

# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 1

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 8.101.302 and 8.101.305 ) PROPOSED AMENDMENT  
pertaining to the policies of the )  
Montana Coal Board and applications )  
for Montana Coal Board grant )  
assistance )

TO: All Concerned Persons

1. On February 5, 2014, at 10:00 a.m., a public hearing will be held in Room 226 of the Park Avenue Building, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., January 31, 2014, to advise us of the nature of the accommodation that you need. Please contact Andy Fjeseth, Community Development Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2782; TDD (406) 841-2702; fax (406) 841-2771; or e-mail [afjeseth@mt.gov](mailto:afjeseth@mt.gov).

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

8.101.302 APPLICATION FORM (LIF 1-75) (1) remains the same.

(2) Applications will be evaluated based on the five criteria listed in ARM 8.101.301. The application shall be considered by the Coal Board during the next scheduled quarterly meeting after receipt of the completed application, and either be approved, denied, or tabled pending submittal of additional information to the Coal Board. The application form is available online at [http://comdev.mt.gov/CDD\\_CB.asp](http://comdev.mt.gov/CDD_CB.asp).

(3) and (4) remain the same.

(5) Coal impact grant funds used for the preparation of plans, studies, analyses, or necessary research for the preparation of a preliminary engineering report must meet the requirements of the most current Uniform Application for Montana Public Facility Projects. Coal impact grant funds used for the preparation of a preliminary architectural report must meet the requirements described in ~~Appendix S of the CDBG Application Guidelines for Public Facilities Projects. The Uniform Application and the CDBG Guidelines are available on the Community Development Division web site at~~ <http://comdev.mt.gov> the Coal Impact Grant Application. This application is available online.

AUTH: 90-6-205, MCA  
IMP: 90-6-208, MCA

REASON: It is reasonably necessary to amend this rule because 90-2-205 and 90-2-208, MCA, require the board through the department to adopt rules to implement the program.

8.101.305 SUBMITTAL DEADLINES (1) Grant applications shall be submitted to the administrative officer ~~by the first of the month preceding the month of the next 45 days prior to the~~ quarterly meeting.

(2) and (3) remain the same.

AUTH: 90-6-205, MCA  
IMP: 90-6-205, MCA

REASON: It is reasonably necessary to amend this rule because 90-2-205 and 90-2-208, MCA, require the board through the department to adopt rules to implement the program.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Coal Board, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2782; fax (406) 841-2702; or e-mail [afjeseth@mt.gov](mailto:afjeseth@mt.gov), and must be received no later than 5:00 p.m., February 13, 2014.

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

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, by fax to (406) 841-2702, by e-mail to [afjeseth@mt.gov](mailto:afjeseth@mt.gov), or may be made by completing a request form at any rules hearing held by the department.

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

web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Kelly A. Lynch  
KELLY A. LYNCH  
Rule Reviewer

/s/ Douglas Mitchell  
Douglas Mitchell  
Deputy Director  
Department of Commerce

Certified to the Secretary of State January 6, 2014

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and the amendment of ARM 18.8.1501, 18.8.1502, and 18.8.1503 pertaining to motor carrier services safety assistance program	)	NOTICE OF PROPOSED ADOPTION AND AMENDMENT
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On February 17, 2014, the Department of Transportation proposes to adopt and amend the above-stated rules.

2. The Department of Transportation 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 Transportation no later than 5:00 p.m. on February 6, 2014, to advise us of the nature of the accommodation that you need. Please contact Dennis Hult, Department of Transportation, Motor Carrier Services Division, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-9237; fax (406) 444-7681; TTY Service (406) 444-7696 or (800) 335-7592; or e-mail dhult@mt.gov.

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

NEW RULE I COMMERCIAL VEHICLE SAFETY PROGRAM OPERATIONS

(1) The department shall implement a commercial vehicle safety program to assume responsibility for improving motor carrier safety and enforcing safety standards under federal regulations adopted by reference in ARM 18.8.1502 and state standards found in Montana statutes and administrative rules.

(2) The commercial vehicle safety program shall conduct safety inspections and investigations of hazardous material shippers, for-hire motor carriers, private motor carriers, or any motor vehicle or vehicle combination as defined in 61-10-154, MCA, when the vehicle is used in interstate or intrastate commerce in Montana.

(3) The department shall designate motor carrier services officers as peace officers under 61-10-154, MCA, with authority to conduct the following safety program activities:

(a) Enforce the provisions of Title 49, USC, and the federal regulations that have been adopted under Title 49 in the Code of Federal Regulations;

(b) Enforce the provisions of the Commercial Vehicle Safety Alliance (CVSA), North American Out-of-Service Criteria, as incorporated by reference in ARM 18.8.1505;

(c) Conduct roadside inspections of commercial motor vehicles for compliance with federal and state safety requirements;

(d) Conduct investigations of commercial motor carriers or hazardous materials shippers for compliance with federal and state safety requirements or

hazardous materials requirements, including right of entry for investigations at the commercial motor carriers' place of business;

(e) Require production of documents relating to the commercial motor carrier and commercial motor vehicle safety regulations adopted under administrative rules;

(f) Issue citations and make arrests in connection with violations of safety standards adopted under these administrative rules; and

(g) All other reasonable activities allowed by federal statutes or regulations, or by state statutes, or administrative rules related to safety inspections and investigations.

(4) The department shall designate civilian safety inspectors, with authority to conduct the following safety program activities:

(a) Enforce the provisions of Title 49, USC, and the federal regulations that have been adopted under Title 49 in the Code of Federal Regulations;

(b) Enforce the provisions of the Commercial Vehicle Safety Alliance (CVSA), North American Out-of-Service Criteria, as incorporated by reference in ARM 18.8.1505;

(c) Conduct roadside inspections of commercial motor vehicles for compliance with federal and state safety requirements;

(d) Conduct investigations of commercial motor carriers or hazardous materials shippers for compliance with federal and state safety requirements or hazardous materials requirements, including right of entry investigations at the commercial motor carriers' place of business;

(e) Require production of documents relating to the commercial motor carrier and commercial motor vehicle safety regulations adopted under administrative rules;

(f) Refer violations and violators to designated motor carrier services officers or Montana Highway Patrol (MHP) officers for issuance of citations and performance of arrests in connection with violations of safety standards adopted under these administrative rules; and

(g) All other reasonable activities allowed by federal statutes or regulations, or by state statutes, or administrative rules related to safety inspections and investigations.

(5) The department shall coordinate with MHP for MHP officer enforcement of the federal and state safety regulations adopted in Montana. MHP officers shall have authority to conduct all of the following safety program activities:

(a) Enforce the provisions of Title 49, USC, and the federal regulations that have been adopted under Title 49 in the Code of Federal Regulations;

(b) Enforce the provisions of the Commercial Vehicle Safety Alliance (CVSA), North American Out-of-Service Criteria, as incorporated by reference in ARM 18.8.1505;

(c) Conduct roadside inspections of commercial motor vehicles for compliance with federal and state safety requirements;

(d) Conduct investigations of commercial motor carriers or hazardous materials shippers for compliance with federal and state safety requirements, or hazardous materials requirements, including right of entry for investigations at the commercial motor carriers' place of business;

(e) Require production of documents relating to the commercial motor carrier and commercial motor vehicle safety regulations adopted under administrative rules;



(f) Issue citations and make arrests in connection with violations of safety standards adopted under these administrative rules; and

(g) All other reasonable activities allowed by federal statutes or regulations, or by state statutes, or administrative rules related to safety inspections and investigations.

AUTH: 61-10-155, MCA

IMP: 44-1-1005, 61-10-154, MCA

REASON: The proposed new rule is necessary because the department's Motor Carrier Safety Assistance Program (MCSAP) was reviewed by the Federal Motor Carrier Safety Administration (FMCSA) in June, 2013. FMCSA Finding No. 2 stated the department had failed to adopt right-of-entry authority for all officers and inspectors conducting safety inspections. The proposed new rule will set forth the right-of-entry authorities including: enforcement of federal safety requirements; performance of roadside inspections; performance of investigations, including at the commercial motor carriers' place of business; and requirement of document production. The proposed new rule will also clarify that department motor carrier peace officers and MHP officers may issue citations and make arrests in connection with violation of safety standards, while department civilian safety inspectors may refer violators of safety standards to designated MCS officers or MHP officers for citation issuance or arrests. Proposed New Rule I will bring the department into compliance with the FMCSA review Finding No. 2.

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

18.8.1501 MOTOR CARRIER SAFETY DEFINITIONS (1) through (2) remain the same.

(3) For purposes of transportation of hazardous materials in commerce, and subchapter 15 of these rules, the department adopts by reference the definitions found at 49 CFR §171.8, with the following clarification:

(a) "Hazardous materials shipper" means an individual, corporation, company, association, firm, partnership, society, joint stock company, government, Indian tribe, or authority of a government or tribe, that:

(i) offers a hazardous material for transportation in commerce;

(ii) transports a hazardous material to support a commercial enterprise and is a private motor carrier;

(iii) performs, or is responsible for performing, any pre-transportation function required by state or federal statute or rule for the transportation of hazardous materials in commerce; or

(iv) tenders or makes hazardous materials available to a carrier for transportation in commerce.

AUTH: 61-10-155, MCA

IMP: 61-10-141, 61-10-154, MCA

REASON: The proposed amendment of ARM 18.8.1501 is necessary because the department's Motor Carrier Safety Assistance Program (MCSAP) was reviewed by the Federal Motor Carrier Safety Administration (FMCSA) in June, 2013. FMCSA Finding No. 1-c stated the department had failed to make hazardous materials shippers subject to federal and state hazardous materials shipping regulations. The proposed amendment will define "hazardous materials shipper" to clarify persons and groups subject to federal and state hazardous materials shipping regulations in Montana.

18.8.1502 FEDERAL MOTOR CARRIER SAFETY RULES AND STATE MODIFICATIONS (1) remains the same.

(2) The federal regulations incorporated by reference are subject to the following modifications:

(a) For purposes of part 385 as applied to intrastate carriers, the safety investigation will be referred to as an "intrastate safety investigation." An intrastate safety investigation may only be conducted ~~by a civilian inspector authorized by the department to perform such reviews~~ in compliance with [New Rule I].

(b) through (f) remain the same.

AUTH: 61-10-155, MCA  
IMP: 61-10-141, 61-10-154, MCA

REASON: The proposed amendment to ARM 18.8.1502 is necessary to make the rule consistent with New Rule I on the department's Safety Program Operations, and the authorities for safety inspections by department MCS officers, MHP officers, and department civilian safety inspectors. The proposed amendment will delete an unnecessary reference to civilian inspector authorization to avoid any conflicts with New Rule I.

18.8.1503 TRANSPORTATION OF HAZARDOUS MATERIALS (1) A commercial motor vehicle, ~~or motor carrier, or hazardous materials shipper~~ subject to regulation by the department under 61-10-154, MCA, shall comply with and the department adopts by reference the following federal regulations of the U.S. Department of Transportation concerning the transportation of hazardous materials: ~~The regulations adopted by reference are~~ 49 CFR part 107, 49 CFR part 171, 49 CFR part 172, 49 CFR part 173, 49 CFR part 177, 49 CFR part 178, and 49 CFR part 180. The regulations adopted may be found in the Code of Federal Regulations, Title 49, chapter I, subchapters B and C, as updated through April 1, 2013. Copies may be obtained from the U.S. Government Printing Office, 732 North Capitol Street, NW, Washington, DC 20401-0001, or on the Internet at [www.gpo.gov](http://www.gpo.gov).

AUTH: 61-10-155, MCA  
IMP: 61-10-154, MCA

REASON: The proposed amendment of ARM 18.8.1503 is necessary because the department's Motor Carrier Safety Assistance Program (MCSAP) was reviewed by

the Federal Motor Carrier Safety Administration (FMCSA) in June, 2013. FMCSA Finding No. 1-c stated the department had failed to make hazardous materials shippers subject to federal and state hazardous materials shipping regulations. The proposed amendment will add "hazardous materials shipper," as defined in ARM 18.8.1501, to the list of entities subject to federal and state hazardous materials shipping regulations in Montana.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Dennis Hult, Department of Transportation, Motor Carrier Services Division, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-9237; fax (406) 444-7681; or e-mail [dhult@mt.gov](mailto:dhult@mt.gov), and must be received no later than 5:00 p.m., February 13, 2014.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Dennis Hult at the above address no later than 5:00 p.m., February 13, 2014.

7. 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 9,570 persons based on 95,702 permits issued in the 2012 calendar 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.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Carol Grell Morris  
Carol Grell Morris  
Rule Reviewer

/s/ Michael T. Tooley  
Michael T. Tooley  
Director  
Department of Transportation

Certified to the Secretary of State January 6, 2014.

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

In the matter of the adoption of NEW ) NOTICE OF PUBLIC HEARING ON  
RULE I pertaining to military training ) PROPOSED ADOPTION  
or experience )

TO: All Concerned Persons

1. On February 10, 2014, at 10:30 a.m., a public hearing will be held in the Small Conference Room, 4th Floor, 301 South Park Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Chiropractors (board) no later than 5:00 p.m., on February 3, 2014, to advise us of the nature of the accommodation that you need. Please contact Dennis Clark, Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdcchi@mt.gov.

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

NEW RULE I MILITARY TRAINING OR EXPERIENCE (1) Pursuant to 37-1-145, MCA, the board shall accept relevant military training, service, or education toward the requirements for licensure as a chiropractor.

