MUTCD is updated in the future, the administrative rules may be amended to conform to the updates.

COMMENT #5: One comment was received stating ARM 18.6.420(4) conforms to the current MUTCD in stating "a facility shall be eligible for TODS only if it derives its major portion of income or visitors... from road users not residing in the area of the facility." The comment stating the NCUTCD has recommended to the FHWA that this be changed from "shall" to "should." The comment stated the department may consider amending the language in ARM 18.6.420(4) to state the facility must be eligibility requirements as outlined in the MUTCD to avoid having to revise this section at a later date.

RESPONSE #5: See response to Comment #4 above.

COMMENT #6: One comment was received stating ARM 18.6.420(5) is confusing as it implies a business that cannot qualify for a permitted "off-premise" sign would be granted a TODS sign even if it is visible from the roadway. The comment stated it is unclear why any business that is visible from the main traveled road would be eligible for a TODS sign since the purpose of the TODS is to direct motorists to businesses which are not visible from the main traveled roadway.

RESPONSE #6: The department's intent is to assist Montana businesses that exist in largely rural areas, where no opportunities for off-premise permitted advertising are possible due to a lack of qualifying commercial activities in the area. Instead, the statute allows the department to create a rule setting forth criteria to allow TODS for businesses which are visible from a roadway, but may desire additional signs at farther distances or other locations along the roadway. The department notes the rule specifically states the business must meet all criteria for a TODS sign, thus not every commercial business would be eligible, but the rule does create additional opportunities for eligible businesses which desire signage and additional tourist opportunities for motorists traveling through the rural areas.

COMMENT #7: One comment was received stating ARM 18.6.420(6) conforms to the current MUTCD in stating that where both TODS and LOGO signs would be needed at the same intersection, the TODS should be used in place of the LOGO sign. The comment stating the NCUTCD has recommended to the FHWA that this language be removed in its entirety in the next edition of the MUTCD. The comment stated the department may consider amending the language in ARM 18.6.420(6) to avoid having to revise this section at a later date.

RESPONSE #7: See response to comment #4 above.

COMMENT #8: One comment was received stating ARM 18.6.432(4) – (6) which requires the franchisee to pay the costs of relocation of any signs as necessary for highway improvements, maintenance or construction provides significant unknown variables for the franchisee, whose costs could far exceed revenues generated by the fees paid by participants. The comment stated that if I-90 were widened, requiring the removal and reinstallation of all of the sign structures, ARM 18.6.432(6) would require the franchisee to bear those costs, however the franchisee would never be able to recover those costs from the annual participation fees. The comment stated that other transportation agencies include the removal, relocation or reinstallation of the signs in the bid package for the project which affects the current placement of the signs. The comment suggested language be substituted in the rule which states "the department will be responsible for coordinating required modification, removal and replacement of specific service sign structures involved in department and local construction projects, and the franchisee will resume total responsibility for those signs at project completion."

RESPONSE #8: The department agrees with the comment and will amend the rule as shown above. The department will assume responsibility for costs of removal and relocation (where possible) of motorist information signs when necessary for highway purposes such as construction, reconstruction, or maintenance of highways.

COMMENT #9: One comment was received in support of New Rule I on Supplemental Message signs and the recognition of RV Access signs.

RESPONSE #9: The department acknowledges the comment in support.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Timothy W. Reardon
Timothy W. Reardon
Director
Department of Transportation

Certified to the Secretary of State November 26, 2012.

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 24.156.618 testing requirement) ADOPTION
and the adoption of NEW RULES I)
through V reporting obligations)

TO: All Concerned Persons

1. On July 12, 2012, the Board of Medical Examiners (board) published MAR notice no. 24-156-76 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1319 of the 2012 Montana Administrative Register, issue no. 13.

2. On August 6, 2012, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the August 14, 2012, deadline.

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

ARM 24.156.618 Testing Requirement

COMMENT 1: Five commenters supported eliminating the requirement for physicians practicing in other jurisdictions to take the SPEX test. The commenters stated that the amended reactivation process will be more logical, appropriate, and streamlined. One commenter believed that separating reactivating physicians who had not practiced from those who practiced in other jurisdictions will help remove unnecessary barriers to patient care.

RESPONSE 1: The board appreciates all comments made during the rulemaking process.

COMMENT 2: One commenter supported the removal of the testing requirement, but objected to requiring physicians with active licensure in other states to appear before the board, and suggested that ARM 24.156.603(3) may need to be amended for consistency.

RESPONSE 2: The board notes that a physician actively practicing in another jurisdiction could have discipline, be enrolled in a professional assistance program, or be deemed a nonroutine applicant for other reasons. The board points out that this appearance is not always required, but ensures that the board has the continued flexibility to protect the public from physicians who may have issues worthy of concern.

Additionally, the board notes that ARM 24.156.603 applies to physicians seeking initial Montana licensure who have not actively practiced anywhere in the two years prior to application.

COMMENT 3: One commenter stated that requiring reactivating physicians to pay the difference between inactive and active license fees for every year on inactive status is a "transparent money grab."

RESPONSE 3: The board notes that the only time the difference between the inactive and active fee is paid is when the request to reactivate is submitted to the board. There is only a one-time difference in fee payment.

NEW RULES I-V Reporting Obligations

COMMENT 4: One commenter stated that allowing licensees 90 days to report final judgments or agency actions is too lenient and recommended a 30 day timeline.

RESPONSE 4: The board points out that the reporting requirement exists to better protect the public and, for purposes of crosschecking information, is also required at license renewal. Section 37-3-402, MCA, requires insurers to report malpractice claims within 30 days of claim initiation. A physician who renews and does not reveal a malpractice claim, or who fails to inform the board under this new rule, may be found to have committed unprofessional conduct. Disciplinary action is reported to the National Practitioner Data Bank and by the Federation of State Medical Boards. Criminal matters are public and typically appear in newspaper reports.

COMMENT 5: One commenter objected to having to report malpractice claims and described being sued for transporting a patient to a closer, smaller facility that the patient disliked.

RESPONSE 5: As shown in response four, the board points out that insurance carriers are also required to report this information, and that malpractice claims do not necessarily result in complaints filed against licensees.

COMMENT 6: Two commenters addressed the more expansive EMT rule changes that were proposed in a different rulemaking notice, MAR 24-156-77.

RESPONSE 6: The board is unable to respond to these comments as they are outside the scope of this notice.

4. The board has amended ARM 24.156.618 exactly as proposed.

5. The board has adopted NEW RULES I (24.156.619), II (24.156.2706), III (24.156.1007), and IV (24.156.812) exactly as proposed.

6. The board is not adopting NEW RULE V following a determination by staff that the substance of the rule already exists in ARM 24.156.1407.

BOARD OF MEDICAL EXAMINERS
ANNA EARL, MD, PRESIDENT

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

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

Certified to the Secretary of State November 26, 2012

BEFORE THE BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.219.401, 24.219.405, and)
24.219.409 fee schedule)

TO: All Concerned Persons

1. On September 20, 2012, the Board of Social Work Examiners and Professional Counselors (board) published MAR notice no. 24-219-26 regarding the public hearing on the proposed amendment of the above-stated rules, at page 1829 of the 2012 Montana Administrative Register, issue no. 18.

2. On October 15, 2012, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the October 23, 2012, deadline.

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

COMMENT 1: Several commenters opposed the proposed fee increases as unfair burdens on licensees, since licensee salaries have not increased. The commenters suggested the board cut back expenses and reduce costs instead of increasing the renewal fees.

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

Much of the board's budget is a fixed cost allocation to the board for computer systems, web site support, staff salaries, phone and mail service, etc. The board also notes that both the department and the board continually seek and implement ways to reduce costs associated with board functions. Examples of this include the use of electronic board books instead of paper ones, and having some board meetings by telephone conference instead of in-person attendance.

COMMENT 2: Many commenters opposed the fee increases and asserted that the board's expenses had not been adequately described and justified.

RESPONSE 2: The department is required biennially to provide detailed information to the legislature on current and projected licensee numbers and board revenues, expenses, activities, goals, objectives, and complaints. The board also reviews a

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

In addition, the board performs more functions than it has in the past, including licensing a new profession and performing fingerprint and background checks, which has resulted in increased costs. The increase in costs has been seen in all areas, and is not limited to the costs of licensing and renewal. The costs of administration and management, rulemaking, verifying compliance with statutes and rules, maintaining records, providing information to the public through print and electronic means, and legal costs associated with complaints and disciplinary actions have all increased over the decade since the board last raised fees. Detailed information about board costs is available through the board office.

COMMENT 3: Some commenters argued the license fee increase is excessive, given that the examination vendor fees have also increased.

RESPONSE 3: Examination providers set testing fees based on their costs. While the board reviews testing companies to monitor the quality of examinations as well as to ensure that the fees charged to applicants are reasonable, the board does not control the examination fees that applicants pay directly to the providers.

COMMENT 4: Many commenters observed that Montana's license fees are more than those charged by other states.

RESPONSE 4: Fees must be set in a manner commensurate with costs. The board is not permitted to set fees based on external factors, such as fees charged by other states. It is difficult to compare fees from state to state for a variety of reasons. Each jurisdiction provides different services to its members, states have different numbers of licensees, legal issues are different, costs are accounted for in different ways, and licensing authorities are funded in different ways.

COMMENT 5: Numerous commenters asked the board to consider imposing the fee increase gradually.

RESPONSE 5: The board could have increased costs gradually and incrementally over a number of years, but the board found that this approach would also increase rulemaking costs. The board has been considering a fee increase for nearly a year as it has reviewed and monitored its budget. Given the current state of the budget, the board would not be able to continue to operate if it chose to reduce the size of the current increase and incrementally raise fees later. More frequent fee increases also could have increased confusion for applicants and licensees.

By increasing fees substantially at this time, the board hopes to forestall future increases for several years. Should the board require additional revenue to cover its costs in the future, it would consider making smaller increases more frequently in order to avoid the need for a single, large fee increase.

