

# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 4

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF PROPOSED  
2.59.302 pertaining to schedule of ) AMENDMENT  
charges for consumer loans )  
) NO PUBLIC HEARING  
) CONTEMPLATED

TO: All Concerned Persons

1. On April 4, 2013, the Department of Administration proposes to amend the above-stated rule.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Administration no later than 5:00 p.m. on March 22, 2013, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to [banking@mt.gov](mailto:banking@mt.gov).

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

2.59.302 SCHEDULE OF CHARGES (1) Every applicant for license under the Montana Consumer Loan Act shall file with the commissioner in duplicate, at the time of filing an application for ~~such a~~ license, a full and accurate schedule of all charges, fees, and ~~costs~~ rate(s) of interest to be exacted in connection with any and all loans to be made by ~~such the~~ applicant and the method of computing the same.

(2) Licensees shall thereafter maintain on file with the commissioner in duplicate a current schedule of all charges, fees, and ~~costs~~ rate(s) of interest to be exacted in connection with all loans to be made by ~~such the~~ licensee and shall not exact charges, fees, or ~~costs~~ rate(s) of interest in excess of those contained in the schedule.

(3) Licensees shall display ~~such the~~ schedule, which shall include examples of principal, ~~add-on charges~~ rate(s) of interest, monthly payments, and the contract period covered, prominently in each licensed place of business where loans are made or negotiated so as to be easily readable by borrowers and prospective borrowers.

(4) Licensees ~~shall~~ may not make loans without ~~such~~ having the schedule ~~being~~ displayed.

(5) Licensees operating more than one licensed location in Montana shall advise the commissioner at which location or locations each ~~such~~ schedule is to be used, if there ~~be~~ is more than one schedule.

(6) Licensees shall observe the following definitions and procedures in computing charges interest:

~~(a) a calendar month is that period of time from one date in the month to the corresponding date in the next month. If there is no corresponding date, then the last date of the next month will be used.~~

~~(b) the term "month" as used in the Act and in this regulation shall mean calendar month;~~

~~(c) (a) charges interest shall be computed at the applicable rate on the amount of the loan from the date of the loan to the due date of the final installment irrespective of the fact that the loan is payable in installments balance of the loan from the date of the previous payment to the date of the following payment; and~~

~~(d) (b) licensees shall compute monthly charges for a period of less than one year at 1/12th of the annual rate for each month; interest using a 365-day year, or in the case of a leap year a 366-day year, and by counting the actual number of days from one payment to the next.~~

~~(e) licensees shall compute daily charges for a period of less than one month at 1/30th of 1/12th of the annual rate for each day;~~

(7) Licensees shall not fix the due date of the first installment on any loan contract providing for monthly installments, for a term exceeding 45 actual days from the date of loan.

~~(a) When the first payment on any such contract may be due on a date beyond a calendar month as defined above, licensees will be permitted to make an additional charge for the number of days in excess of 30 or of one calendar month from the date of loan, whichever is less.~~

~~(b) The number of days in excess will be at the daily rate for actual number of days.~~

~~(8) Licensees shall compute prepayment refunds under the rule of 78ths:~~

~~(a) Licensees may disregard any earned charge made for an extended first payment. (e.g. if a 10 day first payment extension charge was made, the charge becomes earned with the elapse of the 10 days.)~~

~~(b) When any loan contract is prepaid after the first scheduled installment date by cash, a new loan, renewal, or otherwise, on other than scheduled dates, licensees shall elect to use either the 15-day rule or a daily basis to compute the refund due.~~

~~(i) The daily basis, if elected, shall be at the rate of 1/30th of the total earned charges determined under the rule of 78ths for that month in which prepayment occurs times the number of days which follow the prepayment date to the next scheduled payment date;~~

~~(ii) Licensees electing the 15-day rule are entitled to earned charges under the rule of 78ths for the month in which prepayment occurs provided the prepayment date is 16 days or more after the preceding regularly scheduled payment date;~~

~~(iii) Licensees are prohibited from using both methods.~~

~~(c) Licensees who elect to use the 15-day rule in determining the refund due a borrower under the provisions of (8)(b)(ii) above may use the following formula in determining the service charge due from borrowers who repay any loan contract within 15 days or less from the date the loan is made:~~

~~(i) lenders are authorized to divide the original add on charge by the number of months in the contract period of the original term of loan. If a first payment extension was made, that charge is to be entirely refunded if it has not been earned by elapse of time; if earned, the 15 days or less is determined from the date which is one month prior to the first scheduled payment;~~

~~(ii) whenever the resulting quotient is less than \$2, the lender may collect \$2 as a minimum service charge.~~

~~(d) a borrower who prepays one whole installment or more in advance shall be entitled to a refund credit of unearned charges for such prepayment, if the loan contract is repaid within the time allowed in its original terms. Such refund shall be computed by subtracting from the original add on charge as great a proportion of such charge as the sum of all monthly balances as originally contracted for. Monthly balances are those on the date of origination and on the consecutive scheduled monthly payment dates of the original loan contract;~~

~~(9) (8) Licensees shall interpret 32-5-301(2), MCA, of the Act "only once" to mean on the same default; i.e., a borrower who defaults in one or more payments may be subject to a penalty of 5% of as specified in 32-5-301(2), MCA, for each payment in default;~~

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

AUTH: 32-5-401, MCA

IMP: 31-1-106, 32-5-301, MCA

STATEMENT OF REASONABLE NECESSITY: The rule is being amended to remove archaic language "such" and "be," which are no longer used in rule drafting. The term "cost" is being removed and the term "interest" is being added since the Montana Consumer Loan Act (Act) refers to "interest" in 32-5-301(1), MCA. The remainder of 32-5-301, MCA, refers to "fees" but does not use the term "cost." So the rule must be amended to make the terminology consistent with the terminology used in the Act.

In the days before calculators, loans were computed on set numbers of days to aid in ease of calculation of interest. For purposes of calculating interest, a month was 30 days and a year was 360 days. This allowed for more simple interest calculations. However, since the advent of ubiquitous hand-held calculators, there really is no reason for calculating interest other than on actual days. In addition, in October 2010 the voters of Montana passed Ballot Initiative No. 164 (I-164). I-164 amended 32-5-301(1), MCA, of the Act to read: "a licensee may contract for and receive interest on any loan of money. Such interest, including fees and charges incurred in the making of the loan but excluding the fees authorized in subsections (2) and (3), may not exceed 36% per annum." The rate cap was effective on all consumer loans originated on or after January 1, 2011.

If a company uses a 30/360-day year since I-164 took effect, it could charge and collect more interest that is allowed by I-164. On March 11, 2011, the division issued a memorandum cautioning licensees that the effective interest rate (the interest rate that is actually charged on a given loan) must be consistent with the stated interest rate (the interest rate disclosed by the terms of the contract). For

these reasons, references to 30/360 calculations for interest on loans are being removed and replaced by actual days.

Subsections (7)(a) and (b) of the rule are being deleted because they relate to an anachronistic method of calculating interest. In the past, interest was calculated on a 30-day month and any payment of longer than 30 days presented a problem for purposes of calculating the interest due. Now interest is calculated daily so these sections are no longer needed.

Section (8) is being deleted because it relates to two concepts that no longer exist under the Act: precomputed loans and the rule of 78ths. Before 2007, the Act contemplated that consumer loans would be made on an add-on interest basis. In fact, until the mid-1980s most loans were made on an add-on interest basis. In an add-on loan, the amount of interest owed over the life of the loan was precomputed and added to the principal amount due. Sometimes the loans were called precomputed loans.