(2) Relevant military training, service, or education must be completed by an applicant while a member of either:

- (a) United States Armed Forces;
- (b) United States Reserves;
- (c) state national guard; or
- (d) military reserves.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as a chiropractor. At a minimum, satisfactory evidence shall include:

- (a) a copy of the applicant's military discharge document (DD 214);
- (b) a document that clearly shows all relevant training, certification, service, or education the applicant received while in the military, including dates of training and completion or graduation; and
- (c) any other documentation as required by the board.

(4) The board shall consider all documentation received to determine whether an applicant's military training, service, or education is equivalent to relevant licensure requirements.

AUTH: 37-1-145, MCA  
IMP: 37-1-145, MCA

REASON: The 2013 Montana Legislature enacted House Bill 259 and Senate Bill 183, acts requiring the professional and occupational licensing boards and programs to accept satisfactory evidence of relevant military education, training, or service to satisfy licensing or certification requirements. The bill was signed by the Governor and became effective on April 26, 2013, and is codified at 37-1-145, MCA.

The new statute requires each licensing board and program to adopt rules providing that certification or licensure requirements of the board or program may be met by relevant military training, service, or education, completed as a member of the armed forces or reserves of the United States, a state's national guard, or the military reserves. In consulting with the bill sponsors regarding the rulemaking, it was clarified that the sponsor received input on the bill draft from Montana military personnel and the U.S. Department of Defense. The sponsor was assured that the bill language, as reflected in this proposed rule, is intended to include relevant military training, service, or education received while serving in all branches of the military and reserves, including the U.S. Coast Guard. It is reasonably necessary for the board to adopt New Rule I to coincide with and further implement the legislation.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdcchi@mt.gov](mailto:dlibsdcchi@mt.gov), and must be received no later than 5:00 p.m., February 14, 2014.

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

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

dlibschi@mt.gov; or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted on December 16, 2013, by electronic mail.

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rule I will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; facsimile (406) 841-2305; or e-mail dlibschi@mt.gov.

9. Darcee L. Moe, attorney, has been designated to preside over and conduct this hearing.

BOARD OF CHIROPRACTORS  
SCOTT HANSING, D.C., PRESIDENT

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

/s/ PAM BUCY  
Pam Bucy, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 6, 2014

BEFORE THE BOARD OF HEARING AID DISPENSERS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 24.150.401 fees and the ) PROPOSED AMENDMENT AND  
adoption of NEW RULE I pertaining ) ADOPTION  
to military training or experience )

TO: All Concerned Persons

1. On February 10, 2014, at 11:00 a.m., a public hearing will be held in the Small Conference Room, 4th Floor, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Hearing Aid Dispensers (board) no later than 5:00 p.m., on February 3, 2014, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsddhad@mt.gov.

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

24.150.401 FEES (1) through (1)(f) remain the same.

(g) Renewal active license

~~4000~~ 1500

(h) through (3) remain the same.

AUTH: 37-1-131, 37-1-134, 37-16-202, MCA

IMP: 37-1-131, 37-1-134, 37-1-141, 37-16-402, 37-16-405, 37-16-406,

MCA

REASON: The board determined it is reasonably necessary to increase renewal fees to comply with the provisions of 37-1-134, MCA, and keep the board's fees commensurate with program costs. Over the last several years, the board has experienced a decrease in the number of licensees and an increase in expenses in excess of revenue generated through board licensure fees. In providing administrative services to the board, the department has determined it is necessary to increase fees as proposed to ensure that the board can cover their operating expenses. The board estimates that the proposed fee increases will affect approximately 54 active licensees and result in \$27,000 in additional annual revenue. In addition to the fee increases, the department and the board will continue to seek and implement ways to reduce costs associated with board functions.



4. The new rule proposed to be adopted provides as follows:

NEW RULE I MILITARY TRAINING OR EXPERIENCE (1) Pursuant to 37-1-145, MCA, the board shall accept relevant military training, service, or education toward the requirements for licensure as a hearing aid dispenser.

(2) Relevant military training, service, or education must be completed by an applicant while a member of either:

- (a) United States Armed Forces;
- (b) United States Reserves;
- (c) state national guard; or
- (d) military reserves.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as a hearing aid dispenser. At a minimum, satisfactory evidence shall include:

- (a) a copy of the applicant's military discharge document (DD 214);
- (b) a document that clearly shows all relevant training, certification, service, or education the applicant received while in the military, including dates of training and completion or graduation; and
- (c) any other documentation as required by the board.

(4) The board shall consider all documentation received to determine whether an applicant's military training, service, or education is equivalent to relevant licensure requirements.

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: The 2013 Montana Legislature enacted House Bill 259 and Senate Bill 183, acts requiring the professional and occupational licensing boards and programs to accept satisfactory evidence of relevant military education, training, or service to satisfy licensing or certification requirements. The bill was signed by the Governor and became effective on April 26, 2013, and is codified at 37-1-145, MCA.

The new statute requires each licensing board and program to adopt rules providing that certification or licensure requirements of the board or program may be met by relevant military training, service, or education, completed as a member of the armed forces or reserves of the United States, a state's national guard, or the military reserves. In consulting with the bill sponsors regarding the rulemaking, it was clarified that the sponsor received input on the bill draft from Montana military personnel and the U.S. Department of Defense. The sponsor was assured that the bill language, as reflected in this proposed rule, is intended to include relevant military training, service, or education received while serving in all branches of the military and reserves, including the U.S. Coast Guard. It is reasonably necessary for the board to adopt New Rule I to coincide with and further implement the legislation.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Hearing Aid Dispensers, 301 South Park Avenue, P.O.

Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsddhad@mt.gov](mailto:dlibsddhad@mt.gov), and must be received no later than 5:00 p.m., February 14, 2014.

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted on December 16, 2013, by electronic mail.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.150.401 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rule I will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Hearing Aid Dispensers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; facsimile (406) 841-2305; or e-mail [dlibsddhad@mt.gov](mailto:dlibsddhad@mt.gov).

10. Kevin Maki, attorney, has been designated to preside over and conduct this hearing.

BOARD OF HEARING AID DISPENSERS  
ALFRED MCLEES, PRESIDING OFFICER

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

/s/ PAM BUCY  
Pam Bucy, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 6, 2014

BEFORE THE LICENSED ADDICTION COUNSELORS PROGRAM  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the adoption of NEW ) NOTICE OF PUBLIC HEARING ON  
RULE I pertaining to military training ) PROPOSED ADOPTION  
or experience )

TO: All Concerned Persons

1. On February 10, 2014, at 10:00 a.m., a public hearing will be held in the Small Conference Room, 4th Floor, 301 South Park Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Licensed Addiction Counselors Program (program) no later than 5:00 p.m., on February 3, 2014, to advise us of the nature of the accommodation that you need. Please contact Cyndi Reichenbach, Licensed Addiction Counselors Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdcdc@mt.gov.

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

NEW RULE I MILITARY TRAINING OR EXPERIENCE (1) Pursuant to 37-1-145, MCA, the department shall accept relevant military training, service, or education toward the requirements for licensure as a licensed addiction counselor.

(2) Relevant military training, service, or education must be completed by an applicant while a member of either:

- (a) United States Armed Forces;
- (b) United States Reserves;
- (c) state national guard; or
- (d) military reserves.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as a licensed addiction counselor. At a minimum, satisfactory evidence shall include:

- (a) a copy of the applicant's military discharge document (DD 214);
- (b) a document that clearly shows all relevant training, certification, service, or education the applicant received while in the military, including dates of training and completion or graduation; and
- (c) any other documentation as required by the department.

(4) The department shall consider all documentation received to determine whether an applicant's military training, service, or education is equivalent to relevant licensure requirements.

AUTH: 37-1-145, MCA  
IMP: 37-1-145, MCA

REASON: The 2013 Montana Legislature enacted House Bill 259 and Senate Bill 183, acts requiring the professional and occupational licensing boards and programs to accept satisfactory evidence of relevant military education, training, or service to satisfy licensing or certification requirements. The bill was signed by the Governor and became effective on April 26, 2013, and is codified at 37-1-145, MCA.

The new statute requires each licensing board and program to adopt rules providing that certification or licensure requirements of the board or program may be met by relevant military training, service, or education, completed as a member of the armed forces or reserves of the United States, a state's national guard, or the military reserves. In consulting with the bill sponsors regarding the rulemaking, it was clarified that the sponsor received input on the bill draft from Montana military personnel and the U.S. Department of Defense. The sponsor was assured that the bill language, as reflected in this proposed rule, is intended to include relevant military training, service, or education received while serving in all branches of the military and reserves, including the U.S. Coast Guard. It is reasonably necessary for the department to adopt New Rule I to coincide with and further implement the legislation.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Licensed Addiction Counselors Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdcdc@mt.gov](mailto:dlibsdcdc@mt.gov), and must be received no later than 5:00 p.m., February 14, 2014.

5. An electronic copy of this notice of public hearing is available at [www.lac.mt.gov](http://www.lac.mt.gov) (department and program's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this program. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all program administrative rulemaking proceedings or other administrative proceedings. The request must indicate

whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Licensed Addiction Counselors Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsdcdc@mt.gov](mailto:dlibsdcdc@mt.gov); or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted on December 16, 2013, by electronic mail.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of New Rule I will not significantly and directly impact small businesses.

Documentation of the department's above-stated determination is available upon request to the Licensed Addiction Counselors Program, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; facsimile (406) 841-2305; or e-mail [dlibsdcdc@mt.gov](mailto:dlibsdcdc@mt.gov).

9. Joslyn Hunt, attorney, has been designated to preside over and conduct this hearing.

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

/s/ PAM BUCY  
Pam Bucy, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 6, 2014

BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the adoption of NEW ) NOTICE OF PUBLIC HEARING ON  
RULE I pertaining to military training ) PROPOSED ADOPTION  
or experience )

TO: All Concerned Persons

1. On February 10, 2014, at 9:30 a.m., a public hearing will be held in the Small Conference Room, 4th Floor, 301 South Park Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Nursing Home Administrators (board) no later than 5:00 p.m., on February 3, 2014, to advise us of the nature of the accommodation that you need. Please contact Linda Grief, Board of Nursing Home Administrators, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail [dlibsdnha@mt.gov](mailto:dlibsdnha@mt.gov).

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

NEW RULE I MILITARY TRAINING OR EXPERIENCE (1) Pursuant to 37-1-145, MCA, the board shall accept relevant military training, service, or education toward the requirements for licensure as a nursing home administrator.

(2) Relevant military training, service, or education must be completed by an applicant while a member of either:

- (a) United States Armed Forces;
- (b) United States Reserves;
- (c) state national guard; or
- (d) military reserves.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as a nursing home administrator. At a minimum, satisfactory evidence shall include:

- (a) a copy of the applicant's military discharge document (DD 214);
- (b) a document that clearly shows all relevant training, certification, service, or education the applicant received while in the military, including dates of training and completion or graduation; and
- (c) any other documentation as required by the board.

(4) The board shall consider all documentation received to determine whether an applicant's military training, service, or education is equivalent to relevant licensure requirements.

AUTH: 37-1-145, MCA  
IMP: 37-1-145, MCA

REASON: The 2013 Montana Legislature enacted House Bill 259 and Senate Bill 183, acts requiring the professional and occupational licensing boards and programs to accept satisfactory evidence of relevant military education, training, or service to satisfy licensing or certification requirements. The bill was signed by the Governor and became effective on April 26, 2013, and is codified at 37-1-145, MCA.

The new statute requires each licensing board and program to adopt rules providing that certification or licensure requirements of the board or program may be met by relevant military training, service, or education, completed as a member of the armed forces or reserves of the United States, a state's national guard, or the military reserves. In consulting with the bill sponsors regarding the rulemaking, it was clarified that the sponsor received input on the bill draft from Montana military personnel and the U.S. Department of Defense. The sponsor was assured that the bill language, as reflected in this proposed rule, is intended to include relevant military training, service, or education received while serving in all branches of the military and reserves, including the U.S. Coast Guard. It is reasonably necessary for the board to adopt New Rule I to coincide with and further implement the legislation.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Nursing Home Administrators, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdnha@mt.gov](mailto:dlibsdnha@mt.gov), and must be received no later than 5:00 p.m., February 14, 2014.

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

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Nursing Home Administrators, 301 South Park Avenue,



P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsdnha@mt.gov](mailto:dlibsdnha@mt.gov); or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted on December 16, 2013, by electronic mail.

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rule I will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Nursing Home Administrators, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2395; facsimile (406) 841-2305; or e-mail [dlibsdnha@mt.gov](mailto:dlibsdnha@mt.gov).

9. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF NURSING HOME  
ADMINISTRATORS  
CARLA NEIMAN, PRESIDING OFFICER

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

/s/ PAM BUCY  
Pam Bucy, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 6, 2014

BEFORE THE BOARD OF REAL ESTATE APPRAISERS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the adoption of NEW ) NOTICE OF PUBLIC HEARING ON  
RULE I pertaining to military training ) PROPOSED ADOPTION  
or experience )

TO: All Concerned Persons

1. On February 10, 2014, at 1:00 p.m., a public hearing will be held in the Small Conference Room, 4th Floor, 301 South Park Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Real Estate Appraisers (board) no later than 5:00 p.m., on February 3, 2014, to advise us of the nature of the accommodation that you need. Please contact Sharon Peterson, Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2375; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsrea@mt.gov.