COMMENT 6: Many commenters observed that the fee increase is coming amid difficult economic circumstances.

RESPONSE 6: The board appreciates that there are difficult economic times, but the board must balance its budget in the same way that individuals and businesses do.

COMMENT 7: Several commenters questioned why the fee increase is occurring now. Some commenters alleged the fee increase came without adequate warning to licensees and suggested that the board seek input from licensees prior to proposing a large fee increase.

RESPONSE 7: The board has seen the need to increase fees over the last year and has discussed the idea of a fee increase at previous board meetings. Due to increased costs incurred this fiscal year, it became evident that the increase must be implemented immediately. Increasing the fees as proposed should reduce the chances of additional increases over the next several years, unless new legislation results in added expense for the board.

COMMENT 8: Most commenters objected to the fee increases as too large and suggested the board cut costs rather than increase fees.

RESPONSE 8: The board could have increased costs gradually and incrementally over the years, but the board found that this approach would have increased rulemaking costs. More frequent fee increases also would have added to confusion for applicants and licensees. The board has taken steps to reduce licensee fees, including creating inactive status, which allows licensees practicing in other states to maintain Montana licensure at a lower cost. The board has also seen cost savings by holding meetings by teleconference to reduce travel costs and travelling less often for training and conferences. When possible, the board has attempted to use electronic communication to further reduce telephone and postage charges.

COMMENT 9: Some commenters asked the board to be more specific about increases in legal fees and complaints cited in the reasonable necessity statement.

RESPONSE 9: The board sets licensure fees to be commensurate with associated board costs of licensing and regulation, including the processing of complaints against licensees and unlicensed individuals. Per 37-1-312, MCA, all fines assessed as disciplinary sanctions and paid by licensees must be deposited into the state general fund and do not go toward payment of specific board costs. The board notes that information on final disciplinary actions taken by the board is available to the public via the board's web site or upon request to board staff.

In response to the increased time involved in processing complaints, the board has adopted rules to reduce the number of complaints. Among other things, the board has clarified that some common practices do not meet the standard of care and provided guidelines for practitioners who are involved with child custody determinations.

COMMENT 10: Some commenters suggested the license and renewal fee increases will be a barrier to licensure and reduce the number of licensees practicing in Montana.

RESPONSE 10: Due to increased costs, other boards administratively attached to the department have also been forced to raise fees. These boards have not experienced a serious decline in the number of licenses they issue. Notably, following previous fee increases, the board did not see a decline in license numbers.

COMMENT 11: Other commenters noted that Montana licensees are paid less than individuals who hold the same licenses in other states. Therefore, they contended Montana's licensing fees should be less than those in other states.

RESPONSE 11: The board is required to set fees commensurate with costs and the board does not have the ability to implement fee changes based on the fees charged in other jurisdictions. The board cannot consider the rates charged by its licensees to determine an appropriate level for licensing and renewal fees.

COMMENT 12: Some commenters were concerned that if the fees are increased as proposed, licensees would not be able to afford it.

RESPONSE 12: The board understands the concern, but license fees are a cost of doing business as a professional. The board must meet its financial obligations in order to continue to regulate the professions as mandated in statute.

COMMENT 13: Some commenters stated the license/renewal fee increases were not justified on the basis of inflation since the time of the last fee increase.

RESPONSE 13: Fees are not set according to inflation, licensees' salaries, or cost of living measures, but must be set according to associated board costs. Although the board has seen costs rise over several years, fees have not increased in nine years.

COMMENT 14: Most commenters were generally opposed to the license and renewal fee increases.

RESPONSE 14: The board recognizes that raising fees creates difficulty for licensees, but notes that the practice of any profession is a privilege and paying the associated licensure fee is an obligation inherent in maintaining that privilege.

COMMENT 15: Some commenters asked the board to advocate for licensees for better reimbursement rates from insurance companies.

RESPONSE 15: Lobbying insurance companies to change reimbursement rates is not the role of a regulatory body such as the board. The board would be acting

beyond its statutory authority to assume such a role. Trade and professional associations may be in a position to take on such an advocacy role.

COMMENT 16: One commenter asked about the number of full-time employees needed to handle regulation and licensing.

RESPONSE 16: The number of positions allocated to the board does not determine costs, because boards are not billed based on the number of people who are assigned to work with a board. Department employees are often assigned to work for a number of boards. The board is charged on an hourly basis by department staff when they do work directly for the board.

COMMENT 17: One commenter argued the proposed inactive fee is too high.

RESPONSE 17: The board set the inactive fee based on the cost of renewing an inactive license. Inactive licensees not only save on fees, but do not have to complete continuing education until their licenses are reactivated.

COMMENT 18: One commenter asked why the board needs to raise licensing fees when there is a general fund surplus.

RESPONSE 18: The board is funded solely from the fees it collects. It receives no general fund appropriations.

COMMENT 19: One commenter alleged the application process is too cumbersome and unclear.

RESPONSE 19: The board staff works continually to streamline the process and make improvements as needed. The new database and Internet portal used by licensing staff may make the application and renewal processes simpler and faster. The board has modified its rules to be clearer regarding application processes and will continue to consider improvements to this process at future board meetings.

COMMENT 20: One commenter stated that the fee increases seemed reasonable.

RESPONSE 20: The board regrets that it must increase fees and appreciates the comment.

COMMENT 21: Some commenters suggested that the board reduce the renewal fee for a second license renewal for an individual who is dually licensed.

RESPONSE 21: The board discussed and would consider reducing the renewal fees for dually licensed persons, but cannot make this change now as it exceeds the scope of this rulemaking. Therefore, the board must consider this option at a future board meeting and would have to include it in a future rule proposal. The board is willing to discuss this suggestion at its next meeting.

CONTINUING EDUCATION COURSE APPROVAL FEE

COMMENT 22: One commenter noted that the August 22, 2012, board minutes did not include a motion to charge a fee for continuing education course approval.

RESPONSE 22: The motion to charge a fee for continuing education approval was made at the June 6, 2012, board meeting. The proposed rule changes were combined into a single notice to save rulemaking and filing costs.

COMMENT 23: Several commenters warned that the continuing education approval fee may reduce the number of continuing education course offerings available, especially in rural and remote areas of Montana. Some commenters were concerned that the continuing education fee would reduce the number of small courses offered in-house to employees of nonprofits and health centers.

RESPONSE 23: Many continuing education providers are vendors who are in the business of providing continuing education for professionals. For these entities, the cost of approval is a cost of doing business. In the past, the cost of approving continuing education courses was paid for by all licensees, whether they attended a commercial continuing education course or not. Many courses are available online to licensees in remote areas.

The fee for course approval is relatively small and is charged per course rather than per participant. However, if a course is offered to a small audience in a rural area or by a nonprofit or health center, the provider could recoup the course approval fee by passing the charge on to the participants. Even if this were to occur, because the fee is only \$20, the cost to each participant who attends a small course should be slight. Therefore, licensees who typically attend courses offered by nonprofits, health centers, and in rural areas should not see a significant reduction in available approved courses.

COMMENT 24: Many commenters stated the continuing education approval fee will make obtaining continuing education too costly for licensees.

RESPONSE 24: The continuing education approval fee for each course will generally be paid by the provider, not by licensees. While providers can pass the fee on to participants, even a small course attended by ten licensees would likely result in a per participant cost of only two dollars. Because many courses are offered to larger audiences or are developed by continuing education vendors that offer the course in a number of states, the fee charged to participants may not increase at all.

COMMENT 25: Some commenters argued that the revenue from the proposed licensing/renewal fee increases should be used to pay for continuing education course approval.

RESPONSE 25: The board considered covering continuing education course approval costs with licensing and renewal fees, but determined that it was more

appropriate to have those who take advantage of a particular course pay for it. This fee for services approach allocates fees to the individual or group who generated the cost. Licensees who are not able to take advantage of a course should not be burdened with the expense of the board's review.

COMMENT 26: Some commenters asked whether there will be a continuing education approval fee for each course.

RESPONSE 26: Each individual continuing education course will have to be approved, and each course approval will require the payment of a fee. Licensees will not have to pay for approval unless the course provider did not submit the course for approval in Montana.

COMMENT 27: A few commenters questioned how the continuing education charge will be administered.

RESPONSE 27: In most cases, the fee for approving a continuing education course will be paid for by the course provider. In some cases, specialty training is provided by vendors who do not believe that a significant number of Montana licensees will attend. In these cases, the vendor may choose not to seek approval of the course, and the licensee who takes the course would have to request approval individually. Aside from the collection of a fee, the process for course approval will remain unchanged.

COMMENT 28: Some commenters asked whether there will be a separate continuing education fee for each online course offered by a particular course provider or sponsor.

RESPONSE 28: The fee charged will not vary based on the format of the course. Providers must seek course approval each licensing year. After the subject, length, and format of a course have been approved for the year, the provider would not have to pay an additional fee during the year, unless the subject, length, or format of the course changed.

COMMENT 29: Many commenters were generally opposed to the continuing education course approval fee.

RESPONSE 29: The board already reviews and approves courses and the cost is currently paid for by all licensees from licensing fees. The board has determined that a fee for services model is more equitable, because those who sponsor and benefit from a continuing education course should be expected to pay for it. If the board did not charge a continuing education course approval fee, licensing fees would need to be increased more than what is currently proposed.

COMMENT 30: Numerous commenters stated that individual licensees should not be required to pay a continuing education course approval fee.

RESPONSE 30: Generally, only the course provider will pay to have the course approved. An individual licensee would only be required to pay for a course to be approved if the course had not already been approved for continuing education credit.

COMMENT 31: Some commenters asked if there will be a separate course approval fee for each license type.

RESPONSE 31: Because the regulations concerning social workers, professional counselors, and marriage and family therapists are similar, courses will either be approved for all license types or none of them. Thus, it will not be necessary to charge a course approval fee for each license type.