If the loan was paid off early by the borrower, the borrower would receive a refund of interest based on the rule of 78ths. The rule of 78ths was a set formula that front loaded interest early in the term of the loan so that a proportionately greater amount of interest was collected early in the loan than at the end of the loan. If a precomputed or add-on loan was paid according to the contractual terms, the rule of 78ths had no impact on borrowers. However, if a borrower paid off a precomputed or add-on loan early, the borrower would pay more interest under the rule of 78ths than under a simple interest basis.

The rule of 78ths was a convenient method to calculate refunds of interest due to borrowers in the days before computers and personal calculators because it converted to a chart the formula used to determine the amount to be collected in any given month that the loan was outstanding. But it also led to confusing issues: if the borrower repaid the loan 10 days into the month, could the lender collect the charge for the entire month or not? With the rise of computers and hand held calculators, most lenders have switched from precomputed loans to simple interest loans, turning loans made on add-on interest and the rule of 78ths into anachronisms. In 2007, all references to add-on or precomputed loans and the rule of 78ths were removed from the Act. Therefore, in this amendment, all references to precomputed or add-on loans and the rule of 78ths, and other various rules related to the application of the rule of 78ths, are being deleted from the rule.

The change in (8) is being made because it makes the rule clearer and more consistent with the statute. The actual language of 32-5-301(2), MCA, is: "The fee charged may be the greater of \$15 or 5% of the amount past due, not to exceed \$50. The fee charged for any past-due amount may be charged only once." The reference to a fee of 5% is being deleted because the penalty is the greater of \$15 or 5%, not to exceed \$50. The amended language is intended to make clear that the penalty described in 32-5-302(2), MCA, may be imposed once for each default.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to [banking@mt.gov](mailto:banking@mt.gov), and must be received no later than 5:00 p.m., April 1, 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 written request for a hearing and submit this request along with any written comments to Kelly O'Sullivan at the above address no later than 5:00 p.m., April 1, 2013.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be four persons based on the number of existing consumer loan licensees which is 43.

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

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by mail, e-mail, and telephone on January 9, 2013.

By: /s/ Sheila Hogan  
Sheila Hogan, Director  
Department of Administration

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

Certified to the Secretary of State February 19, 2013.



BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF PROPOSED  
2.59.104 pertaining to semiannual ) AMENDMENT  
assessment for banks )  
) NO PUBLIC HEARING  
) CONTEMPLATED

TO: All Concerned Persons

1. On April 4, 2013, the Department of Administration proposes to amend the above-stated rule.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on March 22, 2013, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to [banking@mt.gov](mailto:banking@mt.gov).

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

2.59.104 SEMIANNUAL ASSESSMENT (1) Based upon the following schedule, and upon calculation of the semiannual value for the respective bank, the value must be multiplied by the factor of 1.50 to determine the dollar fee assessment, rounded to the next highest dollar, due the Division of Banking and Financial Institutions for the semiannual period.

<u>Total assets</u> <u>(Million)</u>	<u>Base</u>	<u>Plus rate/</u> <u>Million</u>	<u>Over</u> <u>(Million)</u>
0-1	0	.00085	0
1-10	850	.000105	1
10-50	1,795	.000085	10
50-100	5,195	.00005	50
over 100	7,695	.00003	100

(2) For the period ~~April 27, 2012~~ [effective date of this amendment] through September 30, 2012~~3~~, the assessment fee must be multiplied by a factor of .50. This section will sunset October 1, 2012~~3~~.

AUTH: 32-1-213, 32-1-218, MCA  
IMP: 32-1-213, 32-1-218, MCA

STATEMENT OF REASONABLE NECESSITY: Last year, the department reviewed its expected revenues and expenditures and determined that a one-time reduction in the bank assessments was necessary to refund to the banks an excess balance in the special revenue account. The excess balance was due to a steady growth in the size and number of institutions and individuals licensed or supervised by the Division of Banking and Financial Institutions. This growth, coupled with conservative management and sound fiscal policies in the department, resulted in an increasing special revenue fund balance. In particular, the semiannual assessments paid by state-chartered banks exceeded expenses for bank supervision. In order to refund the excess funds to the state-chartered banks, the department determined that a one-time reduction in the semiannual assessment was necessary. So in April of 2012, the department reduced the bank assessment for the period ending in June 2012 by 50%.

This one-time reduction in bank assessments reduced the revenues by approximately 50% as expected. It was estimated that semiannual assessments paid by the 64 state-chartered banks for the June 2012 assessment without the assessment reduction would have been \$1,500,000. The bank assessment reduction reduced the amount collected to an estimated \$750,000 for the assessment period ending June 30, 2012. The final numbers are not in yet, so an estimate is being used in this rulemaking.

At the time the prior reduction in the bank assessment was proposed, the department stated that it expected a significant change in the number of state-chartered banks in 2012, and planned to review the assessment rates after the impact of the change was known. As expected, Montana saw a significant contraction in the number of state-chartered banks in 2012 from 64 to 57. The department expects to see a further drop in the number of state-chartered banks in 2013. At this time, the extent of the further reduction in the number of state-chartered banks is unknown. The department will propose a permanent downward revision in the bank assessments after it becomes reasonably certain that the number of state-chartered banks has reached a relatively stable number.

The intent of this amendment is to reduce the assessments that the department will receive in July 2013 from approximately \$1,500,000 to approximately \$750,000. Because this rule revision is intended to be temporary, the department has chosen to have it sunset on October 1, 2013, which will make the amendment effective only for the June 2013 assessment, not for the December 2013 assessment.

4. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to [banking@mt.gov](mailto:banking@mt.gov); and must be received no later than 5:00 p.m., April 1, 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 written request for a hearing and submit this request along with any written

comments to the person listed in 4 above at the above address no later than 5:00 p.m., March 28, 2013.

6. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be six persons based on the 57 existing state-chartered banks.

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

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

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

By: /s/ Sheila Hogan  
Sheila Hogan, Director  
Department of Administration

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

Certified to the Secretary of State February 19, 2013.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PROPOSED
2.60.203 pertaining to application	)	AMENDMENT
procedure for a certificate of	)	
authorization for a state-chartered bank	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On April 4, 2013, the Department of Administration proposes to amend the above-stated rule.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on March 22, 2013, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to [banking@mt.gov](mailto:banking@mt.gov).

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

2.60.203 APPLICATION PROCEDURE FOR A CERTIFICATE OF AUTHORIZATION FOR A STATE-CHARTERED BANK (1) remains the same.

(a) the Interagency Charter and Federal Deposit Insurance Application (expiration date: ~~5/21/2010~~ 6/20/2013) as the form that shall be completed when applying for a certificate of authorization; and

(b) the Interagency Biographical and Financial Report (expiration date: ~~3/31/2011~~ 4/30/2014) for use by individuals in conjunction with the Interagency Charter and Federal Deposit Insurance Application. The application and biographical and financial report are available at the Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546, or on the division web site located at [www.banking.mt.gov](http://www.banking.mt.gov).

(2) through (5) remain the same.

AUTH: 32-1-203, MCA

IMP: 32-1-203, MCA

STATEMENT OF REASONABLE NECESSITY: It is necessary to amend the rule to refer to the current versions of these two Interagency forms because the two versions currently in rule have expired.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to [banking@mt.gov](mailto:banking@mt.gov), and must be received no later than 5:00 p.m., April 1, 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 written request for a hearing and submit this request along with any written comments to Kelly O'Sullivan at the above address no later than 5:00 p.m., April 1, 2013.