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

NEW RULE I MILITARY TRAINING OR EXPERIENCE (1) Pursuant to 37-1-145, MCA, the board shall accept relevant military training, service, or education toward the requirements for licensure as a licensed real estate appraiser, certified residential real estate appraiser, and certified general real estate appraiser.

(2) Relevant military training, service, or education must be completed by an applicant while a member of either:

- (a) United States Armed Forces;
- (b) United States Reserves;
- (c) state national guard; or
- (d) military reserves.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as a licensed real estate appraiser, certified residential real estate appraiser, and certified general real estate appraiser. At a minimum, satisfactory evidence shall include:

- (a) a copy of the applicant's military discharge document (DD 214);
- (b) a document that clearly shows all relevant training, certification, service, or education the applicant received while in the military, including dates of training and completion or graduation; and
- (c) any other documentation as required by the board.

(4) The board shall consider all documentation received to determine whether an applicant's military training, service, or education is equivalent to relevant licensure requirements.

AUTH: 37-1-145, MCA  
IMP: 37-1-145, MCA

REASON: The 2013 Montana Legislature enacted House Bill 259 and Senate Bill 183, acts requiring the professional and occupational licensing boards and programs to accept satisfactory evidence of relevant military education, training, or service to satisfy licensing or certification requirements. The bill was signed by the Governor and became effective on April 26, 2013, and is codified at 37-1-145, MCA.

The new statute requires each licensing board and program to adopt rules providing that certification or licensure requirements of the board or program may be met by relevant military training, service, or education, completed as a member of the armed forces or reserves of the United States, a state's national guard, or the military reserves. In consulting with the bill sponsors regarding the rulemaking, it was clarified that the sponsor received input on the bill draft from Montana military personnel and the U.S. Department of Defense. The sponsor was assured that the bill language, as reflected in this proposed rule, is intended to include relevant military training, service, or education received while serving in all branches of the military and reserves, including the U.S. Coast Guard. It is reasonably necessary for the board to adopt New Rule I to coincide with and further implement the legislation.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsrea@mt.gov](mailto:dlibsrea@mt.gov), and must be received no later than 5:00 p.m., February 14, 2014.

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

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

person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to [dlibsdua@mt.gov](mailto:dlibsdua@mt.gov); or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted on December 16, 2013, by electronic mail.

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rule I will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2375; facsimile (406) 841-2305; or e-mail [dlibsdua@mt.gov](mailto:dlibsdua@mt.gov).

9. Don Harris, attorney, has been designated to preside over and conduct this hearing.

BOARD OF REAL ESTATE APPRAISERS  
THOMAS STEVENS, CHAIRPERSON

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

/s/ PAM BUCY  
Pam Bucy, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 6, 2014

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

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through IX, the amendment of	)	PROPOSED ADOPTION,
ARM 37.100.101, 37.100.102,	)	AMENDMENT, AND REPEAL
37.100.120, 37.100.121, 37.100.125,	)	
37.100.130, 37.100.135, 37.100.140,	)	
37.100.141, 37.100.145, 37.100.146,	)	
37.100.150, 37.100.151, 37.100.152,	)	
37.100.153, 37.100.157, 37.100.161,	)	
37.100.162, 37.100.165, 37.100.170,	)	
and 37.100.175, and the repeal of	)	
ARM 37.100.105 and 37.100.110,	)	
pertaining to adult foster care homes	)	
(AFCH)	)	

TO: All Concerned Persons

1. On February 5, 2014, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption, 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 January 29, 2014, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I ADULT FOSTER CARE HOMES (AFCH): LIMITATIONS ON CARE PROVIDED (1) Except as provided in this rule and pursuant to 50-5-216, MCA, the types of care offered by Adult Foster Care Homes (AFCH) are limited to light personal care, custodial care, and supervision. An adult in the care of an AFCH must not be:

- (a) in need of skilled nursing care;
- (b) in need of medical, physical, or chemical restraint;
- (c) nonambulatory or bedridden;
- (d) incontinent to the extent that bowel or bladder control is absent; or

- (e) unable to self-administer medications.
- (2) To continue the continuity of care, an AFCH may be licensed to provide care for an adult receiving state-funded services through the developmental disabilities program of the department or an adult who resided in the home before reaching 18 years of age, even though the adult is:
  - (a) in need of skilled nursing care;
  - (b) in need of medical, physical, or chemical restraint;
  - (c) nonambulatory or bedridden;
  - (d) incontinent to the extent that bowel or bladder control is absent; or
  - (e) unable to self-administer medications.
- (3) A resident of an AFCH licensed under (2) must have a certification in the form of a signed statement, renewed on an annual basis, from a physician, a physician's assistant-certified, a nurse practitioner, or a registered nurse, whose work is unrelated to the operation of the home and who has actually visited the home within the year covered by the statement and certifies that:
  - (a) the services available to the resident in the home or in the community, or services that may be brought into the home from the community, including nursing services or therapies, are appropriate for meeting the health care or other needs of the resident; and
  - (b) the health care status of the resident does not necessitate placing the resident in a more intensive residential service setting.

AUTH: 50-5-103, 50-5-215, MCA

IMP: 50-5-101, 50-5-103, 50-5-215, 50-5-216, MCA

#### NEW RULE II ADULT FOSTER CARE HOMES (AFCH): RESIDENT

RIGHTS (1) The facility must comply with the Montana Long-Term Care Residents' Bill of Rights, found at 50-5-1101 through 50-5-1107, MCA. This includes the posting of the facility's statement of resident rights in a conspicuous place. Prior to or upon admission of a resident, the AFCH must explain and provide the resident with a copy of the Montana Long-Term Care Residents' Bill of Rights.

(2) The provider will write and adhere to a statement applicable to all residents in the AFCH, including as a minimum the rights listed in 50-5-1104, MCA. This statement will be provided to each resident and his or her legal representative upon admission to the AFCH. Signed copies must be retained in the resident file and copies made available to the resident and resident's legal representative, if applicable.

(3) This written statement must include information that all residents have the right to:

- (a) be treated as an adult with respect and dignity;
- (b) be informed of their medical condition and the right to consent to or refuse treatment;
- (c) receive appropriate care, services, and prompt medical care, as needed;
- (d) participate in community organizations and activities;
- (e) have medical and personal information kept confidential;
- (f) a safe and secure environment;

(g) be free from discrimination in regards to race, color, national origin, sex, or religion;

(h) be provided the opportunity to voluntarily practice their own religion, attend religious services of their choice in the community, and to visit with representatives of their faith;

(i) identify with their cultural heritage;

(j) the opportunity for bathing and personal grooming, as desired;

(k) dress according to personal taste;

(l) write and send mail at their own expense without censorship and receive unopened mail;

(m) daily private access to a telephone;

(n) have visitors within reasonable visiting hours; and

(o) be encouraged and assisted to exercise constitutional and legal rights including the right to vote.

AUTH: 50-5-103, 50-5-215, MCA

IMP: 50-5-103, 50-5-215, MCA

NEW RULE III ADULT FOSTER CARE HOMES (AFCH): LICENSE RESTRICTIONS (1) A license is not subject to sale, assignment, or other transfer, voluntary or involuntary.

(2) A license is valid only for the premises and person covered under [NEW RULE I], for which the original license was issued.

(3) The license remains the property of the department and should be returned to the department upon closing or transfer of ownership.

(4) The address for returning the license is Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.

AUTH: 50-5-103, 50-5-215, MCA

IMP: 50-5-103, 50-5-201, 50-5-215, 50-5-216, MCA

NEW RULE IV ADULT FOSTER CARE HOMES (AFCH): COMMUNICABLE DISEASE CONTROL (1) The AFCH must develop and implement an infection prevention and control program. At a minimum:

(a) The provider will develop, implement, and review, at least annually, written policies and procedures regarding infection prevention and control which must include, but not be limited to, procedures to identify high-risk individuals and what methods are used to protect, contain, or minimize the risk to residents, staff, and visitors.

(b) The provider is responsible for the direction, provision, and quality of infection prevention and control services.

AUTH: 50-5-103, 50-5-215, MCA

IMP: 50-5-103, 50-5-215, MCA

NEW RULE V ADULT FOSTER CARE HOMES (AFCH): PETS (1) When pets are kept on the premises, the provider must write and adhere to procedures for their care and maintenance. The AFCH will consult with the local health department and care for all pets as recommended by them.

(2) When animals are kept at the AFCH, the following conditions must be met:

- (a) proof of current vaccinations must be kept on file at the AFCH;
- (b) pets not confined in enclosures must be under control;
- (c) pets must not present a danger to residents, staff, or visitors;
- (d) live animals and fowl are prohibited from food preparation, food storage, and eating areas; and
- (e) caregivers and residents must wash their hands after handling animals, animal food, and animal waste.

(3) The AFCH will not keep or bring in ferrets, turtles, iguanas, lizards, or other reptiles, psittacine birds (birds of the parrot family), or any wild or dangerous animals.

(4) The AFCH may allow exceptions for reptiles if the animals are kept behind a glass wall in a tank or container where the animal cannot be easily touched while inside the tank.

AUTH: 50-5-103, 50-5-215, MCA

IMP: 50-5-103, 50-5-215, MCA

NEW RULE VI ADULT FOSTER CARE HOMES (AFCH): BACKGROUND CHECKS (1) The provider, staff, and any adult residing in the home must have a State of Montana criminal background check, and, if applicable, a tribal criminal background check and state protective service background check prior to receiving an AFCH license or working at the AFCH.

(2) If an applicant has lived outside the state within the past five years, the AFCH provider must complete background checks in every state that the applicant has resided within the past five years.

(3) The department will deny or revoke a license upon finding that:

(a) the provider, staff member, or anyone residing in the AFCH has been convicted by a court of competent jurisdiction of a felony or misdemeanor involving homicide, sexual intercourse without consent, sexual assault, aggravated assault, assault on a minor, assault on an officer, assault with a weapon, kidnapping, aggravated kidnapping, prostitution, robbery, or burglary;

(b) the provider, staff member, or anyone residing in the home has a conviction for a crime pertaining to children and families, including but not limited to child abuse or neglect, incest, child sexual abuse, ritual abuse of a minor, felony partner and family member assault, child pornography, child prostitution, Internet crimes involving children, felony endangering the welfare of a minor, felony unlawful transactions with children, or aggravated interference with parent-child contact;

(c) the provider or staff member or anyone residing in the home has, within the previous five years, a felony conviction of a drug-related offense, including but not limited to use, distribution or possession of controlled substances, criminal possession of precursors to dangerous drugs, criminal manufacture of dangerous



drugs, criminal possession of imitation dangerous drugs with the purpose to distribute, criminal possession, manufacture of or delivery of drug paraphernalia, or driving under the influence of alcohol or other drugs;

(d) the provider, staff member, or anyone residing in the home has been named as a perpetrator in a substantiated report of child abuse or neglect; or

(e) the provider, staff member, or anyone residing in the home has been convicted of abuse, sexual abuse, neglect, or exploitation of an elderly person or a person with a developmental disability.

(4) The department may deny or revoke a license upon finding that the provider, staff member, or anyone residing in the home has a conviction for a misdemeanor partner and family member assault, misdemeanor endangering the welfare of a child, misdemeanor unlawful transaction with a child, or a crime involving an abuse of the public trust.

(5) The provider or staff member or anyone residing in the home who is charged with physical or sexual violence against any person, or any felony drug-related offense and awaiting trial may not provide care or be present in the facility pending the outcome of the criminal proceeding.

(6) The AFCH is responsible for assuring that the persons covered by this rule have met these requirements before providing care.

(7) The provider, staff member, or anyone residing in the home must not pose any potential threat to the health, safety, and well-being of the residents in care.

AUTH: 50-5-103, 50-5-215, MCA

IMP: 50-5-103, 50-5-215, MCA

NEW RULE VII ADULT FOSTER CARE HOMES (AFCH): ADDITIONAL REQUIREMENTS FOR AN AFCH LICENSED TO SERVE INDIVIDUALS WITH MENTAL ILLNESS

(1) An AFCH licensed to serve individuals with mental illness must admit only those residents that meet the following admission criteria:

(a) be diagnosed with a severe disabling mental illness as defined in ARM 37.86.3503;

(b) be medically stable;

(c) must not be an immediate danger to themselves or others; and

(d) be able to take medications when prompted.

(2) Documentation of the resident meeting admission criteria in (1) must be in the resident's file.

(3) The AFCH must contract with a licensed mental health center that has an adult foster care endorsement pursuant to ARM 37.106.1906 or have a formal working relationship with a case management team providing mental health services to the resident.

(4) The AFCH provider contracting with a mental health center must participate in residents' treatment planning as required in ARM 37.106.2016.

(5) In addition to requirements in ARM 37.100.162, a placement agreement must set forth the terms of the resident's placement, the responsibilities of the foster care provider, the responsibilities of the mental health center or case management

team, the responsibilities of the resident, and when appropriate, the responsibilities of the resident's legal guardian.

(6) The AFCH provider contracting with a mental health center must participate in orientation as required in ARM 37.106.2004.

(7) The AFCH will assign chores to residents only as outlined in the resident's treatment plan.

(8) AFCH providers must have a written policy describing the consequences to the resident when violating any rules which the AFCH itself establishes.