COMMENT 32: One commenter suggested that the board consider eliminating the fee for small, short, in-house continuing education offerings.

RESPONSE 32: The cost of evaluating a course for approval is not affected by whether the course is short or offered in-house for employees. The cost is a function of the requirement that the course be evaluated to determine whether the content will enhance and supplement the knowledge and abilities of the licensees who take the course. Thus, the board has determined that having only one course approval fee is appropriate in all circumstances.

4. The board has amended ARM 24.219.401, 24.219.405, and 24.219.409 exactly as proposed.

BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
LINDA CRUMMETT, LCSW, PRESIDENT

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

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

Certified to the Secretary of State November 26, 2012

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

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I through VIII pertaining to state-)
owned navigable waterways)

To: All Concerned Persons

1. On June 21, 2012, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-144 regarding a notice of public hearing on the proposed adoption of the above-stated rules at page 1225 of the 2012 Montana Administrative Register, Issue No. 12. On August 9, 2012, the department published a notice of extension of comment period on the proposed adoption at page 1597 of the 2012 Montana Administrative Register, Issue No. 15.

2. The department has adopted New Rules II (36.25.1102) and III (36.25.1103) as proposed.

3. The department has adopted New Rules I (36.25.1101), IV (36.25.1104), V (36.25.1105), VI (36.25.1106), VII (36.25.1107), VIII (36.25.1108) as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined.

NEW RULE I (36.25.1101) DEFINITIONS When used in this subchapter, unless a different meaning clearly appears from the context:

(1) "Bed" means an area on or above state-owned land between the low-water marks of a navigable river channel, excepting any portion of the land greater than 50 feet vertically below the thalweg of the channel and excepting any minerals therein.

(2) through (7)(b) remain as proposed.

(c) an interruption or modification to area of the bed of a navigable river below the low-water mark as provided in 70-16-201, MCA, ~~which may be modified for a private use.~~

(8) "Hazard" means a physical condition of an improvement, structure, or facility which creates an extraordinary risk of physical harm to persons or property which is so obvious and immediately dangerous that an ordinarily prudent person would observe and appreciate such extraordinary risk and take action to address or eliminate such risk.

(8) through (10) remain as proposed but are renumbered (9) through (11).

(14~~2~~) "Low-water mark" means the location of the water line of a navigable river at the lowest tenth percentile of historic annual flow as measured by the nearest upstream hydrograph station.

(a) As utilized in this definition, "historic annual flow" is a graph of water flow in the stream expressed in cubic feet per second (cfs) derived from an average of all existing hydrograph records for each day of the year at a hydrograph station

immediately above the river segment in question (with water flows in cubic feet per second expressed on the 'y' axis and calendar days expressed on the 'x' axis).

(b) The "lowest tenth percentile" is determined by constructing a cumulative frequency graph of the average annual historic water flow rates measured by a particular hydrograph station, and determining the average annual flow rate which is exceeded 90 percent of the time in that cumulative frequency graph.

(12) remains as proposed but is renumbered (13).

(134) "Navigable river" means a segment of a river adjudicated as navigable for title purposes by a court of competent jurisdiction.

(145) "Public use" means activities on navigable waters that are guaranteed by law to the general public to use navigable waters to fish, hunt, trap, navigate, camp, install docks and wharves, and recreate; provided that no physical occupation by a boat positioned, moored, or anchored in a specific location is made for any longer than fourteen days in any thirty-day period. ~~After the fourteenth day a fee shall be assessed for term use for the entire duration of the stay.~~

(15) remains as proposed but is renumbered (16).

(167) "Thalweg" means the deepest portion of the active channel of a stream or river in any given cross-section of the stream or river.

AUTH: 77-1-204, 77-1-1117, MCA

IMP: 77-1-1110, 77-1-1117, MCA

NEW RULE IV (36.25.1104) AUTHORIZATION FOR USE OF NAVIGABLE WATERWAYS (1) Except as otherwise provided in this rule, the following shall require prior written authorization from the department:

(a) fixed structures placed within the bed of a navigable river or suspended above the bed of a navigable river; and

(b) boats positioned, moored, or anchored longer than fourteen days within any 30-day period within a specific location upon navigable waters shall require prior written authorization from the department.

(2) through (5) remain as proposed.

(6) With the exception of applications for authorization sought by the Montana Department of Transportation (MDT), all All necessary federal, state, and local permits shall be acquired by those requesting authorization to use a navigable river or other river as specified in ARM 36.25.1102(3), except where the department issues contingent authorizations under (6)(b).

(a) remains as proposed.

(b) However, the department may choose to issue a lease, license, or easement prior to the department's receipt of permit copies where the lease, license, or easement is conditioned upon the applicant's receipt of a permit and the filing of a copy of the permit with the department.

(7) remains as proposed.

(8) The department may require agreement holders of leases, licenses, or easements to remove hazards from the river, including structures that are no longer in use.

(9) remains as proposed.

AUTH: 77-1-1111, 77-1-1115, 77-1-1117, MCA
IMP: 77-1-1115, 77-2-102, MCA

NEW RULE V (36.25.1105) FEES FOR USES IN NAVIGABLE WATERWAYS

(1) through (3) remain as proposed.

(4) The fee for a lease for the use of the bed of a navigable waterway shall be the greater of the product of the lease rate multiplied by the calculated market value of the footprint, any competitive bid received, or a minimum fee of \$150. The process for calculating the market value lease rate will be as described in 77-1-905, MCA, and ARM 36.25.915. The department reserves the right to impose higher market value lease rates where the proposed use of the bed subjects the state, the department, or the trust beneficiaries to greater risk of damage to trust lands. However, generally, the market value lease rates will be guided by consideration of various market and risk factors, including, but not limited to:

(a) through (7) remain as proposed.

(8) Lease and license revenues will be deposited as follows:

(a) from July 1, 2011, through June 30, 2014, to the guarantee account provided for in 20-9-622, MCA; and

(b) on or after July 1, 2014, to the school facility and technology account provided for in 20-9-516, MCA. into the public land trust fund, according to Article X, Section 5(1) of the Constitution.

(9) Easement revenues will be deposited into the permanent public land trust fund according to Article X, Section 5(2) of the Montana Constitution.

AUTH: 77-1-209, 77-1-1117, MCA
IMP: 17-3-1003, 77-1-102, 77-1-103, 77-1-1117, MCA

NEW RULE VI (36.25.1106) SELECTION OF LEASE, LICENSE, OR EASEMENT (1) and (2) remain as proposed.

(a) A lease will be issued by the department through a competitive bid process ~~per~~ pursuant to 77-1-904, MCA.

(3) remains as proposed.

AUTH: 77-1-1115, 77-1-1117, MCA
IMP: 77-1-1115, MCA

NEW RULE VII (36.25.1107) RELOCATION AND EXPANSION OF FOOTPRINT; CHANGE OF USE (1) The holder of a lease, license, or easement for a water diversion associated with an existing water right shall submit a notice to the department on a form as prescribed by the department when a footprint or associated facilities are proposed to be relocated or expanded.

(1) remains as proposed but is renumbered (2).

~~(2) The holder of a lease, license, or easement for a water diversion shall submit an application as prescribed by the department when a footprint or associated facilities are proposed to be relocated or expanded. Initiation of any work within the low-water marks of the navigable river shall begin only after the~~

~~application has been submitted to the department and the department has authorized the work.~~

(3) through (7) remain as proposed.

(8) Relocation and expansion of a footprint under a lease, license, or easement for a water diversion structure associated with a water right which represents an historic use under ARM 36.25.1108 is exempt from the Montana Environmental Protection Act (MEPA), 757-1-201, et seq., MCA, and the Antiquities Act, 22-3-401, et seq., MCA.

AUTH: 77-1-1116, 77-1-1117, MCA

IMP: 77-1-134, 77-1-1116, MCA

NEW RULE VIII (36.25.1108) HISTORICAL USES IN NAVIGABLE

WATERWAYS (1) Persons using the bed of a navigable river adjudicated before October 1, 2011 [~~the effective date of these rules~~], without written authorization from the department prior to October 1, 2011 [~~the effective date of these rules~~], that wish to continue the use must complete an application prescribed by the department and provide the application to the department by July 15, 2017.

(2) through (5)(b) remain as proposed.

(i) the applicant or the applicant's predecessor in interest used the bed of a river that has been determined navigable in compliance with ARM 36.25.1101(13), and that the use continues; and

(ii) the historic use of the acreage covered by the footprint which occurred prior to December 7, 2012, or the date the river was adjudicated as navigable, whichever is later; and

~~(iii) the use for which authorization is sought is documented by a statement of identical historic use in a notarized affidavit;~~

(c) through (c)(vi) remain as proposed.

~~(d) annual payment of the lease or license fee or payment for the full market value of the easement footprint.~~

~~(d6) The authorization for easements is approved by the board. Leases and licenses may be approved by the department.~~

(6) The lease or license shall automatically terminate should the lessee or licensee fail to make annual payment of the lease or license fee. No easement shall be issued if the easement applicant fails to pay the full market value of the easement footprint.

(7) through (10) remain as proposed.

AUTH: 77-1-1112, 77-1-1117, 77-2-102, MCA

IMP: 77-1-1112, 77-2-102, MCA

4. A summary of the written and oral comments received appear below with the department's responses. "SB 35" refers to Senate Bill 35 (2011 Montana Session Laws, Chapter 359) which was codified in Title 77, chapter 1, MCA.

COMMENT 1:

Clarify the exemptions to the rules to encompass footprints that existed prior to statehood, as well as rights-of-way and patents that were granted, but not yet built prior to statehood. Commenter suggested adding the following language to New Rule VIII(2)(e): "Real property rights in lands beneath a navigable river that vested or accrued prior to November 8, 1889".

RESPONSE 1:

New Rule VIII(2)(b) already adequately addresses this comment, since it clarifies that the proposed rules do not apply to "footprints that existed prior to November 8, 1889", which is the date of Montana's statehood.