6. If the department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those affected has been determined to be six persons based on the number of existing state-chartered banks which is 57.

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

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

By: /s/ Sheila Hogan  
Sheila Hogan, Director  
Department of Administration

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

Certified to the Secretary of State, February 19, 2013.

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

In the matter of the amendment of ) AMENDED NOTICE OF PROPOSED  
ARM 37.36.604 pertaining to ) AMENDMENT  
updating the federal poverty index for )  
the Montana telecommunications )  
access program )

TO: All Concerned Persons

1. On November 23, 2012 the Department of Public Health and Human Services published MAR Notice No. 37-616 pertaining to the proposed amendment of the above-stated rule at page 2327 of the 2012 Montana Administrative Register, Issue Number 22.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on March 7, 2013, 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 MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The U. S. Department of Health and Human Services (HHS) updates the poverty guidelines each year to take into account changes in the cost of living. The notice of proposed amendment filed in November 2012 proposed to amend ARM 37.36.604 to provide that the 2012 rather than the 2009 federal poverty guidelines would be used to determine whether a family is eligible for MTAP based on income. However, after the notice of proposed amendment was filed, HHS published the federal poverty guidelines for 2013. The department now proposes to provide that the 2013 guidelines will be used because the 2013 guidelines are higher than the 2012 guidelines, reflecting increases in the cost of living since the 2012 guidelines were published. Using the 2013 poverty levels will result in higher income limits for the Montana Telecommunications Access Program (MTAP). If the lower 2012 poverty guidelines were used, some households might be ineligible for benefits due to inflationary increases in the household's income that did not reflect an increase in actual buying power.

4. The rule as proposed is being amended as follows, new matter underlined, deleted matter interlined:

37.36.604 FINANCIAL ELIGIBILITY CRITERIA (1) Individuals whose annual family income during the 12 months immediately preceding the month of

application is less than 250% of the ~~2012~~ 2013 poverty guidelines published by the U.S. Department of Health and Human Services (HHS) are eligible for a loan of specialized telecommunications equipment based on income. 250% of the HHS ~~2012~~ 2013 annual poverty guidelines for families of various sizes are shown in (2).

(2) 250% of the annual poverty guidelines is as follows:

FAMILY SIZE	250% OF ANNUAL POVERTY GUIDELINE
One	<del>\$27,925</del> <u>\$28,725</u>
Two	<del>37,825</del> <u>\$38,775</u>
Three	<del>47,725</del> <u>\$48,825</u>
Four	<del>57,625</del> <u>\$58,875</u>
Five	<del>67,525</del> <u>\$68,925</u>
Six	<del>77,425</del> <u>\$78,975</u>
Seven	<del>87,325</del> <u>\$89,025</u>
Eight	<del>97,225</del> <u>\$99,075</u>
Each Additional Person, Add	<del>9,900</del> <u>\$10,050</u>

(3) There is no asset test to be eligible for a loan of specialized telecommunications equipment.

AUTH: 53-19-305, 53-19-307, MCA

IMP: 53-19-305, 53-19-307, MCA

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on March 14, 2013. Comments may also be faxed to (406) 444-9744 or e-mailed to [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

6. The notice of proposed amendment filed in November 2012 stated that the department intended to apply the rule amendment retroactively to July 1, 2012. However, the 2013 federal poverty guidelines were not published until February 2013 so the department does not intend to apply them retroactively to July 1, 2012. Instead the department proposes that the amendment of ARM 37.36.604 will take effect retroactively on March 1, 2013.

/s/ Barbara B. Hoffmann  
Barbara B. Hoffmann  
Rule Reviewer

/s/ Richard H. Opper  
Richard H. Opper, Director  
Public Health and Human Services

Certified to the Secretary of State February 19, 2013.



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 37.34.2101, 37.34.2102, and ) PROPOSED AMENDMENT AND  
37.34.2111 and the repeal of ARM ) REPEAL  
37.34.2106, 37.34.2107, and )  
37.34.2112 pertaining to )  
developmental disabilities program )  
staffing )

TO: All Concerned Persons

1. On March 20, 2013, 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, at 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 March 13, 2013, 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:

37.34.2101 STAFFING: APPLICABILITY (1) Contractors A contractor who contracts to provide developmental disabilities services funded by the developmental disabilities program must employ, in the provision of direct care to persons eligible for those services, staff who are able to demonstrate the ability to meet the needs of the persons that the contractors serve.

(2) ~~All A contractors of who contracts to provide developmental disabilities services, except contractors providing transportation services that are also available to the general public and contracting with the department to provide only transportation services, are~~ is subject to these rules this subchapter.

(3) A contractor providing transportation services, that are also available to the general public, who contracts with the department only to provide transportation services is not subject to this subchapter.

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

37.34.2102 STAFFING: STAFF COMPETENCIES GENERALLY (1) A The contractor must have, for each direct care staff position, a written job position description and listing of competencies that specifies the physical requirements and the minimum standards for education and experience for each staff position.

(2) A The contractor must conduct a thorough screening and a background check of all persons a person prior to an offer of employment as a direct care staff with the corporation. A thorough screening and background check must include, but is not limited to, a criminal background check through the Montana Department of Justice.

(3) A The contractor must verify to the department upon hire and on a regular basis thereafter, that each direct care staff member person meets the competencies to perform the tasks and responsibilities of their position.

(4) Upon hiring of a direct care staff person and thereafter on a monthly basis, the contractor must review the list of excluded individuals and entities maintained at the System for Award Management maintained by the federal General Services Administration (GSA) to determine whether the person appears on the list and if the person appears on the list, must:

(a) report the listing to the department immediately; and

(b) take the appropriate action to terminate the person if the person is employed in a manner that is not permissible under the applicable federal requirements.

(5) A staff person must be trained and demonstrate competency within 30 days of hire, in the following:

(a) abuse and incident reporting;

(b) rights and confidentiality;

(c) first aid and CPR; and

(d) any specialty training related to the needs of the persons served.

(6) A staff person must complete the department-approved basic training in the provision of direct care services within six months of hire.

(7) A staff person must complete 20 hours of lessons annually of the department-approved basic training in the provision of direct care services.

AUTH: 53-20-204, MCA

IMP: 53-20-205, MCA

37.34.2111 STAFFING: CONTRACTOR STAFFING FOR SERVICES

~~(1) All contractors must comply with the staffing requirements of this rule.~~

~~(2) (1) For each person served, the contractor must maintain minimum staffing ratios in each program of service, as specified for each program in the contract provide the number of staff with appropriate training and guidance required to ensure the quality and effectiveness of services to be delivered in accordance with the person's plan of care and individual cost plan.~~

~~(3) (2) The contractor must ensure the presence of on-site awake night staff in applicable programs, when specified in the contract sufficient to meet the needs of the persons the contractor serves.~~

~~(4) (3) The contractor must provide for emergency, back-up staff in applicable programs, when specified in the contract sufficient to meet the needs of the persons the contractor serves.~~

~~(5) Procedures for supervision of staff including day, evening, night and weekend staff must be maintained, implemented and documented in applicable programs, when specified in the contract.~~

~~(a) Supervision of staff must include the provision of guidance and direction to on-line staff in a sufficient and reasonable manner to ensure that the individuals served receive appropriate, quality care and treatment. Supervision of staff can include having a supervisor on call or available to provide assistance to on-line staff on an as-needed basis. Some periodic and unscheduled on-site visits should be utilized as a means of ensuring and maintaining appropriate staff behavior.~~