(9) If the house rules are violated by the resident the AFCH will submit an incident report to the mental health center or case management team within 24 hours.

AUTH: 50-5-103, 50-5-215, MCA

IMP: 50-5-103, 50-5-215, MCA

NEW RULE VIII ADULT FOSTER CARE HOMES (AFCH): APPLICATION OF OTHER RULES (1) To the extent that other licensure rules in ARM Title 37, chapter 106, subchapter 3 conflict with the terms of this subchapter, the terms of this subchapter apply to an AFCH.

AUTH: 50-5-103, 50-5-215, MCA

IMP: 50-5-103, 50-5-215, MCA

NEW RULE IX DISCHARGE CRITERIA (1) The provider will not discharge or transfer a resident from the AFCH without prior planning, including:

(a) providing a written 30-day prior notice to the resident or resident's legal representative; and

(b) maintaining a record that includes:

(i) the date of discharge;

(ii) the reason for discharge;

(iii) the disposition of money, valuables, and medications held for safekeeping; and

(iv) a forwarding address of the resident or the resident's legal representative.

(2) A resident may be involuntarily discharged in less than 30 days for the following reasons:

(a) the resident has a medical emergency;

(b) the resident exhibits behavior that poses an immediate danger to self or others; or

(c) the resident has not resided in the facility for 30 days.

AUTH: 50-5-103, 50-5-215, MCA

IMP: 50-5-103, 50-5-215, MCA

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

37.100.101 ADULT FOSTER CARE HOMES, (AFCH): PURPOSE (1) The purpose of these rules in this subchapter is to establish licensing requirements for adult foster family care homes (AFCH).

(2) The purpose of an ~~adult foster family care home~~ AFCH is to offer in a home-like safe environment, light personal care, custodial care, and supervision to aged or disabled adults who require assistance in meeting their basic needs. Residents' needs are to be addressed in a manner that supports and enables residents to maximize their ability to function at the highest level of independence possible.

(3) An ~~adult foster family care home~~ AFCH is limited to light personal care, custodial care, and supervision and does not provide skilled nursing care except as provided for in [NEW RULE I].

(4) The licensing requirements for operating an ~~adult foster home~~ AFCH do not apply to persons in a mutual or shared living arrangement.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-101, 50-5-103, 50-5-215, 50-5-216, 53-5-303, MCA

37.100.102 ADULT FOSTER CARE HOMES, (AFCH): DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment, or the misappropriation of personal property of any person receiving care in an AFCH.

~~(1) (2) "Adult foster family care home AFCH" means a private home operated by one or more persons 18 years of age or older which or other facility that offers, except as provided in 50-5-216, MCA and [NEW RULE I], only light personal care, custodial care, and supervision to four or fewer disabled adults, or aged persons who are not related to the operator owner or manager of the home by blood, or marriage, or which offers light personal care or custodial care to aged persons adoption, or who are not under full guardianship of the owner or manager. (An adult foster family care home shall hereafter be referred to as an adult foster home.)~~

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

(4) "Applicant" means a person who is applying for an AFCH license.

(5) "Case plan" means a document created by the resident's case manager, or a representative from a placement agency which identifies supports and services that are necessary for the resident to achieve independence, dignity, and personal fulfillment while in the AFCH.

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

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

~~(3) (8) "Disabled adult" means a person 18 years of age or older who has been determined to be disabled by the social security administration, the veteran's administration (full disability), the department of public health and human services for the purposes of Medicaid eligibility or a court of competent jurisdiction as defined by ARM 37.100.302, 37.100.402, and 37.86.3503.~~

(9) "Exploitation" means an act taken by a person who has the trust of an AFCH resident to obtain control of or to divert to the advantage of another, the ownership, use, benefit, or possession of the resident's money, assets, or property

by means of deception, duress, menace, fraud, undue influence, or intimidation with the intent or result of depriving the AFCH resident of the ownership, use, benefit, or possession of his or her money, assets, or property.

(10) "Incident report" means a written report documenting an unusual occurrence, accident, or illness involving a resident.

(11) "License" means the document issued by the department that authorizes a person to operate an AFCH.

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

(i) remains the same, but is renumbered (a).

~~(ii)~~ (b) "Supervision" means guidance of a person as he carries out activities of daily living, including reminding a resident to maintain his medication schedule as directed by his physician practitioner, reminding him of important activities to be carried out, assisting him in keeping appointments, and being aware of his general whereabouts even though he may travel independently about the community.

(8) remains the same, but is renumbered (13).

(14) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving care in an AFCH, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect. The term includes, but is not limited to:

(a) deprivation of food, shelter, appropriate clothing, medical care, or other services;

(b) failure to follow a prescribed care plan or medical treatment; or

(c) failure to respond to a resident in an emergency situation by indifference, carelessness, or intention.

(15) "Practitioner" means an individual licensed by the Department of Labor and Industry who has assessment, admission, and prescription authority.

(16) "PRN medication" means an administration scheme, in which a medication is not routine, is taken as needed, and requires the licensed practitioner or individual resident's cognitive assessment and judgment for need and effectiveness.

(17) "Provider" means a person who operates or is licensed to operate an AFCH. The provider may be involved in the direct care of residents in the AFCH.

(18) "Resident" means anyone accepted for care in an AFCH.

(19) "Resident agreement" means a signed, dated, written document drawn up between the resident, the resident's legal representative or caseworker, and the provider. The resident agreement lists all charges, services, refunds, and discharge criteria.

(20) "Resident's legal representative" or "resident's representative" means the resident's guardian, or, if no guardian has been appointed, then the resident's family member or other appropriate person acting on the resident's behalf.

~~(7)~~ (21) "Responsible person" means a relative or friend of the resident or an advocate the resident, resident's legal representative, or any other person identified by the department or the placing agency in the placement resident or resident's legal representative, as specified in the resident's agreement.

(22) "Restraint" means a personal restriction that immobilizes or reduces the freedom of movement of an individual's arms, legs, or head.

(23) "Serious incident" means:

- (a) a suicide attempt;
- (b) use of excessive physical force by the provider or staff;
- (c) physical or sexual assault of a resident by another resident, provider, or staff;
- (d) injury to a resident which requires emergency medical care;
- (e) falls or accidents that injure a resident;
- (f) known or suspected abuse or neglect of a resident by the provider or staff;
- (g) unusual behavioral episodes; or
- (h) the death of a resident.
- (9) (24) "Skilled nursing care" means 24-hour care supervised by a registered nurse or a licensed practical nurse under orders of an attending physician the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.
- (25) "Staff" means any person whether paid or unpaid, other than the provider, who is employed by the provider and is providing care to residents in an AFCH.
- (26) "Survey" means a detailed study to determine if applicant or provider meets all applicable licensing requirements.
- (27) "Third party services" means care and services provided to a resident by individuals or entities who have no fiduciary interest in the facility.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-101, 50-5-103, 50-5-215, 50-5-216, 53-5-303, MCA

37.100.120 ADULT FOSTER CARE HOMES; (AFCH): LICENSE REQUIRED (1) Every ~~adult foster home shall~~ AFCH must be licensed by the department.

(2) Any person, group, or corporation that establishes or operates an ~~adult foster care home~~ AFCH without a license from the department is in violation of law and subject to prosecution.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-103, 50-5-111, 50-5-112, 50-5-113, 50-5-201, 50-5-215, 53-5-303, MCA

37.100.121 ADULT FOSTER CARE HOMES; (AFCH): LICENSES (1) The department ~~shall~~ may issue a license for a period of one to three years in duration for an ~~adult foster home~~ AFCH, under ARM 37.100.121, to any license applicant meeting all of the requirements established by these rules ~~in this subchapter~~ and the governing statutes.

(2) The department ~~shall~~ will determine whether an applicant meets the requirements after conducting a licensing ~~study~~ survey.

(3) The department ~~shall~~ will renew the license on the expiration date of the current license if:

(a) the ~~licensee~~ provider makes written application for ~~issuance~~ renewal at least 30 days prior to the expiration date of the current license; and

(b) the licensee provider continues to meet all requirements established by these rules in this subchapter, as determined by the department after a licensing study survey.

(4) An ~~adult foster home~~ AFCH may be licensed to care for four or fewer aged persons or disabled adults in need of such care, and shall must not care for more residents than the number allowed by their license.

AUTH: 50-5-103, 50-5-215, ~~53-5-304~~, MCA

IMP: 50-5-103, 50-5-204, ~~50-5-210~~, 50-5-215, ~~53-5-303~~, MCA

37.100.125 ADULT FOSTER CARE HOMES, (AFCH): LICENSING PROCEDURES (1) An applicant shall must apply for an ~~adult foster home~~ AFCH license prior to the operation of such home or prior to the expiration of a current license. ~~Application shall be made to the department upon forms provided by the department.~~

(2) Application for a license upon forms provided by the department and accompanied by the required fee must be made to the Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59602-2953.

~~(2)~~ (3) Upon receipt of an application for license or renewal of license, the department shall will conduct a study and evaluation of the home and applicant within 30 days licensing survey to determine if the home and applicant comply with the meet all licensing requirements for licensure as established by these rules. Within 60 45 days of receipt of a complete application the department shall will make a final determination of whether the home will be licensed.

~~(3)~~ (4) If the department determines that an application or accompanying information is incomplete or erroneous, the department will notify the applicant of the specific deficiencies or errors and the applicant shall submit the required or corrected information within 60 days. The department shall will not issue a license until it receives all required information.

(5) Upon completion of the licensing survey, the department will notify the applicant or provider, in writing, whether they have met the licensing requirements. If the facility has any deficiencies that need to be corrected, the applicant or provider must submit an acceptable plan of correction within ten business days.

~~(4)~~ (6) Each applicant or provider must report to the department any changes which would affect the current accuracy of information provided on the application within 48 hours prior to the effective date of the change.

~~(5)~~ (7) After denial of If an initial application is denied, an applicant who does not meet the standards set forth in these rules can reapply when those standards are complied with met. The department will respond within 30 days of the new application.

(8) A provider must report a change of address to the department at least three weeks prior to moving. The department will then evaluate whether the new residence meets the licensing requirements before the provider may operate an AFCH in the new residence.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-103, 50-5-203, 50-5-215, ~~53-5-303~~, ~~53-5-312~~, MCA

37.100.130 ADULT FOSTER CARE HOMES; (AFCH):

LICENSE REVOCATION, DENIAL, REVOCATION, OR SUSPENSION (1) The department may deny, revoke, or suspend an adult foster home AFCH license by written notification to the licensee specifying the reasons for denial, revocation or suspension within 30 days of the department's determination that provider for any of the following reasons:

(a) the ~~home~~ provider is not in compliance with licensing requirements established by this subchapter; or

(b) the licensee provider has made misrepresentations to the department, either negligent or intentional; or

(c) the licensee provider, staff, or other persons at in the home have been named as a perpetrator in a substantiated report of abuse, neglect, or exploitation of an aged person or disabled adult a child or adult;

(d) the licensee provider, staff, or other persons in the home pose a risk or threat to the safety or welfare of any resident of the home;

(e) any AFCH resident requires physical restraint;

(f) any AFCH resident will need to be carried from the home during any emergency that requires evacuation unless under the direct care of a hospice provider; or

(g) any AFCH resident is totally incontinent or is incontinent and unable to manage their incontinence with more than minimal supervision.

~~(2) The department must deny a license if:~~

~~(a) any adult foster care resident of the home requires physical restraint.~~

~~(b) any adult foster care resident of the home will need to be carried from the home during any emergency that requires evacuation.~~

~~(c) any adult foster care resident of the home is totally incontinent or is incontinent and unable to manage their incontinence with more than minimal supervision.~~

~~(3) (2) If any violation of these rules the licensing requirements by a licensee provider, staff, or person in the home places a resident in imminent risk of injury or harm, the license may be immediately revoked.~~

~~(4) (3) If the department finds that a current licensee provider who is operating an adult foster care home AFCH is out of compliance with the standards set forth in these rules, the department will not revoke or deny renewal of the license if all the following conditions are met:~~

~~(a) and (b) remain the same.~~

~~(c) the licensee provider submits a written ~~correction~~ corrective action plan within 45 ~~ten~~ days of the department's notification of noncompliance specifying how compliance will be made within 30 days of receipt of the notification of noncompliance; and~~

~~(d) the department approves the ~~correction~~ corrective action plan.~~

AUTH: 50-5-103, 50-5-215, ~~53-5-304~~, MCA

IMP: 50-5-103, 50-5-207, 50-5-215, ~~53-5-303~~, MCA

37.100.135 ADULT FOSTER CARE HOMES; (AFCH): FAIR HEARING

(1) remains the same.

(2) ~~The licensee shall~~ provider will cease operation of the ~~fooster home~~ AFCH pending the fair hearing in those instances where the revocation or suspension of the license is based upon actions that the department has determined places a any resident in imminent risk of harm or injury.

AUTH: 2-4-201, 50-1-202, 50-5-103, 50-5-215, ~~52-3-304~~, ~~53-5-304~~, MCA

IMP: 50-5-103, 50-5-208, 50-5-215, ~~50-5-227~~, ~~52-3-303~~, ~~53-5-303~~, MCA

37.100.140 ADULT FOSTER CARE HOMES; (AFCH): ENVIRONMENTAL REQUIREMENTS (1) ~~The home shall~~ AFCH must be located close to community resources.