COMMENT 2:

Commenter asked to extend the comment period to allow more participation from public entities before proceeding with rulemaking.

RESPONSE 2:

The public comment period was extended from July 19, 2012, to August 31, 2012, to allow for more participation and comment.

COMMENT 3:

There needs to be a penalty clause in the rules, including remedies for the user or applicant if the application is denied. The penalty should include action taken to address the structure itself, as well as the person in violation.

RESPONSE 3:

There is no need to include a civil penalty procedure in the proposed rules. 77-1-125, MCA, authorizes DNRC to impose civil penalties upon persons who install or construct facilities or structures upon state trust lands without prior permission.

COMMENT 4:

The rules need to specify processes for structures with multiple involved parties and clarify who the applicant is: specifically, multiple user structures, and structures that may have separate owners, users, contractors, etc. The rules should clarify who is responsible for applications, fees, and penalties.

RESPONSE 4:

Restrictions on the identity of applicants for use are beyond the scope of this rulemaking. Users should assure themselves that the identity of the applicant for use is consistent with the ownership of the structure.

COMMENT 5:

The rules should reference the Habitat Conservation Plan (HCP) and the Comprehensive Fish and Wildlife Conservation Strategy (CFWCS) regarding application approval, remedial action for structural violations, and potential exemptions for fees to expand footprints to comply with the HCP and CFWCS.

RESPONSE 5:

The recent DNRC HCP applies only to certain classified state forest lands. Applicants for authorization for use of the beds of navigable waters should generally comply with New Rule IV(6) which requires them to obtain all necessary "federal, state, and local permits", prior to making application to DNRC for use of a navigable river bed. However, DNRC retains the discretion under (6)(b) to issue authorizations for use conditioned upon the applicant's receipt of other necessary permits.

COMMENT 6:

There needs to be an environmental analysis completed for these rules.

RESPONSE 6:

The scoping period ended on August 31, 2012, and an environmental assessment which was signed October 30, 2012 and posted to the DNRC web site on November 7, 2012.

COMMENT 7:

The rules should specify which state trust the fees will go to.

RESPONSE 7:

The rules specify revenue deposit information under New Rule V(7) through (9).

COMMENT 8:

Conservation districts have already developed a multi-user application and use it uniformly for 404 and 324 turbidity permits. DNRC should consider using this existing process for simplicity in processing and clarity for the user.

RESPONSE 8:

DNRC will utilize its existing procedures for the processing of applications for use of the beds of navigable waterways.

COMMENT 9:

The rules should include a waiver or implementation incentive for increasing footprints in structures to make them more environmentally sound in ways that comply with the HCP and/or CFWCS.

RESPONSE 9:

See Response 5.

COMMENT 10:

The definition of "footprint" in rule is inconsistent with that in statute.

RESPONSE 10:

The definition in New Rule I(7) has been revised to reflect the statutory definition.

COMMENT 11:

The rules regarding expansion of a footprint are inconsistent with statute. The rules call for prior authorization for the expansion of a footprint, while the statute allows for

the expansion for the same use without prior authorization from the DNRC or the Board of Land Commissioners (Land Board or board).

RESPONSE 11:

Under 77-1-1116(2)(b)(i), MCA, the holder of a lease, license, or easement must provide written notice to DNRC for any relocation or increase in size of the footprint. 77-1-1116(2)(b)(ii), MCA, provides that no DNRC approval is required for "lease, license, or easement for water diversion structures associated with a water right". The section specifies that the holder shall then pay full market value for any increase in size. New Rule VII(1) has been revised to be consistent with the provisions of 77-1-1116(2), MCA.

COMMENT 12:

The rules propose that all other permits must be obtained before a license, lease, or easement will be issued. But, floodplain law already requires that floodplain permits be the final permit issued.

RESPONSE 12:

DNRC retains the authority to issue authorizations for use of the beds of navigable waters, which are contingent upon the applicant's receipt of other permits under New Rule IV(6)(b).

COMMENT 13:

The rules should clarify to which rivers they apply.

RESPONSE 13:

See New Rule I(14).

COMMENT 14:

Commenter asked when DNRC will provide notice to landowners as required by 77-1-1114, MCA.

RESPONSE 14:

DNRC will provide notice to landowners following the adoption of these rules.

COMMENT 15:

The rules appear to conflict with, or exceed the authority of the enabling statutes by requiring authorization for fixed structures suspended above the bed of a navigable river.

RESPONSE 15:

The scope of the proposed rules is consistent with the definition of footprint under SB 35, which states: "...means a structure or other constructed interruption or modification to the bed of a navigable river below the low-water mark as provided in 70-16-201 [MCA]". Because navigable waters are public ways under 85-1-111, MCA, interruptions or modifications to the bed are those which may interfere with the public's use of navigable waters for navigation or other uses. Suspended structures

above navigable waters which impose physical height restrictions upon the use of those waters, thus, clearly fall within the definition of "footprint" under SB 35.

COMMENT 16:

The rules appear to conflict with, or exceed the authority of the enabling statutes by allowing DNRC to require the removal of hazards.

RESPONSE 16:

77-1-1109(2) and (3), MCA, clarify that the purpose of SB 35 was to: "...clarify the process for the use of the beds of navigable rivers and how the state should be compensated for that use"; and that nothing in SB 35 "...diminishes the state's ownership of the beds of navigable rivers, streams, or lakes under any other law". The Land Board retains the legal authority under 77-1-202, MCA, to manage and control state lands, and to condition the use of those lands where necessary to wisely and safely manage those lands for public uses.

COMMENT 17:

The rules are unclear about choice of lease, license, and/or easement.

RESPONSE 17:

Applicants may apply for either a lease, license, or easement. See New Rule VI.

COMMENT 18:

The rules appear to conflict with or exceed the authority of the enabling statutes with regard to the MEPA application.

RESPONSE 18:

The rules are consistent with MEPA. The Legislature has devised specific MEPA procedures to be followed by the board and the DNRC by enacting 77-1-121, MCA.

COMMENT 19:

There should be a provision to the rules that would allow the state to rescind a lease, license, or easement if it is determined that the use is in violation of federal, state, or local permits, regulations, standards, or laws.

RESPONSE 19:

This provision will be addressed in the lease, license, and easement agreement terms and conditions.

COMMENT 20:

The rules should require that all lease, license, and easement applications be reviewed by the Department of Environmental Quality (DEQ) prior to issuance to ascertain that water quality will not be degraded by the proposed use, whether or not a permit is required.

RESPONSE 20:

New Rule IV(6), requires that all other necessary permits must be obtained before authorization. DEQ will review applicable required permits as part of the lease/license/easement authorization process.

COMMENT 21:

The rules should require that all permits be approved and provided prior to granting the lease, license, or easement.

RESPONSE 21:

See Response 12 and New Rule IV(6).

COMMENT 22:

The rules should not exempt relocation or increase in size of a footprint for use of a navigable riverbed from MEPA.

RESPONSE 22:

Section 4 of SB 35 (77-1-1112, MCA) exempts historical use, and leases, or licenses that expressly state that the lease or license is subject to further permitting under any of the provisions of Title 75 or 82. Section 8 of SB 35 (77-1-1116, MCA) provides there is no prior approval required for relocation or increased footprint of a structure for a lease or license, or for an easement for water diversion structures associated with a water right. New Rule VII(8) has been revised to provide: "Relocation and expansion of a footprint under a lease, or license, or for an easement for a water diversion structure associated with a water right is exempt from (MEPA)...All other easement relocations or expansions will be subject to provisions of 75-1-201, et seq., MCA...".

COMMENT 23:

The term "hazard" in Rule IV(8) is ambiguous and conflicts with statute that addresses landowner rights to place structures in the waterway for the purpose of managing land or water. Provide a definition for "hazard" or remove the section.

RESPONSE 23:

The following definition for "hazard" has been added as New Rule I(8): "...means a physical condition of an improvement, structure, or facility which creates an extraordinary risk of physical harm to persons or property which is so obvious and immediately dangerous that an ordinarily prudent person would observe and appreciate such extraordinary risk and take action to address or eliminate such risk".

COMMENT 24:

Drop the issue. Let current controls stay in force or reduce government intervention through a new bill.

RESPONSE 24:

The DNRC is required to adopt administrative rules to implement SB 35.

COMMENT 25:

The rules should incorporate terms of existing Memorandums of Understanding with MDT.

RESPONSE 25:

See Response 26.

COMMENT 26:

Consideration should be given to the requirements for such matters as issuance of permits to address the processes and time schedules that MDT must adhere to in its right of way construction activities.

RESPONSE 26:

Rule IV(6) has been revised to provide that: With the exception of applications for authorization sought by the Montana Department of Transportation (MDT), all necessary federal, state, and local permits shall be acquired by those requesting authorization to use a navigable river or other river as specified in ARM 36.25.1102(3)". This revision is necessary to maintain in effect the January 25, 1997, procedural agreement between DNRC and MDT concerning the timing of easement applications made by MDT to DNRC for transportation projects

COMMENT 27:

The definition of "navigable river" seems to use whole-river analysis rejected by the US Supreme Court in *PPL Montana v. State of Montana*, 565 U.S. ____, 132.Ct. 1215 (2012). It should read "navigable segment of a river".

RESPONSE 27:

DNRC agrees. The definition of "navigable river" in the rules has been revised to be consistent with the segment-by-segment analysis adopted by the U.S. Supreme Court in *PPL Montana v. State of Montana*, 565 U.S. ____, 132.Ct. 1215 (2012).

COMMENT 28:

The definition of "low-water mark" should be revised to: (1) specify that it applies to navigable *segments* - "water line of the navigable segment of a river"; (2) include the word "ordinary" in reference to the water mark to be consistent with use in Montana case law to mean that it occurs with regularity – "ordinary low water mark"; (3) the term "historic annual flow" is ambiguous and unclear to which point in time it refers; (4) it is unclear how the rule term "lowest tenth percentile" is determined.