AUTH: 53-20-204, MCA

IMP: 53-20-205, MCA

4. The department proposes to repeal the following rules:

37.34.2106 STAFFING: STAFF COMPETENCIES FOR FAMILY EDUCATION AND SUPPORT SERVICES, is found on page 37-7615 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA

IMP: 53-20-205, MCA

37.34.2107 STAFFING: STAFF COMPETENCIES FOR COMMUNITY HOME, INTENSIVE COMMUNITY HOME, SUPPORTED LIVING, WORK OR DAY SERVICES, is found on page 37-7615 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA

IMP: 53-20-205, MCA

37.34.2112 STAFFING: CONTRACTOR STAFFING FOR SUPPORTED LIVING SERVICES, is found on page 37-7620 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA

IMP: 53-20-205, MCA

#### 5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing to amend ARM 37.34.2101, 37.34.2102, and 37.34.2111 and to repeal ARM 37.34.2106, 37.34.2107, and 37.34.2112. The rules in Title 37, chapter 34, subchapter 21 were enacted in 1995. Changes made to the programs of developmental disabilities services administered by the department since that time make it necessary for the department to propose these amendments to update

current rule language. In particular, the department no longer designates staffing requirements based upon the type of service provided but instead, staffing is determined by the plan of care and individual cost plans of the persons served.

ARM 37.34.2101

The department proposes to amend ARM 37.34.2101 to clarify the applicability of the subchapter. This is necessary in that the current language states the rules apply to all contractors. The department is proposing language stating that the rule applies only to those contractors who contract with the developmental disabilities program to supply services to persons with developmental disabilities and that the requirements pertain to the employment of persons who provide direct care.

ARM 37.34.2102

The department is proposing to amend ARM 37.34.2102 to update staff training competencies to align with current program requirements. The additional requirement for contractors to check the list of excluded individuals and entities maintained at the System For Award Management (SAM) by federal General Services Administration (GSA) has been added.

ARM 37.34.2111

The department is proposing to amend ARM 37.34.2111 to remove the use of set minimum staff ratios. The department now requires staffing based upon the plan of care and individual cost plan of each person served.

ARM 37.34.2106, 37.34.2107, and 37.34.2112

The department is proposing to repeal ARM 37.34.2106, 37.34.2107, and 37.34.2112. It is necessary to repeal these rules because of the change in staffing requirements. The department no longer designates staffing requirements based upon the type of service provided but instead, staffing is determined by the plan of care and individual cost plans of the persons served. The amendments proposed in ARM 37.34.2102 incorporate this change.

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](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., March 28, 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/ Cary B. Lund  
Rule Reviewer

/s/ Richard H. Opper  
Richard H. Opper, Director  
Public Health and Human Services

Certified to the Secretary of State February 19, 2013.

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

In the matter of the repeal of ARM	)	NOTICE OF PROPOSED
37.87.1503, 37.87.1513, 37.87.1703,	)	REPEAL
37.87.1723, 37.87.1733, 37.87.1903,	)	
37.87.1915, and 37.87.2103	)	
pertaining to children's mental health	)	NO PUBLIC HEARING
services plan (CMHSP)	)	CONTEMPLATED

TO: All Concerned Persons

1. On March 30, 2013, the Department of Public Health and Human Services proposes to repeal the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on March 20, 2013, 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 MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The department proposes to repeal the following rules:

37.87.1503 MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, ELIGIBILITY, is found on page 37-21427 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA  
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

37.87.1513 MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, LIMITATIONS, is found on page 37-21435 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA  
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

37.87.1703 MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, COVERED SERVICES, is found on page 37-21445 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA  
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701,  
53-21-702, MCA

37.87.1723 MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, PROVIDER PARTICIPATION, is found on page 37-21451 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA  
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701,  
53-21-702, MCA

37.87.1733 MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, PROVIDER REIMBURSEMENT, is found on page 37-21457 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA  
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701,  
53-21-702, MCA

37.87.1903 MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, AUTHORIZATION REQUIREMENTS, is found on page 37-21467 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA  
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701,  
53-21-702, MCA

37.87.1915 MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, PREMIUM PAYMENTS AND COPAYMENTS, is found on page 37-21471 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA  
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701,  
53-21-702, MCA

37.87.2103 MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, NOTICE, GRIEVANCE AND RECONSIDERATION, AND RIGHTS, is found on page 37-21481 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA  
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701,  
53-21-702, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to repeal obsolete rules in Title 37, chapter 87, subchapters 15, 17, 19, and 21 pertaining to the Children's Mental Health Service Plan (CMHSP). The program was created to assist low-income youth who were not eligible for Medicaid or Healthy Montana Kids (HMK) and is funded through state general fund. From July 2011 to October 2012 approximately three youth received the approved services through CMHSP which are pharmacy, physician, and therapy. Due to adjustments in the eligibility requirements for HMK, these youth now fall within the eligibility guidelines for HMK. The income guideline for CMHSP is 160% of poverty while HMK is now at 250% of poverty; therefore, from a financial standpoint, the youth would qualify for and have additional services available through HMK.

#### Fiscal Impact

There is no fiscal impact due to the proposed repeal of these rules.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on March 28, 2013. Comments may also be faxed to (406) 444-9744 or e-mailed to [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).
6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kenneth Mordan at the above address no later than 5:00 p.m., March 28, 2013.
7. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be one person based on there were only three youth served in the program last year.
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 5 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 this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ John Koch  
Rule Reviewer

/s/ Richard H. Opper  
Richard H. Opper, Director  
Public Health and Human Services

Certified to the Secretary of State February 19, 2013.

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

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 37.85.105, 37.86.2803, ) AMENDMENT  
37.86.2901, 37.86.2907, and )  
37.86.2928, pertaining to Medicaid )  
inpatient hospital services )

TO: All Concerned Persons

1. On March 20, 2013, at 2:30 p.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, at 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 March 13, 2013, 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:

37.85.105 EFFECTIVE DATES OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) remains the same.

(2) The department adopts and incorporates by reference, the fee schedule for the following programs on the date stated:

(a) remains the same.

(b) inpatient hospital services fee schedule and inpatient hospital base rates to include:

(i) the APR-DRG fee schedule for inpatient hospitals, as provided in ARM 37.86.2907, is effective April 1, 2013;

(ii) the Montana Medicaid APR-DRG relative weight values, average national length of stay (ALOS), outlier thresholds, and APR grouper version 29 are contained in the APR-DRG Table of Weights and Thresholds effective April 1, 2013. The department adopts and incorporates by reference the APR-DRG Table of Weights and Thresholds, effective April 1, 2013.

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

IMP: 53-2-201, 53-6-101, 53-6-402, MCA

37.86.2803 ALL HOSPITAL REIMBURSEMENT, COST REPORTING

(1) and (2) remain the same.

(3) All hospitals reimbursed under ARM 37.86.2806, 37.86.2905, 37.86.2907, 37.86.2912, 37.86.2916, 37.86.2918, 37.86.2920, 37.86.2924, 37.86.2925, 37.86.2928, 37.86.2943, 37.86.2947, 37.86.3005, 37.86.3006, 37.86.3007, 37.86.3009, 37.86.3014, 37.86.3016, 37.86.3018, 37.86.3020, 37.86.3022, 37.86.3025, 37.86.3037, or 37.86.3109 ~~or~~ must file the cost report with the Montana Medicare intermediary and the department on or before the last day of the fifth calendar month following the close of the period covered by the report. For fiscal periods ending on a day other than the last day of the month, cost reports are due 150 days after the last day of the cost reporting period.