(a) ~~The home shall~~ AFCH must be accessible to transportation -- (e.g., bus, train, or car).

(b) ~~The home shall~~ AFCH must be in reasonable proximity to shopping areas, churches, senior centers, medical and dental clinics, and hospitals.

(2) ~~The home shall~~ AFCH must have an adequate and safe ~~sewage system~~ and water supply. A public water supply must be used, if available.

(a) If a nonmunicipal water source is used, coliform sampling must be done before licensing and, at least, two separate times per year. The sampling schedule must include collection in the two time periods that the water source is most likely to be contaminated, such as in April through June and September through October or as directed by the local health authority.

(b) The water samples must be tested for coliform bacteria and action taken to ensure potability.

(c) Water test records must be retained for three years.

(d) Nonpotable water sources must be marked "not for human consumption."

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

(3) The AFCH must be connected to a public sewer system, if available. If septic tanks or other nonmunicipal sewage systems are used, they must be in good working order.

(a) The AFCH must repair or replace the sewage system whenever:

(i) it fails to accept sewage at the rate of application;

(ii) seepage of effluent from or ponding of effluent on or around the system occurs;

(iii) contamination of a potable water supply or state waters is traced to the system; or

(iv) a mechanical failure occurs.

(4) Mop water or soiled cleaning water must be disposed of immediately after use in a utility sink or a toilet.

~~(3)~~ (5) ~~The foster home~~ AFCH must be equipped with a telephone landline. Telephone numbers of the hospital, police department, fire department, ambulance, and poison control center must be posted by each telephone. The provider must



notify the department, the residents' case managers, and the residents' legal representative within 24 hours any time the AFCH phone number is changed.

~~(4)~~ (6) The licensee shall provider must keep the home clean and in good repair and the premises shall must be kept free from objects, materials, and conditions which constitute a danger to the residents.

(7) All operable windows that may be left open must be fitted with insect screens.

(8) A minimum of ten foot-candles of light must be available in all rooms and hallways, with the following exceptions:

(a) all reading lamps must have a capacity to provide a minimum of 30 foot-candles of light;

(b) all toilet and bathing areas must be provided with a minimum of 30 foot-candles of light;

(c) general lighting in food preparation areas must be a minimum of 50 foot-candles of light; and

(d) hallways must be illuminated at all times by at least a minimum of five foot-candles of light at the floor.

~~(5)~~ (9) The foster home shall AFCH must make adequate provisions for laundering of residents' personal laundry.

(a) A mechanical washer and a hot air dryer must be available.

(b) Soiled linens and clothing must be stored in closed containers prior to laundering in an area that is separate from food, storage, kitchen, and dining areas.

(c) Sheets and pillowcases must be laundered at least weekly, and more often, if soiled.

(d) All bed linens, towels, and washcloths must be dried in the dryer.

(e) Clean laundry must be protected from contamination from soiled laundry.

(f) Anyone who handles soiled laundry must wash their hands before handling clean laundry.

~~(6)~~ (10) The licensee shall facility must be equipped to provide an adequate amount of hot water for a resident's use between the temperature range of 110° through 120° F at the fixture.

~~(7)~~ (11) Bedrooms. There shall must be no more than 3 persons three residents in any bedroom and each room shall must include:

(a) and (b) remain the same.

(c) exclusive of toilet rooms, closets, lockers, wardrobes, alcoves, or vestibules, each resident's bedroom shall must have 80 square feet per each bed placed in that bedroom;

(d) and (e) remain the same.

(f) an adequate closet or wardrobe, lighting sufficient for reading and other resident activities, bureau or dresser or equivalent, and at least 4 one chair with arms in each bedroom for every 2 two residents;

(g) remains the same.

(h) a licensee shall provider must provide washable bedding for each bed, which includes 2 two sheets, a pillow case, minimum of 4 one blanket, and a bedspread; and

~~(i) bed linen shall be changed at least weekly or more often if soiled;~~

~~(j)~~ (i) ~~a licensee shall~~ provider must have a linen supply for twice the number of beds in the home.

~~(8)~~ (12) ~~Living rooms.~~ An AFCH must provide distinct living and sleeping areas. All areas shall must be well lighted, heated, and ventilated.

(a) The home shall must have a living or day room area for use by a resident and his visitors.

(b) The living and sleeping areas for a ~~given~~ resident shall must not be in separate wings, units, or buildings.

(c) A living room, dining room, or other room not ordinarily used for sleeping shall must not be used for sleeping by residents, ~~or foster family members~~ providers, or other persons living in the home.

~~(9)~~ (13) ~~Bathrooms.~~ One toilet, sink, and bath or shower shall must be provided for each six ~~adults~~ individuals in the ~~foster home~~ AFCH, ~~including the foster family and the residents.~~ At least one toilet and sink shall must be available on each floor where residents' bedrooms are located.

~~(a)~~ All bathrooms used by residents shall have the following:

~~(i)~~ a toilet and sink;

~~(ii)~~ a tub or shower equipped with non-skid mats or material and permanent sturdy hand grips;

~~(iii)~~ an individual towel rack and place for resident's toilet articles; and

~~(iv)~~ (a) Light switches must be located by the door in all bathrooms.

(b) Bathrooms shall must be vented to outside or have an outside window.

(c) Every bathroom door must be designed to permit the opening of the locked door from the outside in an emergency.

(d) Bathtubs and showers must be equipped with a nonskid surface and sturdy grips.

(e) The use of a commode/movable toilet must only be temporary, less than 30 days, and be accompanied by the resident's practitioner's order.

Commodos/movable toilets must be emptied frequently and cleaned and sanitized daily, or more often if necessary.

~~(10)~~ (14) ~~Kitchen.~~ The kitchen shall must be equipped properly to prepare and serve adequate meals.

(a) Waste shall must be kept in leakproof, nonabsorbent containers with close fitting covers for garbage, refuse, and other solid waste.

(b) Waste shall must be removed from the kitchen daily and from the premises at least weekly.

~~(b)~~ (c) Poisonous compounds, caustics, and other dangerous material shall must not be kept in the food preparation area.

~~(c)~~ (d) The kitchen shall must be maintained in a clean and sanitary condition.

~~(11)~~ (15) ~~Heating.~~ The home shall AFCH must be heated by centralized heating or its equivalent. All rooms used by residents shall be kept at a temperature of all rooms must be between range of 68° F through 72° F during non-sleeping hours 76° F in the daytime and 60° F through 76° F during sleeping hours.

(a) If the heating mechanism is located in the basement of the home, the separation shall ~~shall~~ must include at least a 1 3/4 inch solid wood core door or equivalent to create a floor separation between the basement and the first floor.

(b) Flame producing water heaters ~~or incinerators shall~~ must be installed with the same protection as the heating mechanism.

(c) The use of space heaters in an ~~an foster home~~ AFCH is prohibited.

(d) remains the same.

(e) In existing homes where an American ~~g~~Gas ~~a~~Association (AGA) approved sealed combustion wall heater has been installed in accordance with both the AGA and the manufacturer's recommendations, approval will be given if the unit is located on an outside wall, obtains combustion air directly from the outside, and vents products of combustion directly to the outside.

(f) ~~All wood burning stoves must be properly installed and inspected by the local fire inspector or a state fire marshal. The use of wood burning stoves or fireplaces is prohibited unless documentation is available showing that proper installation and inspection have taken place by a qualified inspector.~~

(i) Documentation will be required upon initial licensure or initial installation and annually, thereafter.

(ii) Documentation must be kept for three years and be available for inspection.

(g) Storage of combustible materials is prohibited in ~~rooms~~ areas containing the heating mechanism, water heater, or incinerator.

(h) The heating mechanism shall must be inspected by the ~~licensee~~ provider at least yearly and necessary maintenance and repairs made.

(i) At least one carbon monoxide detector is required on each level of the AFCH.

~~(12) With respect to any conditions in existence prior to April 5, 1996, any requirement of ARM 37.100.140 may be waived at the discretion of the department if:~~

~~(a) physical limitations of the adult foster care home would require disproportionate expense or effort to comply with a requirement, with little or no increase in the level of safety to the residents and staff; or~~

~~(b) compliance with a requirement would involve unreasonable hardship or unnecessary inconvenience, with little or no increase in the level of safety to the residents and staff.~~

~~(13) With respect to any conditions in existence prior to April 5, 1996, the specific requirements of ARM 37.100.140 may be modified by the department to allow alternative arrangements that will provide the same level of safety to the residents and staff, but in no case shall the modification afford less safety than that which, in the discretion of the department, would be provided by compliance with the corresponding requirement in ARM 37.100.140.~~

AUTH: 50-5-103, 50-5-215, ~~53-5-304~~, MCA

IMP: 50-5-103, 50-5-204, 50-5-215, ~~53-5-303~~, MCA

37.100.141 ADULT FOSTER CARE HOMES, (AFCH): FIRE SAFETY (1) A smoke detector approved by a recognized testing laboratory, which is properly

maintained and regularly tested, shall must be located on each level of the ~~foster~~ ~~home~~ AFCH and in all sleeping areas and common living areas with the exception of the kitchen and bathrooms. ~~Mobile homes shall have smoke detectors near all sleeping areas.~~

(2) If individual battery-operated smoke detectors are used, the following maintenance is required:

(a) smoke detectors must be tested at least once a month to ensure that they are operating correctly;

(b) new operating batteries must be installed at least once each calendar year; and

(c) documentation demonstrating required maintenance must be kept on-site for a period of 24 months.

~~(2) (3) A workable portable fire extinguisher, with a minimum rating of 2A10BC, must be located on each floor of the home with a minimum rating of 2A10BC is required. Fire extinguishers shall must be readily accessible at all times.;~~

(a) mounted on the wall not to exceed five feet from handle to floor and no closer than four feet from the floor;

(b) no more than 75 feet from each other;

(c) inspected, recharged, and tagged at least once a year by a person certified by the state to perform such services; and

(d) not obstructed or obscured from view.

(3) remains the same, but is renumbered (4).

~~(4) (5) No stove or combustion heater will be so located as to block escape or be located under a stairway in case of malfunctioning of the stove or heater.~~

~~(5) (6) Exits.~~ Exits are defined as a means of egress or passage to safe ground outside a building.

(a) Every room used for sleeping, living, or dining shall must have at least two exits that are remote from one another, at least one of which shall must be a door or stairway providing a means of unobstructed travel to the street or ground level outside of the building. Of these two exits, one may be an egress window which meets the criteria in (6)(c)(i) through (iv).

(b) All exits shall must be maintained in unobstructed, easily traveled condition at all times, free of ice and snow on the outside.

~~(c) Where basements are regularly~~ Every floor of the AFCH that is utilized for resident activities, ~~there shall be~~ will have two remote exits. Of these two exits, one may be a window which meets the following criteria found in the National Fire Protection Association Unified Facilities Criteria (NFPA UFC) 101 or Section 1025 International Building Code (IBC) (2006):

(i) emergency escape and rescue openings must be a minimum net clear opening of 5.7 square feet;

(ii) minimum net clear opening of not less than 24 inches in height and 20 inches in width;

(iii) window openings must not be greater than 44 inches from the floor; and

(iv) window openings must be operational from the inside without use of keys or tools.

(d) Stairways in a basement may only be used as an exit if they provide a means of unobstructed travel to the outside of the building.

~~(d)~~ (e) Doors which form a part of a required exit shall must be at least 36 inches in width in new construction, and at least 30 inches in width in existing facilities, and In all cases, exit doors must insure be of adequate width for residents requiring wheelchairs.

~~(e)~~ (f) Traffic to and from any room shall must not be through a resident's bedroom.

~~(f)~~ (g) The first floor of an  ~~Foster home shall~~ AFCH must have at least two separate and independent exits leading to the outside.

~~(g)~~ (h) Homes accommodating residents who regularly require wheelchairs, shall must be equipped with ramps located at each exit to the outside. A ramp shall must not exceed 1 foot of rise in 12 feet of run.

~~(h)~~ (i) ~~No~~ The required path of travel to the outside shall must not be through rooms that are subject to locking or otherwise controlled by a person other than the person seeking to escape.

~~(6)~~ (7) ~~No~~ Access to rooms that are occupied room by residents shall have as its must not be by means of ~~access~~ a trap door, ladder, or folding stairs.

~~(7)~~ (8) Every door that can be locked shall must have a means to open the door from the outside in case of emergencies. Locks on closet doors shall must be openable from both sides.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-103, 50-5-215, 53-5-303, MCA

37.100.145 ADULT FOSTER CARE HOMES, (AFCH): OTHER SAFETY REQUIREMENTS (1) Rugs shall must be attached to the floor or made of ~~non-skid~~ nonskid material. ~~Unattached throw rugs and scatter rugs are prohibited.~~

(2) Corridors shall must be well lighted, uncluttered, and at least 3 three feet wide.

(3) Stairways and ramps shall must have sturdy banisters. ~~Open stairways should be protected by gates, if aged persons are being cared for. Stairs shall be provided with non-slip tread and shall be at least 3 feet wide.~~

(a) Open stairways should be protected by gates unless gates do not enhance the safety of the residents.

(b) Stairs and ramps must be provided with nonslip tread and will be at least three feet wide.

~~(4) Every bathroom door shall be designed to permit the opening of the locked door from the outside in an emergency.~~

~~(5) Bathtubs and showers shall be equipped with non-skid mat and sturdy grips.~~

~~(6)~~ (4) A provider or staff person must have either visual or auditory contact, at least every 30 seconds, with any resident who is able to bathe unassisted but has a condition which may render them physically and/or mentally helpless, or both.