Commenter suggested an averaging of water marks over time, including flows from all months of the year, which would result in an overestimate in the area of the low water streambed due to single peaks occurring between May and June. Also, the specification that low-water mark will be "measured by the nearest upstream hydrograph station" may result in inaccurate conclusions downstream, and it excludes other relevant data such as downstream station data, studies by the US Army Corps of Engineers, HECRAS model and other riverine modeling programs, aerial photographs, surveys, and historic evidence of the ordinary low-water mark.

RESPONSE 28:

The definition of "navigable river" has been amended to: "...a segment of a river adjudicated as navigable for title purposes by a court of competent jurisdiction".

"Low-water mark" is defined in these rules as: "...the location of the water line of a navigable river at the lowest tenth percentile of historic annual flow as measured by the nearest upstream hydrograph station". The definition has been revised to clarify that: "...'Historic annual flow' is a graph of water flow in the stream expressed in cubic feet per second (cfs) derived from an average of all existing hydrograph records for each day of the year at a hydrograph station immediately above the river segment in question (with water flows in cubic feet per second expressed on the 'y' axis and calendar days expressed on the 'x' axis)". The definition of "low-water mark" further clarifies that: "...'lowest tenth percentile' is determined by constructing a cumulative frequency graph of the average annual historic water flow rates measured by a particular hydrograph station, and determining the average annual flow rate which is exceeded 90 percent of the time in that cumulative frequency graph".

The U.S. Army Corps of Engineers' Hydrologic Engineering Center's River Analysis System (HEC-RAS) is a computer model which enables engineers to predict expected changes in river locations over time due to changes in stream profiles, such as channel modifications and construction of levees. The definition of low-water mark utilized in the rules is the same definition of low-water mark tacitly accepted by the Montana Supreme Court in DSL v. Jerry D. Armstrong, et al., 251, Mont. 235, 824 P.2d 255 (1992), and it involves the location of the water boundary actually existing at time of the low-water mark. This definition of "low-water mark" does not utilize a computer-model predicted boundary.

COMMENT 29:

"Thalweg" is ambiguous or improperly defined. Surveyors use the term to mean the line of usual navigation on the river. The term "thread" is generally used by surveyors to mean the line of deepest water in a river.

RESPONSE 29:

The definition of "thalweg" has been amended to: "...the deepest portion of an active stream or river in any given cross-section of the stream or river".

COMMENT 30:

New Rule IV(1) states DNRC authorization is required for fixed structures suspended above the bed of a navigable river. This exceeds DNRC's authority as provided in statute to be limited to the footprint of the structure in the bed of the river, and the coinciding definition of "footprint" in statute.

RESPONSE 30:

The scope of the proposed rules is consistent with the definition of footprint under SB 35: "...means a structure or other constructed interruption or modification to the bed of a navigable river below the low-water mark as provided in 70-16-201 [MCA]". Because navigable waters are public ways under 85-1-111, MCA, interruptions or

modifications to the bed are those which may interfere with the public's use of navigable waters for navigation or other uses. Suspended structures above navigable waters which impose physical height restrictions upon the use of those waters, thus, clearly fall within the statutory definition of a "footprint" under SB 35.

COMMENT 31:

The definition of "bed" excepts out portions "of the land 50 feet below the thalweg of the channel...". This definition is ambiguous because it is not clear if this means vertical feet or something else.

RESPONSE 31:

The definition of "bed" has been revised to clarify that "bed" excludes that portion of land greater than 50 feet vertically below the thalweg of the channel of a navigable stream.

COMMENT 32:

The definition of "navigable river" in rule is different than navigability tests utilized in the law in the past.

RESPONSE 32:

The definition of "navigable river" in the rules has been revised to comply with the federal test of navigability as expressed by the U.S. Supreme Court in PPL Montana, LLC v. Montana, 132 S. Ct. 1215, 1219, 182 L. Ed. 2d 77 (2012) wherein the Court held that: "To be navigable for purposes of title under the equal-footing doctrine, rivers must be "navigable in fact," meaning "they are used, or are susceptible of being used, ... as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water." [citing, The Daniel Ball, 10 Wall. 557, 563, 19 L.Ed. 999 (1870)]; and that this determination of navigability is established segment-by-segment.

COMMENT 33:

Restrictions provided within the definition of "public use" should be specified in parts of the rule dealing with the conduct of operations on the river, and not within the definition.

RESPONSE 33:

The definition has been revised to delete substantive restrictions. The substantive restrictions have been added to New Rule IV(1).

COMMENT 34:

New Rule II(2) conflicts with Fish, Wildlife and Parks (FWP) ongoing management of rivers by stating DNRC shall manage and administer the state's navigable rivers.

RESPONSE 34:

77-1-1109(2) and (3), MCA, state that the purpose of SB 35 was to: "...clarify the process for the use of the beds of navigable rivers and how the state should be compensated for that use"; and that nothing in SB 35 "...diminishes the state's

ownership of the beds of navigable rivers, streams, or lakes under any other law". The Land Board retains the legal authority under 77-1-202, MCA, to manage and control state lands, and to condition the use of those lands where necessary to wisely and safely manage those lands for public uses. Pursuant to 77-1-301, MCA, DNRC, under the direction of the board, is responsible for the management of state lands. The board and DNRC manage state trust lands from a sovereign and proprietary standpoint. By contrast, FWP has regulatory oversight of boating and recreational use of streams pursuant to 23-2-501, et seq., and 23-2-301, et seq., MCA. New Rule II(2) does not conflict with FWP's regulatory authority.

COMMENT 35:

New Rule II(2)(a) is inaccurate because the whole purpose of the rules is to regulate and prevent public use, and obtain revenue.

RESPONSE 35:

See Response 34.

COMMENT 36:

The provisions in New Rule II(3)(b) are extremely vague and without any basis for understanding of what the rule actually means.

RESPONSE 36:

New Rule II(3)(b) provides that: "[t]he department may issue such contingent-right easements, leases, and licenses only where the department has historical documentation that the river was susceptible of use in commerce at statehood". 77-1-1111, MCA, directs that: "The board or the department may require a lease, license, or easement under this part only for a footprint on the bed of a navigable river". A "navigable river" for this purpose is defined by 77-1-1110(3), MCA, as: "...a river adjudicated as navigable for title purposes by a court of competent jurisdiction". Consequently, under SB 35, Section 3 (77-1-1111, MCA) the board and DNRC cannot require a user of an unadjudicated riverbed to obtain authorization for use of that river or stream bed. The board and DNRC may only require that a user obtain authorization for use only where that segment of the waterway has been adjudicated as navigable for title purposes. However, some users of rivers and streambeds will wish to voluntarily obtain authorizations for use of river and streambeds from the board and DNRC prior to any adjudication taking place. New Rule II(3)(b) clarifies that the board and DNRC may grant authorizations for use of river and streambeds contingent upon their subsequent adjudication as being navigable for title purposes.

COMMENT 37:

New Rule II(3)(c)(ii) refers to notice to adjacent land owners, but does not provide or refer to any means of giving notice or what type of notice is to be given. Nor does the rule define adjacent land owners.

RESPONSE 37:

New Rule II is consistent with the process for giving notice of navigability under 77-1-1114, MCA.

COMMENT 38:

New Rule (IV)(6)(a) refers to permits without explaining what they are for or who provides them.

RESPONSE 38:

The rule refers to local, state, or federal permits necessary for the authorized use.

COMMENT 39:

New Rule IV(8) introduces the word "agreement" without previous clarification of what an "agreement" means. Commenter is unclear if this encompasses leases, licenses, and easements, or is a new class of land user.

RESPONSE 39:

New Rule IV(8) has been amended to delete "agreement" and insert the terms "leases, licenses, and easements".

COMMENT 40:

New Rule IV(9) provides that the leases and easements are assignable. That is not the same as saying that the easements are appurtenant to a dominant tenement. Easements, licenses, and leases may be transferred with the real property. Those two sentences could include legal situations of land ownership that are incompatible.

RESPONSE 40:

There is no conflict between the two sentences in New Rule IV(9). Although appurtenant easements on private lands typically transfer automatically with the title to the dominant tenement (see, Blazer v. Wall, 2008 MT 145, 343 Mont. 173, 183, 183 P.3d 84, 93), upon state lands the easement holder must file an assignment of the easement on DNRC's prescribed easement assignment forms under ARM 36.26.135(3).

COMMENT 41:

New Rule V(4) provides DNRC the right to impose higher market value lease rates for various reasons, which is inconsistent with the set fees provided in (2) and (3).

RESPONSE 41:

Regarding New Rule V: (2) only addresses the application fee for a lease, license, or easement; (3) only addresses the fee for a land use license; and (4) only addresses the fee for leases.

COMMENT 42:

New Rule V(4) specifies that DNRC reserves the right to impose higher lease rates if there is a greater risk of damage to trust lands. Inclusion of risk factor is an entirely different approach than one based on market value. Those provisions should be removed.

RESPONSE 42:

DNRC disagrees.

COMMENT 43:

New Rule V(4)(a) suggests that the cost of demolition and reclamation may be considered when determining the lease fee, but IV(8) specifies that DNRC may require the "agreement holder" to remove hazards. The rules seem to charge the "agreement holder" more than once for undefined reclamation costs.

RESPONSE 43:

The rules provide for the ability to charge for either removal up front, or to require the agreement holder be responsible for removal.

COMMENT 44:

The provisions of New Rule V(4)(c) that refer to the current fee schedule developed by DNRC, creates a circular statement without any reference to what provisions of the schedule might be considered. The provisions should be removed from the rule.

RESPONSE 44:

The fee schedule utilized by DNRC may change periodically based upon current market values and policy directions from the board. Accordingly, under New Rule V(4)(c) the fee schedule may be an element of value to be properly considered when determining the full market value for the conveyance of an interest in state trust land.