(a) remains the same.

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

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-149, MCA

37.86.2901 INPATIENT HOSPITAL SERVICES, DEFINITIONS (1) through (21) remain the same.

(22) "Hospital Acquired Condition (HAC)" means a condition that occurs during an inpatient hospital stay and results in a high cost or high volume of care or both; results in a claim being assigned to a diagnosis related group (DRG) that has a higher payment when present as a secondary diagnosis; and could have reasonably been prevented through the application of evidence-based guidelines as defined in Section 5001(c) of the Deficit Reduction Act of 2005.

(22) through (31) remain the same, but are renumbered (23) through (32).

(33) "Present on Admission (POA)" means conditions that are present at the time a medical order for an inpatient admission occurs.

(32) through (43) remain the same, but are renumbered (34) through (45).

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

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, 53-6-149, MCA

37.86.2907 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, APR-DRG PAYMENT RATE DETERMINATION (1) The department's APR-DRG prospective payment rate for inpatient hospital services is based on the classification of inpatient hospital discharges to APR-DRGs. The provider reimbursement rates for inpatient hospital services, except as otherwise provided in ARM 37.85.206, is stated in the department's APR-DRG fee schedule adopted and effective at ARM 37.85.105. The procedure for determining the APR-DRG prospective payment rate is as follows:

(a) and (b) remain the same.

(c) The department computes a Montana average base price per case. This base price includes in-state and out-of-state distinct part rehabilitation units and long term care (LTC) facilities. ~~Effective April 1, 2012 the average base price, including capital expenses, is \$4,630.~~ The effective date and base rate amount is adopted

and effective as provided at ARM 37.85.105. Disproportionate share payments are not included in this price.

~~(i)(d) The average base price for Center of Excellence hospitals, including capital expenses, is \$7,725. The department computes a base price for Center of Excellence hospitals. The effective date and base rate amount is adopted and effective as provided at ARM 37.85.105. Disproportionate share payments are not included in this price.~~

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

(2) The department adopts and incorporates by reference the APR-DRG Table of Weights and Thresholds adopted and effective at ARM 37.85.105. The Montana Medicaid APR-DRG relative weight values, average national length of stay (ALOS), outlier thresholds, and APR grouper version 29 are contained in the APR-DRG Table of Weights and Thresholds ~~(effective April 1, 2012)~~ which are adopted and effective as provided at ARM 37.85.105 and published by the department. ~~The department adopts and incorporates by reference the APR-DRG Table of Weights and Thresholds (effective April 1, 2012).~~ Copies may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2928 INPATIENT HOSPITAL REIMBURSEMENT, HOSPITAL REIMBURSEMENT ADJUSTOR (1) and (2) remain the same.

(3) Part 2 of the IRA HRA payment will be based upon total hospital Medicaid charges, and will be computed as follows:  $HRA2 = (I \div D) \times P$ .

(a) through (c) remain the same.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-149, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.85.105, 37.86.2803, 37.86.2901, 37.86.2907, and 37.86.2928, regarding Medicaid Inpatient Hospital Services. The following describes the purpose of the proposed rule amendments and necessity pertaining to each rule:

##### ARM 37.85.105

In (2)(b), language would be added to clarify that: (1) the inpatient hospital fee schedule, (2) both inpatient hospital base rates, and (3) the APR-DRG Table of Weights and Thresholds which include effective dates and base rate amounts, are listed within ARM 37.85.105 and would be adopted and incorporated by reference. This proposed addition is necessary as access to this information will be considerably easier for providers and department personnel and provides a legal reference for the rule.

ARM 37.86.2803

In (1), the CMS publication 15 (Medicare Provider Reimbursement Manual), Form 2552-10, would be updated to the current transmittal number of "3". This update is necessary to ensure that the department and providers are utilizing the most current federal publication.

A typographical error in (3) would be corrected to provide clarity and accuracy within the rule.

ARM 37.86.2901

In (22), the term "Hospital Acquired Condition" (HAC) would be added to the list of definitions. This is necessary to provide clarity to the term as it pertains to inpatient hospital services.

In (33), the term "Present on Admission" (POA) would be added to the list of definitions. This is necessary to provide clarity to the term as it pertains to inpatient hospital services.

ARM 37.86.2907

The proposed amendment would add to (1) language which clarifies that the provider reimbursement rates for inpatient hospital services, except as otherwise provided in ARM 37.85.206, as stated in the department's APR-DRG fee schedule adopted and effective as provided at ARM 37.85.105. This proposed change is necessary as access to this information will be considerably easier for providers and department personnel and provides a legal reference for the rule.

In (1)(c), the reference to the Montana average base rate amount and the effective year would be removed. Reference to ARM 37.85.105 would be added which is where the base rate amount and effective date will be recorded. This proposed change is necessary as access to this information will be considerably easier for providers and department personnel.

In (1)(c)(i), the reference to the Center of Excellence average base rate amount and the effective year would be removed. Reference to ARM 37.85.105 would be added which is where the base rate amount and effective date will be recorded. This proposed change is necessary as access to this information will be considerably easier for providers and department personnel.

In (2), language would be added to clarify that the department adopts and incorporates by reference the APR-DRG Table of Weights and Thresholds and the APR grouper version adopted and effective at ARM 37.85.105. This proposed change is necessary to provide the current effective date as to when the APR-DRG

weights and measures and the grouper are reviewed and to provide a legal reference for the rule.

ARM 37.86.2928

There is a typographical error in (3) where the acronym "IRA" is listed. This would be corrected to "HRA" which is consistent with the information pertained in the rule.

FISCAL IMPACT

The proposed amendments to the stated rules regarding inpatient hospital services will not have any fiscal impact on the Medicaid budget for state fiscal year (SFY) 2014. Current hospital base rates would remain the same having a budget neutral effect. The proposed changes would affect approximately 372 inpatient hospital providers both in and out of state. Services provided to Medicaid clients would not be affected.

5. The department intends to apply these rules retroactively to April 1, 2013. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

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](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., March 28, 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  
John Koch  
Rule Reviewer

/s/ Richard H. Opper  
Richard H. Opper, Director  
Public Health and Human Services

Certified to the Secretary of State February 19, 2013.

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 4.6.202 pertaining to annual )  
potato assessment )

TO: All Concerned Persons

1. On January 17, 2013, the Department of Agriculture published MAR Notice No. 4-14-210 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1 of the 2013 Montana Administrative Register, Issue Number 1.

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

3. No comments or testimony were received.

*/s/ Cort Jensen* \_\_\_\_\_  
Cort Jensen  
Rule Reviewer

*/s/ Ron de Yong* \_\_\_\_\_  
Ron de Yong  
Director  
Department of Agriculture

Certified to the Secretary of State February 19, 2013



BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT
17.36.340 and 17.36.605 pertaining to lot	)	
sizes: exemptions and exclusions	)	(SUBDIVISIONS/ON-SITE
	)	SUBSURFACE WASTEWATER
	)	TREATMENT)

TO: All Concerned Persons

1. On November 23, 2012, the Department of Environmental Quality published MAR Notice No. 17-341 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 2299, 2012 Montana Administrative Register, issue number 22.