(5) Extension cords may not be used as permanent wiring.

(6) All appliances, lamp cords, and exposed light sockets must be suitably protected to prevent accidents or electrocution.

(7) All areas occupied by residents shall must be well lighted. Night lights shall must be provided for each resident. Light switches shall must be located at the door and switches in bathroom shall be located at least 4 feet from tub or shower. ~~Exposed light bulbs shall not be used in the home.~~

(8) The yard area shall must be kept free from all hazards, nuisances, refuse, and litter.

(9) All guns must be kept in locked storage and ammunition must be kept in locked storage separate from the gun.

(10) The provider must ensure the residence is equipped with accessible first-aid supplies including a first-aid kit with sufficient supplies available at all times. A first-aid kit must:

(a) be readily available on-site as well as in all vehicles used by the AFCH;

(b) meet the standards of an appropriate national organization for the activity being conducted and the location and environment being used;

(c) be reviewed with new staff for contents and use; and

(d) be inventoried on a quarterly basis and restocked as needed.

(11) Policies and procedures must be in place for the safe use and storage of fuels and all heat sources.

(a) All alcohol, detergents, chemical sanitizers, and related cleaning compounds and other chemicals must be stored in their original properly labeled container in a safe location.

(b) Combustible and flammable materials and liquids must be properly stored in their original properly labeled container so as not to create a fire hazard.

(c) Poisonous compounds such as insecticides, rodenticide, and other chemicals bearing the EPA toxicity labels "warning" or "danger" must be kept in their original properly labeled container and under lock and key.

(d) Poisonous or toxic chemicals may not be stored above or adjacent to food, dishes, utensils, or food-contact surfaces. They may not be used in such a manner that they could contaminate these articles.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-103, 50-5-215, 53-5-303, MCA

#### 37.100.146 ADULT FOSTER CARE HOMES; (AFCH): EMERGENCY

PREPAREDNESS (1) The adult foster home shall Each AFCH must have written policy and procedures for emergency evacuation to be followed in the case of fire or other emergency. A provider and resident evacuation drill must be conducted at least two times annually, no closer than four months apart.

(a) All household members must participate in an evacuation drill.

(b) The provider will retain a written report including, but not limited to the date and time of the drill and those involved in the drill. The provider must retain a copy of the written report, on-site, for a period of 24 months.

(2) Residents, adult members of the foster family and other persons in the home shall be familiar with emergency procedures and such procedures shall be practiced with the residents at least quarterly. A new resident will be instructed in emergency evacuation upon admission.

(3) Emergency procedures shall must include a plan for removing all residents, including residents who need assistance in exiting.

(4) New staff members must also be oriented in how to conduct an evacuation within one week of employment and before being scheduled as the only staff in the home. Documentation of this orientation must be maintained in the staff member's personnel record.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-103, 50-5-215, 53-5-303, MCA

37.100.150 ADULT FOSTER CARE HOMES, (AFCH): PROGRAM (1)

The ~~licensee shall~~ provider must provide light personal care, custodial care, and supervision for residents, including:

(a) ~~a~~ A minimum of three regular, nutritious, ~~attractively prepared and well-~~ balanced meals ~~per day~~ must be served family style per day and a minimum of two snacks offered to residents per day;

~~(i)~~ (b) Not more than 15 hours shall can elapse between the evening and morning meal.

~~(ii)~~ (c) All perishable foods shall must be stored at such temperatures as will protect against spoilage. Temperatures must not register over 41° F for refrigeration and 0° to 10° F in the freezer.

(d) Thermometers must be kept in freezer and refrigerator compartments.

~~(iii)~~ (e) All foods, while being stored, prepared, or served shall must be protected against contamination and be kept safe for human consumption.

~~(iv)~~ (f) Home canned foods ~~cannot~~ must not be used for resident's meals.

~~(v)~~ (g) The ~~licensee shall~~ provider must prepare meals which comply with the special dietary needs of the resident ~~who has been placed on a special diet as~~ prescribed by his physician the resident's practitioner.

~~(b) opportunities for residents to participate in community organizations and activities.~~

~~(2) The licensee shall cooperate with the placing agency to implement the resident's case plan.~~

~~(3) The licensee shall allow each resident the opportunity to voluntarily practice his or her own religion. Residents shall be permitted by the licensee to attend religious services of the resident's choice in the community and to visit with representatives of their faith.~~

~~(4) The licensee shall allow each resident the opportunity to identify with his cultural heritage.~~

~~(5) The licensee shall allow for the privacy for the resident. The licensee shall provide appropriate sleeping arrangements, separate storage space for clothing and personal articles, and a place to display pictures, belongings and other personal items.~~

~~(6) The resident shall be provided the opportunity for bathing and personal grooming as desired.~~

~~(7)~~ (2) If a resident requires assistance in bathing, the person assisting should be of the same sex whenever possible. If not possible, appropriate covering shall must be used to ~~assure~~ ensure the resident's privacy.

~~(8) The resident shall be allowed to dress as fashion, personal tastes, cleanliness and the season warrants.~~

~~(9) (3) An A provider, staff member, or adult member of the foster family or another adult employee of the licensee shall AFCH must always be present when a resident is in the home except as may be provided in a resident's individual assessment plan. Only if stated in the resident's case plan or resident's agreement can a resident be left in the home alone. This time must be no longer than four hours in a 24-hour period.~~

~~(10) The licensee shall not subject the resident to moral, social and financial exploitation.~~

~~(11) (4) Residents shall must not be used as employees of the foster home AFCH or be coerced into performing tasks such as housekeeping, laundering, and yard work for the operator provider or others.~~

~~(12) A resident shall have access to the use of the United States mails, and may write and send mail at his own expense without censorship and receive mail addressed to him unopened.~~

~~(13) A resident shall have daily, private access and use of a telephone for local calls. Similar access is to be granted for long distance calls which are made collect or for which charges are otherwise paid by the resident.~~

~~(14) Restrictive visiting hours shall not be maintained and residents shall be allowed to receive reasonable numbers of visitors at any reasonable time.~~

~~(15) An elderly or disabled adult shall not be denied admission to, or be discharged from, a foster home because of race, religion, color or national origin.~~

(5) The provider will transport residents to medical, dental, mental health, and other appointments related to the resident's care plan, unless the resident, case manager, or guardian has arranged for other transportation.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-103, 50-5-215, 53-5-303, MCA

### 37.100.151 ADULT FOSTER CARE HOMES; (AFCH): MEDICATION

~~(1) All residents must take self-administer their own medications.~~

~~(2) The licensee shall, as necessary, be provider is responsible for providing assistance to the resident in taking his medications, including, but not limited to:~~

~~(a) reminding the resident to take medications removing medication from secured storage;~~

~~(b) assisting with the removal of a cap providing verbal suggestions, prompting, reminding, gesturing, or providing a written guide for self-administering medications;~~

~~(c) assisting with the removal of a medication from a container for residents with a disability which prevents performance of this act; or handling a prefilled, labeled medication holder, labeled unit dose container, syringe or original marked, labeled container from the pharmacy, or a medication organizer;~~

~~(d) observing the resident take the medication. opening the lid of the container for the resident;~~

~~(e) guiding the hand of the resident to self-administer the medication;~~



(f) holding and assisting the resident in drinking the fluid to assist in the swallowing of oral medications; and

(g) assisting with removal of a medication from a container for residents with a physical disability which prevents independence in the act.

(3) If the licensee must assist the resident in taking medicine in any way, the licensee shall assure that a medication record is kept noting the doses taken and not taken. Resident medication organizers may be prepared up to four weeks in advance and injectable medications as specified in (4)(c) by the following individuals:

(a) a resident or a resident's legal representative;

(b) a resident's family caregiver, who is a person related to the resident by blood or marriage or who has full guardianship; or

(c) as otherwise provided by law.

(4) The individual referred to in (3) must adhere to the following protocol:

(a) verify that all medications to be set up carry a practitioner's current order;

(b) set up medications only from prescriptions in labeled containers dispensed by a registered pharmacist or from over-the-counter drug containers with intact, clearly readable labels; and

(c) set up injectable insulin up to seven days in advance by drawing insulin into syringes identified for content, date, and resident. Other injectable medications must be set up according to the recommendations provided by the pharmacy.

(5) An accurate medication record for each resident must be kept of all medications, including over-the-counter medications, for those residents who require monitoring or assistance or both by the provider. The record must include:

(a) name of medication, reason for use, dosage, route, and date and time taken;

(b) name and telephone number of the prescribing practitioner;

(c) any adverse reaction, unexpected effects of medication, or medication error, which must also be reported to the resident's practitioner;

(d) allergies and sensitivities, if any; and

(e) resident specific parameters and instructions for PRN medications.

(4) (6) The medication record shall must indicate the reason for the omission of any dose of medication.

(7) A medication record need not be kept for those residents for whom written authorization has been given by their practitioner to keep their medication, including over-the-counter medication, in their rooms and to be fully responsible for taking the medication in the correct dosage and at the proper time. The authorization must be renewed on an annual basis.

(5) (8) Prescription drugs shall must be purchased from a licensed pharmacy, labeled with the name, address, and telephone number of the pharmacy, name of the resident, name and strength of the drug, direction for use, date filled, prescription number, and name of physician the practitioner, and expiration date. Controlled substances shall must have a warning label on the bottle.

(6) (9) There shall be a locked storage space provided for resident's medication. All prescription and nonprescription medication must be contained in a locked storage area.

~~(7) All medication shall be left in the container in which it was provided to the resident by the pharmacist or physician.~~

(10) Medications requiring refrigeration must be separated from food in a clearly labeled, designated locked container.

~~(8) (11) If the resident is not able to do so, the licensee shall~~ provider must destroy all discontinued prescriptions.

(a) The provider will maintain a record of all destroyed or returned medications in the resident record.

(b) Documentation of disposition including resident's name, name of drug, quantity, and prescription number shall must be signed by the licensee individual disposing of the medication. This documentation shall be filed in the resident's record.

~~(9) Over the counter drugs shall be locked up and made available only to the resident who purchased them.~~

(12) No resident, provider, or staff member may be permitted to use another resident's medication.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-103, 50-5-215, 53-5-303, 53-5-304, MCA

37.100.152 ADULT FOSTER CARE HOMES, (AFCH): ILLNESSES, ACCIDENTS, SERIOUS INCIDENTS, ABSENCES, OR DEATH (1) In case of an accident or sudden illness, the ~~licensee shall~~ provider must immediately obtain needed care immediately for the resident and notify the ~~relative, other person or agency responsible for placing and maintaining the resident in the foster home~~ resident's legal representative within 24 hours.

~~(2) Accidents or incidents resulting in injury to resident which required medical attention shall~~ Any serious incident must be reported to the department's quality assurance licensing surveyor and the resident's legal representative within ~~72~~ 24 hours or the next business day following the incident. An accident record or incident report shall be prepared for any accident involving a resident, foster family member or visitor. ~~Incident includes seizures or highly unusual behavior episodes.~~ An accident record or incident report shall include the following information:

(3) The incident report must be in writing and include the following information:

(a) name of ~~the person~~ resident involved in ~~accident or~~ the incident;

(b) date, hour, place, and cause of ~~accident or~~ the incident;

(c) description of the ~~accident or~~ incident;

(d) effect of ~~accident or~~ the incident on ~~the person~~ resident involved and type of care given;

(e) name of ~~physician~~ practitioner notified and time of notification, if necessary;

(f) ~~physician's~~ practitioner's statement regarding extent of injuries, treatment ordered, and disposition of ~~person~~ resident involved;

(g) time and date guardian notified;

(h) time and date of notification of case manager, if the resident has a case manager; and

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

(4) As required by 52-3-811, MCA, any person who operates or is employed by an AFCH must report any suspected abuse, neglect, or exploitation of a resident to adult protective services.

~~(3) (5) If a resident is absent from the home without explanation for a period of 4 hours or more, the foster parents shall notify the local law enforcement authorities, the licensing social worker, the relatives or legal guardian and the person or agency responsible for placing and maintaining the resident in the adult foster home. If a resident is unexpectedly absent from the home without explanation for a period of four hours or more, the provider must notify local law enforcement, case managers, and relatives or legal representatives of the resident.~~

(4) (6) When a resident dies, the licensee shall immediately notify the resident's physician, the next of kin or legal guardian, the licensing social worker and the person or agency responsible for placing and maintaining the resident in the adult foster home. When a resident dies, the provider must immediately notify the resident's practitioner and the resident's legal representative.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-103, 50-5-215, 53-5-303, MCA

### 37.100.153 ADULT FOSTER CARE HOMES; (AFCH): RECORDS (1)

The licensee shall provider must submit to the department, upon its request, any reports required by federal or state law or regulation.

~~(2) A licensee shall report a change of address to the department at least 3 weeks prior to moving, and the department shall evaluate whether the new residence meets the licensing requirements before the licensee may operate an adult foster home in the new residence.~~

~~(3) As required by the Elder Abuse Prevention Act, 53-5-511(3)(e), MCA, any person who operates or is employed by an adult foster home shall report any abuse, neglect or exploitation of a resident to the department or its local affiliate.~~

(4) (2) The licensee shall provider must maintain a record regarding each resident in the home which shall contain at least the following information:

(a) name, address, and telephone number of next of kin or legal guardian;

(b) name, address, and telephone number of person or agency responsible for placing the resident in the home and a copy of the placement resident agreement;

(c) remains the same.