COMMENT 45:

The provision in New Rule V(5) that the fee for a lease will be prorated for the first year is directly contradictory to the provisions of (3), which states the license fee for the first year shall be \$150 without regard to the date when the license term begins.

RESPONSE 45:

Lease and license agreements grant different rights; thus, the fee structure for each is different, as provided in New Rule V. 77-1-1110(2), MCA, only specifies that the annual fee for a license is \$150.

COMMENT 46:

The statement in New Rule V(6)(d) providing the fee for the easement shall be the greater of several factors or the current fee schedule developed by DNRC is ambiguously limitless.

RESPONSE 46:

See Response 44.

COMMENT 47:

New Rule V(7) specifies that application fees for historic use will be deposited into the state special revenue fund. Commenter asked if this should refer to all types of uses, or only historic easements.

RESPONSE 47:

According to 77-1-1112(3)(a), MCA, the application fee for any historic use is \$50. 77-1-1113, MCA, specifies that proceeds from the application fee must be deposited into the state special revenue fund to be used to administer the provisions of 77-1-1112, MCA.

COMMENT 48:

New Rule VI(2)(a) provides for a competitive bid process to issue leases per 77-1-904, MCA. That bid process is for commercial leasing.

RESPONSE 48:

The process under 77-1-904, MCA, allows DNRC to solicit bids via requests for proposal and competitive bidding.

COMMENT 49:

New Rule VI(2)(a) provides for a competitive bid process to issue leases per 77-1-904, MCA. This process is inconsistent with the provisions of New Rule V regarding the lease fee determination.

RESPONSE 49:

New Rule V has been amended to provide: "...fee for a lease...shall be the greater of any competitive bid received, the product of the lease rate multiplied by the calculated market value...or a minimum fee of \$150".

COMMENT 50:

The rules should contain some specific provision protecting the rights of current individual irrigators to maintain their headgate structures pursuant to the provision of Montana water law, specifically 70-30-102, 85-1-204, and 85-7-1904, MCA.

RESPONSE 50:

The additional language suggested is beyond the scope of this rulemaking.

COMMENT 51:

For clarity, subsection (2) ought to precede subsection (1) in New Rule VII.

RESPONSE 51:

DNRC agrees and has made the amendment.

COMMENT 52:

The use of the word "considered" in New Rule VII(3)(c) is ambiguous. It does not specify what it means to be "considered" or who it will be "considered" by.

RESPONSE 52:

DNRC disagrees.

COMMENT 53:

Commenter asked who will determine if the water right and property benefited by the use remain the same at expansion or relocation as provided in New Rule VII(3)(c)(i).

RESPONSE 53:

DNRC will make that determination.

COMMENT 54:

New Rule VII(7) specifies that the full market value of a footprint will be established through an appraisal conducted in compliance with ARM 36.25.917. This is not congruent with provisions of New Rule V establishing fees for uses.

RESPONSE 54:

New Rule V sets fees for the grant of an original footprint. New Rule VII addresses relocation and expansion of a footprint. 77-1-1116(2)(b)(ii), MCA, requires the payment of the full market value for the use of the expanded area. The process described in New Rule VII(7) for determining full market value for an expansion of a footprint is consistent with this grant of legislative authority.

COMMENT 55:

New Rule VII(8) refers to MEPA requirements of 77-1-201, MCA. 77-1-201, MCA, refers to the authorities of the Board of Land Commissioners and is probably an erroneous reference.

RESPONSE 55:

Commenter is correct. The reference to 77-1-201, MCA, is a typographic error and DNRC has amended the reference to 75-1-201, MCA.

COMMENT 56:

The contents of the application required in New Rule VII concerning historical use should be established.

RESPONSE 56:

DNRC disagrees. The contents of New Rule VII as amended in this notice are adequate.

COMMENT 57:

The criteria for determining if a use shall be authorized as a lease, license, or easement provided in New Rule VI is ambiguous. There should be a structure set out to enable an applicant to determine which type of agreement to apply for, and whether or not he would be granted any.

RESPONSE 57:

DNRC policy will provide guidance for application.

COMMENT 58:

The use of the word "identical" in the provisions of New Rule VIII(5)(b)(iii) is problematic and permits DNRC to deny virtually any historical use.

RESPONSE 58:

The word "identical" has been removed, and the rule as revised requires an affidavit proving historic use occurring prior to October 1, 2011.

COMMENT 59:

New Rule VIII(5)(d) seems to require annual payment prior to the determination of which, if any, type of agreement will be granted.

RESPONSE 59:

New Rule VIII(5)(d) has been stricken, and the content has been revised and inserted as VIII(6).

COMMENT 60:

The rules attempt to exempt lease from survey requirements of 76-3-201, MCA in New Rule VIII(8). However, 76-3-302, MCA provides that the clerk and recorder is not permitted to record an instrument that transfers title or possession of a parcel or tract required to be surveyed unless a certificate of survey has been filed. All leased parcels would be required to be surveyed under the Subdivision and Platting Act.

RESPONSE 60:

Whether or not property interests issued pursuant to these rules or SB 35 must be surveyed in compliance with the Montana Subdivision and Platting Act is beyond the scope of this rulemaking. However, 76-3-205(2), MCA, provides that: "[a] division of state-owned land is not subject to the requirements of this chapter [the Montana Subdivision and Platting Act] unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974". Because no property interest will be issued pursuant to the proposed rules for residential purposes in navigable waters, it is expected that a survey of footprints under these rules will not be necessary for compliance with the provisions of the Montana Subdivision and Platting Act (76-3-101, et seq., MCA).

COMMENT 61:

Due to ambiguities and difficulties in administration, the rules should not be adopted until they have undergone substantial and thorough rewriting and revision.

RESPONSE 61:

DNRC has reviewed and revised a portion of the rules as per the comments it has received.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Tommy Butler
TOMMY BUTLER
Rule Reviewer

Certified to the Secretary of State on November 26, 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 37.50.901 pertaining to)
interstate compact on the placement)
of children)

TO: All Concerned Persons

1. On October 11, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-603 pertaining to the proposed amendment of the above-stated rule at page 1966 of the 2012 Montana Administrative Register, Issue Number 19.

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

3. No comments or testimony were received.

4. The department intends to apply this rule amendment retroactively to October 1, 2012. A retroactive application of the rule amendment does not result in a negative impact to any affected party.

/s/ Michelle Maltese
Rule Reviewer

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

Certified to the Secretary of State November 26, 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 37.86.805, 37.86.1802, and)
37.86.1807 pertaining to durable)
medical equipment and hearing aids)

TO: All Concerned Persons

1. On October 11, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-604 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1970 of the 2012 Montana Administrative Register, Issue Number 19.

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

3. No comments or testimony were received.

4. These rule amendments are effective January 1, 2013.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State November 26, 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 37.81.304 pertaining to)
maximum Big Sky RX premium)
change)

TO: All Concerned Persons

1. On October 11, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-605 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1975 of the 2012 Montana Administrative Register, Issue Number 19.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.
4. This rule amendment is effective January 1, 2013.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State November 26, 2012.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 42.21.113, 42.21.123,)	
42.21.131, 42.21.137, 42.21.138,)	
42.21.139, 42.21.140, 42.21.151,)	
42.21.153, 42.21.155, 42.22.1307,)	
42.22.1308, 42.22.1311, and)	
42.22.1312 related to the trended)	
depreciation schedules for valuing)	
property)	

TO: All Concerned Persons

1. On October 11, 2012, the department published MAR Notice Number 42-2-883 regarding the proposed amendment of the above-stated rules at page 1999 of the 2012 Montana Administrative Register, Issue Number 19.

2. A public hearing was held on November 14, 2012, to consider the proposed amendment. No one appeared at the hearing to testify and no written comments were received. Therefore, the department amends ARM 42.21.113, 42.21.123, 42.21.131, 42.21.137, 42.21.138, 42.21.139, 42.21.140, 42.21.151, 42.21.153, 42.21.155, 42.22.1307, 42.22.1308, 42.22.1311, and 42.22.1312 as proposed.

3. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Select the "Laws and Rules" link in the left hand column, and click on the "Rules" link within to view the options under the "Current Rule Actions – Published Notices" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State November 26, 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.

ADMINISTRATION, Department of, Title 2

I-IV	Financial Responsibility of Mortgage Loan Originators and Control Persons - Ultimate Equity Owners of Mortgage Entities, p. 2108, 183, 1253
2.6.202	and other rules - State Vehicle Use, p. 1897
2.21.4022	and other rule - Equal Employment Opportunity - Nondiscrimination - Harassment Prevention, p. 2292
2.59.104	Semiannual Assessment for Banks, p. 460, 883
2.59.1701	and other rules - Mortgage Servicers, p. 778, 1762
2.59.1728	and other rule - Written Exemption Form for Requesting a Mortgage Licensing Exemption, p. 1805

AGRICULTURE, Department of, Title 4

I	Addition of Beans and Pulse Crops to the Listed Commodities of Montana, p. 1308, 1661
I	Eurasian Watermilfoil Management Area, p. 802, 1017, 1346
I-V	State Sampling Program, p. 935, 1254
I-VI	Nursery Program, p. 150, 735
4.10.202	and other rules - Aerial Applicator, p. 1652, 2185

STATE AUDITOR, Title 6

I-VI	Securities Restitution Fund, p. 672, 1140
------	---

6.6.2403 Group Coordination of Benefits, p. 2296

COMMERCE, Department of, Title 8

- 8.94.3727 Administration of the 2011-2012 Federal Community Development Block Grant (CDBG) Program, p. 530, 992
- 8.94.3727 Administration of the 2011-2012 Federal Community Development Block Grant (CDBG) Program, p. 1166, 1613
- 8.94.3727 Administration of the 2011-2012 Federal Community Development Block Grant (CDBG) Program, p. 2102
- 8.99.303 Certified Regional Development Corporations Program, p. 533, 993
- 8.99.901 and other rules - Big Sky Economic Development Trust Program, p. 805, 1255
- 8.111.602 and other rule - Low Income Housing Tax Credit Program, p. 2231