2. The department has amended ARM 17.36.340 exactly as proposed and has amended ARM 17.36.605 as proposed, but with the following changes, new matter underlined, stricken matter interlined:

17.36.605 EXCLUSIONS (1) remains as proposed.

(2) The reviewing authority may exclude the following parcels created by divisions of land from review under Title 76, chapter 4, part 1, MCA, unless the exclusion is used to evade the provisions of that part:

(a) through (b)(ii) remain as proposed.

(c) a parcel that has facilities for water supply, wastewater disposal, storm drainage, or solid waste disposal that were not subject to review, and have not been reviewed, under Title 76, chapter 4, part 1, MCA, if:

(i) remains as proposed.

(ii) the number of developed parcels is not increased;

(ii) remains as proposed, but is renumbered (iii).

~~(iii)~~ (iv) the local health officer determines that existing facilities are adequate for the ~~proposed~~ existing use. As a condition of the exemption, the local health officer may require evidence that:

(A) through (3) remain as proposed.

3. The following comments were received and appear with the department's responses:

COMMENT NO. 1: Proposed ARM 17.36.605(2)(c)(ii) should include a date referencing when counties were required to adopt septic permitting procedures.

RESPONSE: Proposed ARM 17.36.605(2)(c)(ii) is an exemption from Sanitation in Subdivisions Act review. This authority does not extend to septic permits administered by the county under Title 50, MCA. The Department of Environmental Quality (department), through its rulemaking authority, does not have the ability to regulate counties and their permitting process.

COMMENT NO. 2: The department should review all Sanitation in Subdivisions Act exemptions.

RESPONSE: The requirements for Sanitation in Subdivisions Act exemptions are set forth in Title 76, chapter 4, MCA. The determination as to whether an exemption applies is made by the local planner, local health officer, and/or registered land surveyor filing the plat or certificate of survey with the county clerk and recorder. If the qualified individuals determine that a Sanitation in Subdivisions Act exemption applies, then Sanitation in Subdivisions Act review is not necessary. Given the number of plats and surveys to which exemptions apply, the department must rely on the competence and professionalism of these individuals to properly apply the Sanitation in Subdivisions Act.

COMMENT NO. 3: What is considered a storm drainage facility under the proposed amendment to ARM 17.36.605(2)(a)?

RESPONSE: Section 76-4-102(6), MCA, defines facilities as "... any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed." For the purposes of the proposed amendment to ARM 17.36.605(2)(a), this would include those facilities governed by this statute and may include, but not be limited to, those facilities addressed in ARM 17.36.310 and Department Circular DEQ-8.

COMMENT NO. 4: The proposed addition of "storm drainage" to ARM 17.36.605(2)(a) makes the number of sites requiring review excessive.

RESPONSE: Section 76-4-104, MCA, of the Sanitation in Subdivisions Act requires the department to adopt rules and standards for the review of water supplies, sewage disposal facilities, storm water drainage ways and solid waste disposal. The rules and standards adopted by the department pursuant to 76-4-104, MCA, are set forth in ARM Title 17, chapter 36. ARM 17.36.605 identifies certain parcels created by divisions of land that are excluded from Sanitation in Subdivisions Act review. To meet the intent of the statute, any exemption from that review should also include storm drainage facilities.

COMMENT NO. 5: The word "and" should be added to the provisions of proposed ARM 17.36.605(2)(c)(i), (ii), and (iii).

RESPONSE: Common rules of grammar, as well as rules of statutory construction, interpret a list of requirements conjoined with the word "and" at the end to be inclusive. As applied to proposed ARM 17.36.605(2)(c)(iii), the requirements of (i), (ii), and (iii) all need to be met to qualify for the exemption.

COMMENT NO. 6: Proposed ARM 17.36.605(2)(c) has no minimum lot size required. This could result in the exemption of a lot that does not meet the requirements of ARM 17.36.340.

RESPONSE: Proposed ARM 17.36.605(2)(c) requires that the local health officer determine that the existing facilities are adequate for the proposed use. The health officer's determination should include an evaluation of the lot size to ensure the existing systems for water, wastewater, solid waste, and storm water on the reconfigured lot are not a threat to public health.

COMMENT NO. 7: Proposed ARM 17.36.605(2)(c) does not address the need for easements or shared user agreements.

RESPONSE: The intended scope of proposed ARM 17.36.605(2)(c) is limited to parcels affected by boundary line adjustments where no Sanitation in Subdivisions Act issues exist. It is not intended to include the creation of new parcels through division and, as such, does not extend to address easements/shared user agreements. The proposed rule has been amended as shown above to clarify this intent and better reflect the statement of reasonable necessity.

COMMENT NO. 8: What does "adequate for the proposed use" mean in proposed ARM 17.36.605(2)(c)?

RESPONSE: Proposed ARM 17.36.605(2)(c) applies only to boundary line adjustments to lots with existing facilities that serve an existing development. The existing facilities had to meet all local and state regulations in effect at the time they were installed. For clarification purposes, the department has amended ARM 17.36.605(2)(c) as shown above in response to the comment.

COMMENT NO. 9: Proposed ARM 17.36.605(2)(c) requires the local health officer to certify that the water, wastewater, storm water, and solid waste are adequate. This is a function of review and local officials do not have time to spend on this activity without adequate compensation.

RESPONSE: Proposed ARM 17.36.605(2)(c) does not require the local health officer to certify the adequacy of water, wastewater, storm water, and solid waste for the proposed exempt lot. The local health officer has the discretion to either approve the use of this exemption, disapprove it, or refuse to make the determination. If the local health officer disapproves or refuses to make the determination, the lot must be reviewed pursuant to the Sanitation in Subdivisions Act.

COMMENT NO. 10: Proposed ARM 17.36.605(2)(c) does not create a lot layout or ensure that the location of a future replacement drainfield will be preserved.

RESPONSE: Proposed ARM 17.36.605(2)(c) requires that the existing facilities comply with state and local laws and regulations, including permit requirements which were applicable at the time of installation. Information regarding replacement areas for a drainfield should be included in the permit if available. If the health officer feels that the boundary line relocation could compromise an area for replacement, the health officer may deny the use of this exemption and require review pursuant to the Sanitation in Subdivisions Act in Title 76, chapter 4, MCA.

COMMENT NO. 11: It is unclear why ARM 17.36.605(2)(c) is being proposed.

RESPONSE: Proposed ARM 17.36.605(2)(c) modifies the current exclusion in ARM 17.36.605(2)(b) for "previously exempt" parcels. The effect of the amendment will be to expand the exclusion to parcels for which the original basis for exemption no longer applies (e.g., grandfathered parcels), but where no Sanitation

in Subdivisions Act review is necessary. The proposed amendments are necessary to eliminate review of parcels where no Sanitation in Subdivisions Act issues exist.

COMMENT NO. 12: There seems to be a view that Sanitation in Subdivisions Act review should be avoided.

RESPONSE: The exemptions listed are intended to address those lots that meet the definition of a subdivision under 76-4-103, MCA, but do not benefit from a formal review of facilities for water, wastewater, storm water, or solid waste.

COMMENT NO. 13: One comment was received in support of the proposed amendments to ARM 17.36.340(1)(b)(i), ARM 17.36.605(1), (2)(a), (2)(b)(i) and (ii), and ARM 17.36.605(3) regarding Sanitation and Subdivision Act review.

RESPONSE: The department acknowledges the comment.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL  
QUALITY

/s/ John F. North  
JOHN F. NORTH  
Rule Reviewer

By: /s/ Tracy Stone-Manning  
TRACY STONE-MANNING, DIRECTOR

Certified to the Secretary of State, February 19, 2013.