(d) the name and address of the preferred physician resident's practitioner and hospital;

(e) any accident reports or other incident reports regarding the resident;

(f) any grievance or complaints lodged by the resident;

(g) an individual record of prescribed medication taken or not taken medication records as described in ARM 37.100.151;

(h) a signed medical authorization form by the resident or resident's legal representative allowing the provider to obtain needed medical information regarding the resident;

(h) (i) all resident records shall be updated at least quarterly. documentation of medical appointments or consultations and results;

(i) a signed copy of the resident rights statement as required in [New Rule II]; and

(k) a copy of the resident's treatment plan or case plan, if placed through the Mental Health Foster Care Program or the department's Developmental Services Division.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-103, 50-5-204, 50-5-215, 53-5-303, MCA

37.100.157 ADULT FOSTER CARE HOMES; (AFCH): THIRD PARTY PROVIDERS (1) It is recognized that residents may require temporary in-home services from third party providers. The following third party services are allowed in ~~adult foster care homes~~ an AFCH:

(a) If the ~~home operator~~ provider who is the only service provider in the home becomes temporarily incapacitated (~~2 for two~~ weeks or less), a home attendant, personal care attendant, or other qualified person may come into the home to provide the needed services.

(b) If a resident's ~~physician~~ practitioner prescribes temporary (~~less than 30 days~~) in-home skilled nursing services for less than 30 days to prevent the resident's hospital confinement, skilled nursing services may be provided in the ~~adult foster home~~ AFCH for a period not to exceed 30 days.

(c) If a current resident requires hospice services, such services may be provided in the ~~adult foster home~~ AFCH for an indefinite period.

(2) The third party in-home skilled nursing services ~~or hospice services~~ shall as outlined in (b) must not exceed 2 two hours per day per resident.

(3) The day and hour limits established in this ~~section~~ rule are not limitations on the availability of services from any state or federally funded in-home service programs, but are established to ~~ensure that adult foster care homes~~ AFCHs provide light personal care and custodial services, not skilled nursing services.

(4) Payment from third party in-home services is the responsibility of the resident.

(5) Documentation of the services provided to the resident must be retained in the resident record.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-103, 50-5-215, 53-5-303, 53-5-304, MCA

37.100.161 ADULT FOSTER CARE HOMES; (AFCH): RESIDENT'S FUNDS (1) ~~A resident~~ Residents shall must have access to and use of ~~his or her~~ their personal funds. Exceptions shall be are subject to provisions of the resident's ~~assessment~~ case plan.

(2) A licensee provider may handle a resident's finances only if no other responsible person is available and willing to do so.

(a) ~~The maximum value of money and valuables a licensee shall accept~~ accepted by the provider for safekeeping shall must not exceed \$100.00 per resident.

(b) ~~A Resident's funds shall~~ must be kept separate and apart from all funds and monies of the licensee provider and treated as a trust obligation of the licensee provider.

(3) ~~The foster parent~~ provider is responsible for maintaining a written record of each resident's personal property and personal financial transactions, except for those residents who are capable of handling their own financial affairs or those residents whose financial affairs are handled by a relative, guardian, or conservator.

(4) ~~The licensee shall keep a~~ A current monthly record of the income, and source of income, and expenses for each resident, except those residents who are capable of handling their own financial affairs, must be maintained by the AFCH provider.

(a) ~~The licensee shall~~ provider must ensure that the resident's personal money and personal property is not appropriated or misused by any person. Any unethical use of a resident's money or property by another shall must be reported to ~~the department or its local affiliate~~ adult protective services pursuant to ~~53-5-544~~ 52-3-811, MCA.

(5) Transactions prohibited:

(a) ~~A member or employee of a foster family shall~~ provider, staff, or any person living in the home must not borrow money, property, or other valuables from a resident.

(b) Sales or other financial transactions between a ~~resident and a member or employee of the foster family~~ provider, staff, or any person living in the home are prohibited.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-103, 50-5-215, 53-5-303, MCA

37.100.162 ADULT FOSTER CARE HOMES; (AFCH): PLACEMENT RESIDENT AGREEMENT (1) ~~The licensee shall~~ provider must enter into a written placement agreement with the ~~agency or person placing the elderly or disabled adult in the home~~ prospective resident or the resident's legal representative prior to admission to the home. The provider must give the prospective resident or the resident's legal representative a copy of the agreement and must explain the agreement in full. The agreement must include at least the following items:

(a) ~~The agreement shall specify the responsibilities of the licensee and the placing agency or person requesting care.~~ a statement explaining light custodial care provided to the resident, as well as the limitations of an AFCH;

(b) a statement describing specific services the AFCH will provide;

(c) a statement describing transportation of the resident to and from medical appointments and activities;

(d) a statement explaining the resident's responsibilities including, but not limited to house rules, the grievance policy, and policy regarding pets;

~~(b) (e) The agreement shall set forth the a statement explaining specific charges that will be made to the resident for care and an itemized statement of what expenses in addition to the cost for care will be charged to the resident including fines, penalties, or late fees that will be assessed against the resident;~~

~~(f) a statement that the agreed-upon provider rate will not be changed unless 30 days advance written notice is given to the resident or resident's legal representative, or both;~~

~~(g) criteria for requiring transfer or discharge of the resident;~~

~~(h) the provider's policy for refunding payment in the event of the resident's absence, discharge, or transfer from the AFCH and the provider's policy for refunding security deposits; and~~

~~(i) signature of AFCH provider, resident, and legal representative.~~

~~(c) (2) A copy of the agreement shall must be filed in the resident's file.~~

~~(d) For those residents placed in the home by the department, a copy of the agreement shall be sent to the department within 3 days from the day the adult begins to reside in the home.~~

~~(e) As part of the written agreement for residents not placed by the department, the licensee will state the policy for refunding the resident's payments.~~

~~(2) The prospective resident or his guardian shall be allowed to participate in the selection of a foster home.~~

~~(3) When there are changes in services, financial arrangements, or requirements governing the resident's conduct and care, a new resident agreement must be executed or the original agreement must be updated by addendum. New agreements and any addenda must be signed and dated by the provider, the resident, and the resident's legal representative.~~

~~(3) (4) If there is a question as to whether the aged or disabled adult can be adequately cared for in foster care an AFCH, the licensee or placing agency shall provider must contact the adult's personal physician resident's practitioner for an evaluation and written recommendation stating that placement in the AFCH is the most appropriate level of care for the resident and that the resident meets the criteria set in [New Rule I].~~

~~(4) The licensee shall not discharge or transfer a resident from the home without prior planning, including but not limited to:~~

~~(a) determining that the move is in the resident's best interest;~~

~~(b) maintaining a record that includes date of discharge, the reason for discharge, the disposition of money and valuables held for safekeeping and a forwarding address of the resident or a relative, guardian or other adult;~~

~~(c) providing 10 days prior notice to the placing agency or person responsible for placing the resident.~~

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA

IMP: 50-5-103, 50-5-215, 53-5-303, MCA

37.100.165 ADULT FOSTER CARE HOMES; (AFCH): FOSTER PARENTS GENERAL REQUIREMENTS FOR PROVIDERS AND STAFF (1) Providers and staff must be at least 18 years of age or older.

~~(1) (2) Foster parents, employees and other members of the household Providers and staff must be in good physical and mental health. To assist the department in evaluating the mental and physical health of applicants, foster parents, employees and members of the foster home household, the applicant or licensee shall cooperate with the department in providing the following information:~~

~~(a) (3) A CSD-SS-33, An applicant, provider, staff, and each adult living in the AFCH must complete a "personal statement of health for licensure" form provided by the department must be completed for each person living in the household or employed by the licensee and submitted to the department with the initial application for licensure and annually thereafter. Forms must be submitted to the department with the initial application for licensure or application for license renewal.~~

~~(b) The applicant for licensure or relicensure shall complete the application form provided by the department, which shall include questions regarding whether the applicant or other member living in the household has received inpatient or outpatient treatment for mental illness, drug or alcohol abuse.~~

~~(c) Any applicant, any licensed foster parent or any member of the foster home household or employed by the licensee may be asked to obtain a psychological evaluation or medical examination by the department.~~

~~(d) Any applicant, any licensed foster parent or any member of the foster home household or person employed by the licensee may be asked to sign an authorization of release of medical or psychological records allowing the department to obtain medical records concerning the applicant, licensed foster home parent, any other member of the household or person employed by the licensee.~~

~~(e) Any applicant, licensed foster parent, member of the foster home household or staff member may be asked to sign an authorization of release of criminal record information if the department believes that the person may pose a risk or threat to the safety or welfare of any resident of the home.~~

~~(4) The department may request an evaluation of the applicant, provider, staff, or any person living in the home if there are grounds to believe they have engaged in behaviors which may place residents at risk of harm.~~

~~(5) An applicant, provider, staff, or any adult living in the home must complete a "release of information" form provided by the department to conduct a criminal, protective services, and, if applicable, a tribal criminal and protective services background check.~~

~~(6) No individual in the AFCH may pose a risk to the safety and well-being of the residents.~~

~~(7) A provider must maintain a current CPR/First-Aid Certification.~~

~~(a) Staff must obtain a current CPR/First-Aid Certification within 30 days of hire. Certification must be kept current.~~

~~(2) (8) An foster family AFCH must include at least one adult who lives in the home on a permanent basis and who is not engaged in employment outside the home. Exceptions may be granted by the department if there is adequate provision for alternative care.~~

~~(3) (9) The foster parent, employees and other members of the household shall provider and staff must:~~

- ~~(a) accept agency supervision;~~
- ~~(b) (a) share information about the residents with the department and the agency or persons responsible for placing and maintaining the resident in the home resident's legal representation; and~~
- ~~(c) (b) cooperate with any resident's physician practitioner in assisting the resident in following the physician's practitioner's recommendations ~~to~~ for the resident.~~

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA  
IMP: 50-5-103, 50-5-215, 53-5-303, MCA

37.100.170 ADULT FOSTER CARE HOMES, (AFCH): COMPLAINTS GRIEVANCES (1) ~~The licensee shall~~ provider must have a written grievance policy which outlines the procedures to be followed by a resident in presenting a grievance to the family concerning his care in the home.

(2) ~~A resident's grievances and complaint record shall~~ written grievance report must be maintained ~~which shall include copies of all residents' grievances or complaints filed in chronological order in the resident's record.~~

(3) ~~The report shall~~ must include the nature of the complaint, the date of the complaint, and a statement indicating how the issue was resolved.

AUTH: 50-5-103, 50-5-215, 53-5-304, MCA  
IMP: 50-5-103, 50-5-215, 53-5-303, MCA

37.100.175 ADULT FOSTER CARE HOMES, (AFCH): PROHIBITED PRACTICES (1) ~~An foster home shall~~ AFCH must not subject any resident to ~~physical~~ restraint, isolation, corporal punishment, personal humiliation, or the withholding of meals, water, clothing, mail, or visits.

(2) ~~A licensee~~ provider, staff, or any person living in the home is prohibited from providing skilled nursing care except as provided for in [New Rule I].

(3) ~~A foster home shall not provide~~ Licensed day care services provided to adults or children, ~~except that a foster home under this rule may provide day care services to children while foster care residents are present in the home for a maximum period of 3 hours per any 24-hour period, if special approval is given by the regional administrator~~ cannot be provided in the AFCH. The regional administrator's decision on granting or denying special approval must be based on the following:

~~(a) facts demonstrating the ability (or, in cases where special approval is denied, the inability) of the operator to provide for the needs of both the child day care enrollees and the foster care residents during the 3-hour period of time that this rule allows for the presence of both foster care residents and child day care enrollees;~~

~~(b) facts bearing on whether there is beneficial social interaction between the foster care residents and the day care enrollees; and~~

~~(c) any other relevant facts and/or circumstances bearing on the best interests of the foster care residents and the day care enrollees.~~



(4) Foster care services to children cannot be provided in the AFCH with the following exceptions:

(a) the AFCH resident lived in the home prior to the age of 18;

(b) services are provided pending adoption as defined in 41-1-103, MCA; or

(c) kinship foster care provided pursuant to 52-2-602, MCA.

(5) Smoking is prohibited in an AFCH by residents or individuals residing or visiting in the home pursuant to the Montana Indoor Clean Air Act, 50-40-104, MCA.

AUTH: 50-5-103, 50-5-215, ~~53-5-304~~, MCA

IMP: 50-5-103, 50-5-215, 50-5-216, ~~53-5-303~~, MCA

5. The department proposes to repeal the following rules:

37.100.105 PROCEDURES FOR OBTAINING SERVICES is found on page 37-24446 of the Administrative Rules of Montana.

AUTH: 53-5-304, MCA

IMP: 53-5-303, MCA

37.100.110 GENERAL is found on page 37-24451 of the Administrative Rules of Montana.

AUTH: 53-5-304, MCA

IMP: 53-5-303, MCA

## 6. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing New Rules I through IX, amendments to ARM 37.100.101, 37.100.102, 37.100.120, 37.100.121, 37.100.125, 37.100.130, 37.100.135, 37.100.140, 37.100.141, 37.100.145, 37.100.146, 37.100.150, 37.100.151, 37.100.152, 37.100.153, 37.100.157, 37.100.161, 37.100.162, 37.100.165, 37.100.170, and 37.100.175, and the repeal of ARM 37.100.105 and 37.100.110. This entire subchapter must be updated to reflect current practice as well as to coincide with revised language in current statutes. Proposed changes in this subchapter also incorporate updates with respect to 50-5-216, MCA. Additional changes have been made with respect to placing individuals in adult foster care. The department no longer has the authority to place individuals as the result of repealed statutes 52-3-301 and 52-3-314, MCA; therefore the reference was stricken.