EDUCATION, Department of, Title 10

(Board of Public Education)

- 10.55.601 and other rules - Accreditation Standards, p. 1401, 1553, 2042
- 10.56.101 Assessment, p. 1440, 2057
- 10.57.217 and other rules - Educator/Specialist Discipline, p. 244, 1039
- 10.57.412 and other rule - Areas of Specialized Competency, p. 241, 1038

(Montana Arts Council)

- 10.111.701 and other rules - Cultural and Aesthetic Project Grant Proposals, p. 535, 1662

FISH, WILDLIFE AND PARKS, Department of, Title 12

- I Shooting Preserve Applications, p. 2105
- I-III Bodies of Water Identified as Contaminated With Eurasian Watermilfoil, p. 811, 1347, 1523
- 12.9.602 and other rules - Upland Game Bird Release and Habitat Enhancement Programs, p. 463, 1766

(Fish, Wildlife and Parks Commission)

- I Deer Licenses Separated From Nonresident Big Game Combination Licenses, p. 1022, 1841
- I-III License Auctions and Lotteries, p. 1024, 1842
- 12.6.2204 and other rule - Adding Tilapia as a Controlled Species, p. 1019, 1772
- 12.11.2308 and other rules - No Wake Zones Surrounding Commercial Marinas, p. 253, 884

ENVIRONMENTAL QUALITY, Department of, Title 17

- 17.40.201 and other rules - Definitions - Classification of Systems - Certification of Operators - Examinations - Certified Operator in Charge of System--Exceptions, p. 257, 886
- 17.55.109 Incorporation by Reference, p. 678, 814, 1147
- (Board of Environmental Review)
- I Water Quality - Nutrient Trading, p. 1902
- 17.8.102 Incorporation by Reference of Current Federal Regulations - Other Materials Into Air Quality Rules, p. 1554
- 17.8.801 and other rule - Air Quality - Definitions - Review of Major Stationary Sources and Major Modifications--Source Applicability - Exemptions, p. 1098, 2058
- 17.24.301 and other rules - Definitions - Format - Data Collection - Supplemental Information - Baseline Information - Operations Plan - Reclamation Plan - Plan for Protection of the Hydrologic Balance - Filing of Application and Notice - Informal Conference - Permit Renewal - Transfer of Permits - Administrative Review - General Backfilling and Grading Requirements - Blasting Schedule - Sedimentation Ponds - Other Treatment Facilities - Permanent Impoundments - Flood Control Impoundments - Ground Water Monitoring - Surface Water Monitoring - Redistribution and Stockpiling of Soil - Establishment of Vegetation - Soil Amendments - Management Techniques - Land Use Practices-Monitoring -Period of Responsibility - Vegetation Measurements - General Application and Review Requirements - Disposal of Underground Development Waste - Permit Requirement - Renewal and Transfer of Permits - Information and Monthly Reports - Drill Holes - Bond Requirements for Drilling Operations - Notice of Intent to Prospect - Bonding - Frequency and Methods of Inspections - Department's Obligations Regarding the Applicant/Violator System - Department Eligibility Review - Questions About and Challenges to Ownership or Control Findings - Information Requirements for Permittees - Permit Requirement-Short Form - Coal Conservation, p. 2726, 737, 1349
- 17.24.645 and other rules - Reclamation - Water Quality - Subdivisions - CECRA - Underground Storage Tanks - Department Circular DEQ-7 - Definitions - Incorporations by Reference - C-3 Classification Standards - General Treatment Standards - General Prohibitions - Water-Use Classification - Descriptions for Ponds and Reservoirs Constructed for Disposal of Coal Bed Methane Water - G-1 Classification Standards, p. 1103, 2060
- 17.24.902 and other rule - General Performance Standards - Rules Not Applicable to In Situ Coal Operation, p. 1027, 1617
- 17.24.1264 Department's Obligations Regarding the Applicant/Violator System, p. 1349

- 17.30.617 and other rule - Water Quality - Outstanding Resource Water Designation for the Gallatin River, p. 2294, 328, 1398, 438, 1953, 162, 1324, 264, 1648, 89, 1244, 5, 1310
- 17.30.1001 and other rules - Water Quality - Subdivisions/On-Site Subsurface Wastewater Treatment - Public Water and Sewage System Requirements - Solid Waste Management - Definitions - Exclusions From Permit Requirements - Subdivisions - Wastewater Treatment Systems - Plans for the Public Water Supply or Wastewater System - Fees - Operation and Maintenance Requirements for Land Application or Incorporation of Septage - Grease Trap Waste - Incorporation by Reference, p. 1169, 2067
- 17.30.1304 and other rules - Montana Pollutant Discharge Elimination System Permits - Permit Exclusions - Application Requirements - Incorporations by Reference, p. 1556
- 17.36.340 and other rule - Lot Sizes: Exemptions and Exclusions, p. 2299
- 17.38.106 and other rule - Public Water and Sewage System Requirements - Fees - Significant Deficiency, p. 1906, 2237
- 17.38.208 and other rules - Public Water and Sewage System Requirements - Treatment Requirements - Control Tests - Testing and Sampling Records and Reporting Requirements - Definitions - Incorporation by Reference - Cross-Connections: Regulatory Requirements - Voluntary Cross-Connection Control Programs: Application Requirements - Standards and Requirements for Cross-Connection Control, p. 267, 1141

TRANSPORTATION, Department of, Title 18

- I & II Fuel Tax Refund for Agricultural Uses, p. 330, 888
- 18.6.202 and other rules - Outdoor Advertising, p. 2470, 185, 1524
- 18.6.215 Outdoor Advertising Fees, p. 816, 1525
- 18.6.402 and other rules - Motorist Information Signs, p. 1912
- 18.8.101 and other rules - Motor Carrier Services, p. 819, 1350, 1775

CORRECTIONS, Department of, Title 20

- I-V Education of Exonerated Persons, p. 334, 1632
- 20.2.208 and other rules - Department of Corrections - Board of Pardons and Parole, p. 1619
- 20.7.110 and other rules - Boot Camp Incarceration Program, p. 1618
- 20.7.801 and other rules - Eastmont Chemical Dependency Treatment Center, p. 2239, 2377
- 20.9.101 and other rules - Youth Placement Committees, p. 2243
- 20.9.103 and other rules - Youth Placement Committees, p. 1587, 1843

JUSTICE, Department of, Title 23

- 23.4.201 and other rules - Drug and Alcohol Analyses, p. 681, 1355

(Board of Crime Control)

23.14.204 and other rules - Duties and Functions of the Board of Crime Control, p. 275, 615, 743

LABOR AND INDUSTRY, Department of, Title 24

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

I-VI Stay at Work/Return to Work for Workers' Compensation, p. 836, 1357
24.11.462 and other rule - Unemployment Insurance, p. 473, 1040
24.17.127 Prevailing Wage Rates for Public Works Projects, p. 2254
24.29.601 and other rules - Workers' Compensation Insurance Coverage Under Compensation Plan No. 1 and Plan No. 2, p. 693, 1666
24.33.121 Construction Contractor Registration Fees - Evidence of Compliance With Laws - Construction Contractor Registration Requirements, p. 339, 994, 1148
24.101.413 and other rules - Renewal Dates and Requirements - Boiler Operating Engineer Licensure - Licensure of Elevator Contractors, Inspectors, and Mechanics - National Electrical Code - Elevator Code - Boiler Safety - Definitions - Tag-Out and Lock-Out - Stop Orders - Elevator Licensing - Elevator Inspection and Variances, p. 1932
24.351.201 and other rules - Weighing and Measuring Devices - Packaging and Labeling - Petroleum - Voluntary Registration - Certification of Stationary Standards - Weight Device License Transfer, p. 1323, 1786

(Board of Alternative Health Care)

24.111.409 Inactive Status - Naturopathic Physician National Substance Formulary List - Direct-Entry Midwife Apprenticeship Requirements - Naturopathic Physician Continuing Education Requirements - Midwives Continuing Education Requirements, p. 345, 1360, 1634
24.111.602 Direct-Entry Midwife Apprenticeship Requirements, p. 1634

(Board of Athletic Trainers)

24.118.402 and other rules - Fee Schedule - Applications - Renewals, p. 1312, 2378

(Board of Clinical Laboratory Science Practitioners)

24.129.2101 Continuing Education Requirements, p. 1316

(Board of Funeral Service)

24.147.401 Fee Schedule, p. 351, 890

(Board of Hearing Aid Dispenser)

24.150.301 and other rules - Definitions - Fees - Record Retention - Examination - Transactional Document Requirements, p. 294, 894

(Board of Medical Examiners)

24.156.618 and other rules - Testing Requirement - Reporting Obligations, p. 1319

24.156.2701 and other rules - Emergency Medical Technicians - Endorsement Application - Continuing Education Requirements - Post-Course Requirements - Obligation to Report to the Board - Complaints, p. 1809

(Board of Outfitters)

24.101.413 and other rules - Renewal Dates - Requirements - Fees - Outfitter Records - NCHU Categories - Transfers - Records - Renewals - Incomplete Outfitter and Guide License Application - Guide to Hunter Ratio - Provisional Guide License, p. 2107, 2304

(Board of Nursing)

24.159.2001 and other rules - Nurses' Assistance Program, p. 2338, 996

(Board of Pharmacy)

24.174.301 and other rules - Definitions - Dangerous Drug Fee Schedule - Administration of Vaccines by Pharmacists - Transmission of Prescriptions - Identification of Pharmacist-in-Charge - Minimum Information Required for Licensure - Telepharmacy Operations - Acceptable Cancer Drugs - Emergency Prescription Refills - Remote Medication Order Processing Services - Schedule I, II, III, IV, and V Dangerous Drugs - Board-Established Medical Assistance Program - Quality Improvement Program - Limited Service Pharmacy - Class IV Facility, p. 2761, 896