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

In the matter of the adoption New ) NOTICE OF ADOPTION  
Rules I through VI pertaining to )  
targeted case management services )  
for substance use disorders )

TO: All Concerned Persons

1. On November 23, 2012 the Department of Public Health and Human Services published MAR Notice No. 37-613 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 2320 of the 2012 Montana Administrative Register, Issue Number 22.

2. The department has adopted the above-stated rules as proposed: New Rule I (37.86.4001), II (37.86.4002), III (37.86.4005), IV (37.86.4006), V (37.86.4007), and VI (37.86.4010).

3. No comments or testimony were received.

/s/ John Koch  
John Koch  
Rule Reviewer

/s/ Richard H. Opper  
Richard H. Opper, Director  
Public Health and Human Services

Certified to the Secretary of State February 19, 2013.

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

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

TO: All Concerned Persons

1. On November 8, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-614 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2258 of the 2012 Montana Administrative Register, Issue Number 21.

2. The department has amended ARM 37.87.1216, 37.87.1217, 37.87.1222, and 37.87.1223 as proposed.

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

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

(1) "Accredited secondary school" means a secondary school located in the state of Montana accredited in accordance with Montana Board of Public Education standards for secondary education or the Northwest Accreditation Commission.

(2) through (16) remain as proposed.

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

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

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

COMMENT #1: One commenter stated the change in the definition of youth in ARM 37.87.102 which requires that a secondary school be accredited by the Montana Board of Public Education eliminates a number of secondary schools across the state from serving youth receiving Medicaid funded services and requested the department include accreditation by the Northwest Accreditation Commission. The commenter also questioned why accreditation standards are being placed in the PRTF rules.

RESPONSE #1: The department agrees with the commenter and will amend the proposed rule to include the Northwest Accreditation Commission, as long as the secondary school is located in Montana. The definition of youth located in ARM 37.87.102 applies to other mental health services covered by Medicaid and is not limited to PRTFs.

COMMENT #2: One commenter suggested greater definition be added in ARM 37.87.1217(3)(a) and (b) as to what information the developmental disabilities program (DDP) needs to determine eligibility.

RESPONSE #2: The department disagrees with this comment. As stated in ARM 37.87.1217(3)(a), the initial request for an eligibility determination with the DDP requires only a cover letter, psychological testing, and assessments. Any further information required to make the determination must be established on a case-by-case basis.

COMMENT #3: One commenter noted a functional assessment approved by the department will be required at admission and discharge in a PRTF. The commenter also noted the department is not planning to reimburse for PRTFs to complete this assessment.

RESPONSE #3: The commenter is correct. Based on a survey completed by CMHB approximately half of PRTFs are currently using a functional assessment. For those that do not currently use a functional assessment, the department determined that, after the initial staff training, the assessments take minimal time to complete.

5. The department intends ARM 37.87.1217(4) pertaining to the use of a functional assessment to be effective on July 1, 2013.

/s/ John Koch  
John Koch  
Rule Reviewer

/s/ Richard H. Opper  
Richard H. Opper, Director  
Public Health and Human Services

Certified to the Secretary of State February 19, 2013

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

## ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2012. This table includes those rules adopted during the period October 1, 2012, through December 31, 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 September 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 2012/2013 Montana Administrative Register.

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## BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in January 2013 appear. Vacancies scheduled to appear from March 1, 2013, through May 31, 2013, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of February 1, 2013.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

## BOARD AND COUNCIL APPOINTEES FROM JANUARY, 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Budget Director (Governor)</b>			
Director Dan Villa Anaconda Qualifications (if required): none specified	Governor	reappointed	1/7/2013 0/0/0
<b>Chief Business Development Officer</b>			
Mr. John Rogers Helena Qualifications (if required): none specified	Governor	not listed	1/7/2013 0/0/0
<b>Director of the Department of Administration (Administration)</b>			
Director Sheila Hogan Helena Qualifications (if required): none specified	Governor	Kelly	1/7/2013 0/0/0
<b>Director of the Department of Commerce (Commerce)</b>			
Director Meg O'Leary Big Sky Qualifications (if required): none specified	Governor	Preite	1/7/2013 0/0/0
<b>Director of the Department of Corrections (Corrections)</b>			
Director Mike Batista Helena Qualifications (if required): none specified	Governor	Ferriter	1/7/2013 0/0/0

## BOARD AND COUNCIL APPOINTEES FROM JANUARY, 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Director of the Department of Environmental Quality</b> (Environmental Quality)			
Director Tracy Stone-Manning Missoula	Governor	Opper	1/7/2013 0/0/0
Qualifications (if required): none specified			
<b>Director of the Department of Labor and Industry</b> (Labor and Industry)			
Director Pam Bucy Helena	Governor	Kelly	1/7/2013 0/0/0
Qualifications (if required): none specified			
<b>Director of the Department of Military Affairs</b> (Military Affairs)			
Adjutant Gen. Matthew T. Quinn Helena	Governor	reappointed	1/7/2013 0/0/0
Qualifications (if required): none specified			
<b>Director of the Department of Natural Resources and Conservation</b> (Natural Resources and Conservation)			
Director John Tubbs Helena	Governor	Sexton	1/7/2013 0/0/0
Qualifications (if required): not listed			
<b>Director of the Department of Public Health and Human Services</b> (Public Health and Human Services)			
Director Richard Opper Helena	Governor	Whiting Sorrell	1/7/2013 0/0/0
Qualifications (if required): none specified			

## BOARD AND COUNCIL APPOINTEES FROM JANUARY, 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Director of the Department of Revenue (Revenue)</b>			
Director Mike Kadas Missoula	Governor	Bucks	1/7/2013 0/0/0
Qualifications (if required): none specified			
<b>Director of the Department of Transportation (Transportation)</b>			
Director Michael Tooley Helena	Governor	Reardon	1/7/2013 0/0/0
Qualifications (if required): none specified			
<b>Director of the Department of the Department of Agriculture (Agriculture)</b>			
Director Ron de Yong Helena	Governor	reappointed	1/7/2013 0/0/0
Qualifications (if required): none specified			
<b>Director of the Department of the Department of Fish, Wildlife and Parks (Fish, Wildlife and Parks)</b>			
Director Jeff Hagener Helena	Governor	Maurier	1/7/2013 0/0/0
Qualifications (if required): none specified			
<b>Director of the Montana Lottery (Administration)</b>			
Director Angela Wong Helena	Governor	reappointed	1/7/2013 0/0/0
Qualifications (if required): none specified			

**BOARD AND COUNCIL APPOINTEES FROM JANUARY, 2013**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Director of the Office of Indian Affairs</b> (Governor) Director Jason Smith Helena Qualifications (if required): none specified	Governor	Evers	1/15/2013 0/0/0
<b>Judicial Nomination Commission</b> (Justice) Sen. Lane Larson Billings Qualifications (if required): lay member	Governor	Paoli	1/31/2013 1/1/2017
<b>Northwest Power and Conservation Council</b> (Governor) Pat Smith No city listed Qualifications (if required): none specified	Governor	not listed	1/28/2013 0/0/0



**VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2013 THROUGH MAY 31, 2013**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Architects and Landscape Architects</b> (Labor and Industry) Ms. Shelly Engler, Bozeman Qualifications (if required): licensed landscape architect	Governor	3/27/2013
Mr. Carl A. Thuesen, Billings Qualifications (if required): licensed landscape architect	Governor	3/27/2013
Ms. Maire O'Neill, Bozeman Qualifications (if required): registered architect with the MSU School of Architecture	Governor	3/27/2013
Ms. Janet Cornish, Billings Qualifications (if required): public representative	Governor	3/27/2013
<b>Board of Dentistry</b> (Labor and Industry) Dr. Aimee R. Ameline, Great Falls Qualifications (if required): dentist	Governor	3/29/2013
<b>Board of Hail Insurance</b> (Agriculture) Mr. Jim Schillinger, Baker Qualifications (if required): public member	Governor	4/18/2013
<b>Board of Livestock</b> (Livestock) Mr. John Lehfeldt, Lavina Qualifications (if required): sheep producer	Governor	3/1/2013
Mr. Stan Boone, Ingomar Qualifications (if required): cattle producer	Governor	3/1/2013

**VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2013 THROUGH MAY 31, 2013**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Board of Livestock</b> (Livestock) cont.                      Ms. Rebecca Weed, Belgrade                      Qualifications (if required): sheep producer</p>	Governor	3/1/2013
<p><b>Board of Massage Therapists</b> (Labor and Industry)                      Ms. Grace Bowman, Billings                      Qualifications (if required): public representative</p>	Governor	5/6/2013
<p>Ms. Deborah Kimmet, Missoula                      Qualifications (if required): massage therapist</p>	Governor	5/6/2013
<p>Mr. Nick Soloway, Helena                      Qualifications (if required): massage therapist</p>	Governor	5/6/2013
<p>Ms. Carole Love, Billings                      Qualifications (if required): public representative</p>	Governor	5/6/2013
<p>Ms. Carole Love, Billings                      Qualifications (if required): public representative</p>	Governor	5/6/2013
<p><b>Board of Nursing Home Administrators</b> (Labor and Industry)                      Mr. Thomas Klotz, Glasgow                      Qualifications (if required): nursing home administrator</p>	Governor	5/28/2013
<p><b>Board of Optometry</b> (Labor and Industry)                      Dr. Rock E. Svennungsen, Shelby                      Qualifications (if required): registered optometrist</p>	Governor	4/3/2013

**VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2013 THROUGH MAY 31, 2013**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Board of Plumbers</b> (Labor and Industry)                      Ms. Donna L. Paulson, Great Falls                      Qualifications (if required): public representative</p>	Governor	5/4/2013
<p><b>Board of Real Estate Appraisers</b> (Labor and Industry)                      Mr. Dennis Hoeger, Bozeman                      Qualifications (if required): real estate appraiser</p>	Governor	5/1/2013
<p>Ms. Jennifer McGinnis, Polson                      Qualifications (if required): real estate appraiser</p>	Governor	5/1/2013
<p>Mr. Jeffrey Fleming, Huntley                      Qualifications (if required): public representative</p>	Governor	5/1/2013
<p><b>Board of Realty Regulation</b> (Labor and Industry)                      Ms. Lucinda Willis, Polson                      Qualifications (if required): real estate salesperson and a Democrat</p>	Governor	5/9/2013
<p><b>Clinical Laboratory Science Practitioners</b> (Labor and Industry)                      Ms. Alison Mizner, Kalispell                      Qualifications (if required): clinical laboratory practitioner</p>	Governor	4/16/2013
<p><b>County Printing Board</b> (Administration)                      Commissioner Marianne Roose, Eureka                      Qualifications (if required): county commissioner</p>	Governor	4/1/2013
<p>Mr. Dan Killoy, Miles City                      Qualifications (if required): printing industry representative</p>	Governor	4/1/2013

**VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2013 THROUGH MAY 31, 2013**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>County Printing Board</b> (Administration) cont.            Mr. Milton Wester, Laurel            Qualifications (if required): printing industry representative</p>	Governor	4/1/2013
<p>Mr. Calvin J. Oraw, Sidney            Qualifications (if required): public representative</p>	Governor	4/1/2013
<p>Commissioner Laura Obert, Townsend            Qualifications (if required): county commissioner</p>	Governor	4/1/2013
<p><b>Library Commission</b> (Higher Education)            Ms. Marsha Hinch, Choteau            Qualifications (if required): public representative</p>	Governor	5/22/2013
<p><b>MSU Northern Local Executive Board</b> (University System)            Mr. Darrell Briese, Havre            Qualifications (if required): public representative</p>	Governor	4/15/2013
<p><b>Montana Cherry Commodity Advisory Committee</b> (Agriculture)            Mr. Oliver Dupuis, Polson            Qualifications (if required): none specified</p>	Director	5/3/2013
<p><b>Montana Heritage Preservation and Development Commission</b> (Commerce)            Mr. Randy Hafer, Billings            Qualifications (if required): business person</p>	Governor	5/23/2013
<p>Ms. Marilyn Ross, Twin Bridges            Qualifications (if required): having experience in historic preservation</p>	Governor	5/23/2013

**VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2013 THROUGH MAY 31, 2013**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Heritage Preservation and Development Commission</b> (Commerce) cont. Mr. Colin Mathews, Virginia City Qualifications (if required): public representative	Governor	5/23/2013
Mr. Philip Maechling, Florence Qualifications (if required): community planner	Governor	5/23/2013
<b>Montana State University - Billings</b> (Governor) Ms. Kris Carpenter, Billings Qualifications (if required): public representative	Governor	4/15/2013
<b>Montana State University - Bozeman</b> (Governor) Mr. Paul Gatzemeier, Billings Qualifications (if required): public representative	Governor	4/15/2013
<b>Montana State University - Great Falls College of Technology</b> (Governor) Ms. Joan Bennett, Great Falls Qualifications (if required): public representative	Governor	4/15/2013
<b>Public Employees Retirement Board</b> (Administration) Ms. Dianna M Porter, Butte Qualifications (if required): public representative	Governor	4/1/2013
Ms. Darcy Halpin, Belgrade Qualifications (if required): retired public employee	Governor	4/1/2013

**VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2013 THROUGH MAY 31, 2013**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Small Business Compliance Assistance Advisory Council</b> (Environmental Quality)		
Ms. Michelle Bryan Mudd, Missoula	Governor	5/5/2013
Qualifications (if required): public representative		
Ms. Diana Vanek, Bozeman	Governor	5/5/2013
Qualifications (if required): public representative		
Mr. Carson Coate, Helena	Director	5/5/2013
Qualifications (if required): representative of the Department of Environmental Quality		
<b>State Compensation Insurance Fund Board</b> (Administration)		
Rep. Jane DeBruycker, Dutton	Governor	4/28/2013
Qualifications (if required): policy holder		
Mr. James Swanson, Glendive	Governor	4/28/2013
Qualifications (if required): insurance producer and a policy holder		
Mr. Ken Johnson, Missoula	Governor	4/28/2013
Qualifications (if required): representative of private enterprise and a policy holder		
Mr. Thomas R. Heisler, Great Falls	Governor	4/28/2013
Qualifications (if required): representative of private enterprise and a policy holder		
<b>University of Montana</b> (Governor)		
Ms. Ann Boone, Missoula	Governor	4/15/2013
Qualifications (if required): public representative		

**VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2013 THROUGH MAY 31, 2013**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>University of Montana - Helena College of Technology</b> (Governor) Mr. Pat Clinch, Helena Qualifications (if required): public representative	Governor	4/15/2013
<b>University of Montana - Montana Tech</b> (Governor) Mr. Tony Laslovich, Anaconda Qualifications (if required): public representative	Governor	4/15/2013
<b>University of Montana - Western</b> (Governor) Mr. William Kriegel, Dillon Qualifications (if required): public representative	Governor	4/15/2013