(Board of Physical Therapy Examiners)

24.177.401 and other rules - Examinations - Temporary Licenses - Licensure of Out-of-State Applicants - Foreign-Trained Physical Therapy Applicants - Continuing Education - Unprofessional Conduct - Screening Panel, p. 939, 1526

(Board of Plumbers)

24.180.301 and other rules - Definitions - Journeyman Must Work in the Employ of Master - Master Plumbers Registration of Business Name - Nonroutine Applications, p. 476, 1635

(Board of Private Alternative Adolescent Residential or Outdoor Programs)

24.181.301 and other rule - Amendment - Definitions - Renewals, p. 2310

(Board of Professional Engineers and Professional Land Surveyors)

24.183.1001 and other rules - Form of Corner Records - Uniform Standards for Certificates of Survey - Uniform Standards for Final Subdivision Plats, p. 1716, 2113

(Board of Psychologists)

24.189.401 Fee Schedule - Nonresident Psychological Services - Application Procedures - Required Supervised Experience - Work Samples - Examination - Professional Responsibility - Temporary Permit, p. 354, 1041

(Board of Public Accountants)

24.201.501 and other rules - Education Requirements - Out-of-State Applicants - Retired Status - Profession Monitoring - Renewal and Continuing Education - Advisory Committee - Continuing Education Reporting for Permit to Practice - Reinstatement, p. 543, 1363

(Board of Real Estate Appraisers)

24.207.402 Adoption of USPAP by Reference, p. 2487, 745

24.207.501 and other rules - Examination - Qualifying Education Requirements - Trainee Requirements - Mentor Requirements - Continuing Education Noncompliance - Complaints Involving Appraisal Management Companies, p. 1591

(Board of Realty Regulation)

24.210.301 and other rules - Definitions - Fee Schedule - Trust Account Requirements - Internet Advertising Rules - Brokers - Salespersons - Property Management - Public Participation - Course Provider, p. 556, 1776

(Board of Social Work Examiners and Professional Counselors)

I Minimum Qualification Standards for Licensees to Conduct Psychological Assessments, p. 1655, 2129

24.219.401 and other rules - Fee Schedule, p. 1829

LIVESTOCK, Department of, Title 32

32.2.403 Diagnostic Laboratory Fees, p. 1445, 2068

32.3.201 and other rules - Definitions - Additional Requirements for Cattle - Importation of Cattle From Mexico - Special Requirements for Goats - Tuberculosis and Brucellosis Test - Importation of Wild Species of Cloven Hoofed Ungulates - Llamas, p. 715, 1262

32.3.212 Additional Requirements for Cattle, p. 1462, 2069

32.3.433 Designated Surveillance Area, p. 712, 1258

32.3.1205 and other rule - Animal Contact - Brands - Earmarks, p. 1222, 1637

32.18.102 and other rules - Age Tally Mark - Numeral Mark - Placement of Digits - Brand Ownership and Transfer - Sale of Branded Livestock - Change

in Brand Recording - Equine Breed Registry Mark - Freeze Branding - Recording and Transferring of Brand, p. 706, 1257

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

I-VIII State-Owned Navigable Waterways, p. 1225, 1597
36.12.101 and other rules - Water Right Permitting, p. 1465, 2071
36.14.102 and other rules - Dam Safety - Permitting, p. 1234, 1844
36.17.601 and other rules - Application Procedures - Loan Requirements of the Renewable Resources Grant and Loan Program, p. 365, 746

(Board of Land Commissioners)

I-VIII State-Owned Navigable Waterways, p. 1225, 1597

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I Mandatory Cross Reporting to Law Enforcement of Crimes Against Children, p. 1832
I Montana Tobacco Settlement Fund, p. 723, 1149
I-III Home and Community-Based Services (HCBS) State Plan Program, p. 1509, 1733
I-IV Alternatives to Out-of-State Placement for At-Risk Youths, p. 1737, 2192
I-IV Documentation for Admission to Montana State Hospital, p. 1835, 2379
I-IV Discontinuation of Services, p. 1978
I-VI Targeted Case Management Services for Substance Use Disorders, p. 2320
I-XI Licensing of Specialty Hospitals, p. 1598
I-XXXIII Medicaid Home and Community Services Children's Autism Program, p. 1489, 1731, 2085
37.34.206 and other rules - Developmental Disabilities Eligibility Rules for Medicaid Only, p. 312, 1158, 1311, 900
37.34.114 and other rule - Certification of Persons Assisting in the Administration of Medication, p. 1030, 1387
37.34.1101 and other rules - Plan of Care, p. 1983
37.34.1401 and other rules - Positive Behavior Support, p. 1741
37.34.1501 and other rules - Incident Reporting, p. 1994
37.34.2301 and other rules - Residential Facility Screening, p. 2140
37.36.604 Updating the Federal Poverty Index for the Montana Telecommunications Access Program, p. 2327
37.40.307 and other rule - Nursing Facility Reimbursement, p. 1248, 1674
37.50.901 Interstate Compact on the Placement of Children, p. 1966
37.57.102 and other rules - Children's Special Health Services, p. 1126, 1672
37.62.102 and other rules - Montana Child Support Guidelines, p. 2356, 747
37.70.406 and other rules - Updating the Federal Poverty Index for the Montana Telecommunications Access Program, p. 2314

- 37.71.404 Low Income Weatherization Assistance Program (LIWAP), p. 1122, 1529
- 37.78.102 and other rule - Good Cause Criteria TANF Policy Manual, p. 726, 1263
- 37.78.102 Incorporating TANF Manual, p. 2145
- 37.80.101 and other rules - Child Care Policy Manual Revisions, p. 2489, 195, 756
- 37.80.101 and other rule - Child Care Policy Manual Revisions, p. 1333, 1788
- 37.81.304 Maximum Big Sky RX Premium Change, p. 1975
- 37.82.701 and other rules - Plan First 1115 Waiver Implementation, p. 298, 757
- 37.85.206 and other rules - Medicaid Diabetes and Cardiovascular Disease Prevention Services, p. 483, 1671
- 37.85.207 and other rules - Primary Care Service Enhanced Reimbursement - Birth Attendant Services, p. 2131
- 37.85.212 and other rule - Resource Based Relative Value Scale (RBRVS), p. 862, 1266
- 37.86.805 and other rules - Durable Medical Equipment and Hearing Aids, p. 1970
- 37.86.1101 and other rules - Stay at Work/Return to Work for Workers' Compensation, p. 1367
- 37.86.1501 and other rules - Home Infusion Therapy Program Revisions, p. 868, 1270
- 37.86.2401 and other rule - Specialized Nonemergency Medical Transportation, p. 1756, 2278
- 37.86.3001 and other rules - Medicaid Outpatient Hospital Services, p. 948, 1382
- 37.86.3607 Case Management Services for Persons With Developmental Disabilities Reimbursement, p. 1245, 1638
- 37.87.102 and other rules - Psychiatric Residential Treatment Facility (PRTF), p. 2258
- 37.87.733 and other rules - Updating the Children's Mental Health Bureau (CMHB) Fee Schedule, p. 873, 1273
- 37.87.903 Changing Prior Authorization Requirements - Adopting a New Utilization Review Manual, p. 1609, 2086
- 37.87.1303 and other rules - Home and Community-Based Services (HCBS) for Youth With Serious Emotional Disturbance, p. 1514, 1735, 2186
- 37.87.2202 and other rules - Non-Medicaid Respite Care Services, p. 1338, 1659, 2274
- 37.90.401 and other rules - Home and Community-Based Services for Adults With Severe Disabling Mental Illness, p. 851, 1265
- 37.95.102 and other rules - Infant Care, p. 600, 1368
- 37.107.117 Montana Marijuana Program, p. 595, 1061
- 37.108.507 Healthcare Effectiveness Data - Information Set (HEDIS) Measures, p. 845, 1264
- 37.111.101 Public Sleeping Accommodations, p. 375, 1042
- 37.112.103 and other rules - Body Art and Cosmetics, p. 2264

PUBLIC SERVICE REGULATION, Department of, Title 38

- 38.3.706 Regulation of Motor Carriers, p. 877, 1274
- 38.5.2202 and other rule - Pipeline Safety, p. 2330

REVENUE, Department of, Title 42

- I Property Tax Abatement for Gray Water Systems, p. 612, 1001
- 42.4.104 and other rules - Tax Credits, p. 2347
- 42.11.105 and other rules - Liquor Stores - Vendors - Licensees - Distilleries, p. 2333

- 42.11.301 and other rules - Operating Agency Liquor Stores, p. 2149
- 42.12.101 and other rules - Liquor License Application General Regulation - Premises Suitability Requirements, p. 961, 1846
- 42.13.101 and other rule - Alcohol Server Training Compliance, p. 880, 1150
- 42.13.201 and other rules - Product Approval for Beer, Wine, and Hard Cider Products, p. 2178
- 42.15.107 and other rules - Income Tax, p. 2339
- 42.17.111 and other rules - Withholding and Estimated Tax Payments, p. 2029
- 42.18.122 and other rules - Montana Reappraisal Plan, p. 2165
- 42.20.105 and other rule - Valuation of Real Property, p. 730, 1679
- 42.21.113 and other rules - Trended Depreciation Schedules for Valuing Property, p. 1999
- 42.25.501 and other rules - Natural Resource Taxes, p. 2366
- 42.26.310 Water's-Edge Election, p. 1521, 1790
- 42.38.101 and other rules - General Provisions and Disposition of Abandoned Property, p. 488, 1000

SECRETARY OF STATE, Office of, Title 44

- 1.2.419 Scheduled Dates for the 2013 Montana Administrative Register, p. 1759, 2039, 2384
- 44.3.101 and other rules - Elections, p. 52, 760
- 44.6.111 and other rule - Farm Bill Master List Output and Fees Pertaining to the Business Services Division, p.1343