As part of a periodic review, the department is amending its rules to eliminate outdated and unnecessary provisions, to specify language as a result of definitional changes, and to align terminology with language currently used within the industry. Examples would include changing "physician" to "practitioner," "licensing study" to "licensing survey," and "adult foster family care" to "adult foster care home (AFHC)," among others.

The proposed amendments are necessary to implement better organization, proper rule numbering, and to correct grammatical and spelling errors. Punctuation is amended to comply with administrative rule formatting requirements.

#### New Rule I

The department proposes New Rule I that incorporates 50-5-216, MCA and provides an exception to ARM 37.100.175(1) which prohibits the placement of residents who need "skilled nursing care." Some individuals with severe disabilities have resided in a "foster home environment" for a significant period of time; 50-5-216, MCA allows those youth to continue in their current foster care placement after reaching the age of 18 in spite of the severe disability which may require skilled nursing care. Providers continue to question the inconsistency of level of care. By providing the reference to 50-5-216, MCA, we are identifying the criteria for the exception.

#### New Rule II

Resident right's provisions are currently outlined in ARM 37.100.150. New Rule II is being proposed in order to separate rules that are not related in content. This section is being proposed to reflect current universal resident's rights practices for elderly or disabled individuals and to mirror the Montana Long-Term Care Residents Bill of Rights. By including the written and signed acknowledgement of resident's rights, providers are ensuring that residents are aware of these rights.

#### New Rule III

New Rule III is being proposed because it is necessary to inform providers of the restrictions and parameters on the issued license. This proposed new rule identifies the protocol that providers need to follow up on closure of the facility in accordance with 50-5-201, MCA.

#### New Rule IV

The department is proposing New Rule IV to ensure that AFCHs have proper protocols for infection control and preventing of the spread of communicable diseases.

#### New Rule V

AFCHs are intended to create a family-like setting and are frequently established in single-family dwellings. At times, the provider may be a pet owner or the residents may wish to bring their own pet to the facility. Animals, including pets, can be a source of illness for people. Hand washing is the most important way to reduce the spread of infection. New Rule V is necessary to establish criteria to ensure that pets will be free and clear of health hazards and not present a danger to visitors, or to those who reside or work in the AFCH.

### New Rule VI

The department currently requires criminal and protective services background checks to be conducted. However, current rule does not outline specific crimes that would constitute disqualifying criteria for issuance of a license; nor does the rule define crimes which would prohibit individuals from providing care in an AFCH. The department is proposing this rule to reflect federal standards regarding staff in facilities and resident's safety and well-being.

### New Rule VII

New Rule VII applies to AFCHs who provide care for persons with mental illness. With the support and direction of a licensed mental health center or case management team, these AFCHs are increasing in number, and have a unique set of regulatory and treatment considerations that vary from the typical AFCH. With the addition of this rule, AFCH providers will develop their environment and their policies to assist these adults in working toward the most independent living possible. The skills needed for independent living can be incorporated into the resident's treatment plan and may include such things as the resident being responsible for his or her own transportation, learning domestic skills through doing chores, and so forth. While creating this setting, it is important the AFCH provider be familiar with mental illness, have training to handle emergencies, and to be an integral part of the resident's treatment planning.

### New Rule VIII

The department is proposing New Rule VIII to specify that the terms of this subchapter apply to an AFCH when conflicts with any other licensure rules occur.

### New Rule IX

AFCHs provide only light personal care. Often times, residents exceed that level of care and require additional services the AFCH cannot provide. The department is proposing New Rule IX to outline the discharge criteria for residents who exceed the level of care. The criteria, as proposed, is intended to provide the resident or guardian, or both, the necessary information concerning the reasons for discharge and to supply information regarding appropriate placement options. It also establishes a time frame within which to do so. In emergency situations, if determined to be a serious threat to self or others, a resident may need to be discharged without ample notice. This would be done in order to protect the health and welfare of the resident, provider, and other residents in the home.

AFCHs are subject to the Montana Long-Term Care Residents' Bill of Rights as found at 50-5-1101, MCA, et seq. Thus, the department has also proposed this new rule to be in compliance with these necessary criteria.

### ARM 37.100.101

The department proposes to amend this rule to specify the purpose of an AFCH. The new language in (2) supports the requirements in New Rule I.

ARM 37.100.102

The department proposes to amend this rule to define terms used in this subchapter. New definitions have been added to provide clear understanding of terminology that has been added or revised.

ARM 37.100.120, 37.100.121, and 37.100.135

As part of a periodic review, the department is amending its rules to eliminate outdated and unnecessary provisions, specify language as a result of definitional changes, and align terminology with language currently used within the industry. The acronym AFCH has been added in place of "foster home" or "adult foster care home." The term "licensee" has been changed to "provider" to use current industry language. The term "shall" has been replaced with "must" for clarity.

ARM 37.100.125

The department proposes to amend this rule to reflect current practice in licensing procedure by changing the order of the rule. Minor changes in (3), (4), (5), and (6) are necessary to reflect changes in language to coincide with the revised language in the current statute.

ARM 37.100.130

The department is proposing to amend this rule to specify the timelines for the licensing process and to support the department's ability to deny or revoke a license in the event that the AFCH is jeopardizing the resident's health and safety by being out of compliance with New Rules I and VI.

ARM 37.100.140

The department is proposing to amend (2) through (4) to provide for continued safe environments for homes, including requirements for homes that use nonmunicipal water supply and sewage systems as well as other environmental health requirements. In consulting with the Department of Environmental Quality (DEQ), the department was advised that annual samples were not adequate in proving safety. Water quality changes throughout the year especially in the spring months and autumn months.

Section (5) adds a facility requirement for a "landline" telephone. This addition addresses questions about the appropriateness of only a cell phone available at the home. A landline phone is more reliable for emergency purposes because dropped calls from cellular phones are more likely to occur and dispatchers can trace the

source of the call quickly. The notification requirement of a change in telephone number in (5) ensures necessary communication and contact with persons or agencies outside of the home.

Sections (6) and (7) are being amended to ensure the healthy and sanitary conditions in the AFCH and to reflect the current language and practices in the minimum requirements for all health-care facilities found at ARM 37.106.321.

Sections (13)(c) and (d) are being amended to ensure that the resident is safe in the bathroom and can be assisted in the bathroom in case of an emergency. Section (13)(e) is being amended to allow for the short term use and sanitary use of a commode/movable toilet. Use of a commode/movable toilet outside of the provisions of this rule could indicate that the resident exceeds the level of care available in an AFCH.

Section (14)(c) is being amended to require that dangerous materials are locked up rather than just separate from food sources. This is intended to protect residents from accidental food contamination and from the misuse of dangerous materials due to impaired judgment.

Section (15) is being amended to adjust temperatures as recommended by the health department in order to ensure the temperature in the home is appropriate and comfortable for the residents. Section (15)(f) is being amended to strengthen the requirement for documented inspections of wood burning stoves and fireplaces. Section (15)(i) is being amended to prevent hospitalization or death of residents from accidental carbon monoxide poisoning.

#### ARM 37.100.141

The department has consulted with the Department of Justice, Fire Prevention Division (State Fire Marshall's office) to ensure fire safety protection for residents of an AFCH. Fire safety requirements are being amended, including smoke detectors and fire extinguishers, to reduce the risk of serious injury or death to individuals in the home. Basements regularly utilized by residents must have an egress window in accordance with Unified Facilities Criteria (UFC) or International Building Code (IBC) regulations. Specific requirements for egress windows have been added to assist the provider in ensuring the basement is equipped with an emergency exit that meets current fire and building code standards.

#### ARM 37.100.145

An amendment is being proposed in (1) to specify the use of rugs. Rugs offer a more family-type feel to the facility. As long as the rugs are not a tripping or slipping hazard, they are acceptable in the AFCH. The stairways and ramps have been defined in more detail to be in compliance with fire safety and building codes.

Sections (5) and (6) regarding use of extension cords have been amended at the request of the State Fire Prevention Division to reduce the risk of fire hazard.

Since residents at the AFCH may have impaired judgment which could lead to the misuse, accidental or otherwise, of a firearm, (9) is being amended to reduce the risk of accidental injury or death from firearms which might be present in the home.

Section (10) is being amended to ensure that providers can respond appropriately to minor injuries.

Because of possible impaired judgment in AFCH residents which can cause the misuse of toxic or flammable materials, (11) is being amended to reduce the risk of accidental injury or poisoning from flammable or toxic materials which may be present and used in a home.

#### ARM 37.100.146

After consultation with the Department of Justice, State Fire Prevention Division, the department is proposing to amend requirements for conducting emergency evacuation drills. The requirements have been reduced from once each quarter to two times per year. This change will provide consistency with other healthcare facility rules as specified in ARM 37.106.2866(8) and (9).

#### ARM 37.100.150

After consultation with the department's Food and Consumer Safety Section, the department is proposing to amend this rule by adding temperature specifications that will protect food against spoilage.

Resident's rights have been moved to New Rule II which separates the information into its own specific rule. Thus, this information is struck from ARM 37.100.150.

Section (3) is being amended to ensure that residents receive custodial care and supervision according to their individual resident agreements or case plans, by not allowing residents to be alone for an extended period of time.

Section (5) is being amended in response to a problem that surveyors were finding in some homes where the residents had missed medical appointments due to lack of transportation. It is the intent that the AFCHs provide transportation to these appointments as providers are required to know the resident's current physical and emotional status and provide appropriate care.

#### ARM 37.100.151

The department proposes to amend this rule to define criteria for medication supervision. The criteria listed are also found in the State of Montana's Health Care

Facility Rules assisted living facilities found at ARM 37.106.2805. This information is specifically found under the definition of "self-administration assistance."

It is the department's intent that residents are as independent as possible, but some circumstances necessitate assisting residents in taking their medication to prevent missed or inaccurate dosing. Documentation of assistance ensures accountability of medications handled by the provider. This coincides with the department's attempt to ensure the health and well-being of residents in this setting.

#### ARM 37.100.152

The department is proposing to amend this rule to eliminate redundancy in information and to clearly define for providers the procedure for reporting events in the home that impact residents. The incident report serves as a tool to monitor any nonroutine events. These reports are reviewed by the department to determine if the event is a serious incident as defined in these amendments to ARM 37.100.102 and if a plan of action or possible intervention is needed to prevent possible abuse, neglect, or exploitation of the resident in the home.

The requirement for reporting abuse, neglect, or exploitation has been moved from ARM 37.100.153 to this rule as it clearly points out the provider's duty by law to report those incidents.

#### ARM 37.100.153

The department is proposing to amend this rule to monitor on-going health care services provided to the resident. Documentation of services will assist provider, staff, and the resident to be aware of the resident's current health conditions and appropriate treatment. Documentation will help determine appropriateness of placement of the resident in adult foster care.

#### ARM 37.100.157

An AFCH is limited to providing light personal care and custodial care of the resident. Admission criteria determine the needs of the residents. Occasionally health concerns do arise that require care above and beyond the scope of adult foster care. This rule allows for temporary intervention to occur on behalf of the resident to prevent unnecessary placement in a more structured environment. This rule provides the parameters and limitations of third-party services in the AFCH. The department is proposing to amend this rule by adding the requirement that written documentation of third-party health care services, provided to the resident, be retained in the resident's file.

#### ARM 37.100.161

The department is proposing to update terminology of the assessment plan to case plan which is a more consistent use throughout interagency involvement.

Amendments are proposed to accurately address the appropriate statutory reference for reporting exploitation. The department is also proposing to amend this rule to extend prohibition to anyone living in the household, regardless of relationship, to prevent exploitation of the resident in the AFCH.

ARM 37.100.162

The department is proposing to amend this rule by specifying the purpose and content of the written agreement that must be signed before admission to the AFCH. The proposed amendment is necessary to define responsibilities of both parties.

The agreement is considered a contract between the resident, the resident's legal representative, and the AFCH provider. The agreement specifically identifies the costs of care to the resident, what services the AFCH will provide to the resident and admission and discharge criteria. The rule outlines the terms in which the placement agreement/contract can be modified and provides minimum criteria as to what the agreement or contract must include.

ARM 37.100.165

The department is proposing to amend this rule to clearly define provider and staff minimum requirements. This proposed amendment is necessary to provide guidelines to ensure the safety and well-being of residents cared for in the AFCH. Requiring background checks, protective service checks, and the flexibility of other assessment tools help the department determine the minimum assessment of potential of risk or harm to residents served. Requiring a release of information facilitates this process.

Currently there are no CPR/First-Aid training requirements for adult foster care providers or their staff. The department is proposing to amend this rule and include CPR/First-Aid certification to ensure that providers and staff are prepared to respond in cases of a medical emergency and ultimately ensure the well-being and safety of the residents served.

ARM 37.100.170

The resident's ability to file a grievance is part of the resident's rights. The department is proposing amending this rule to reflect a more accurate procedure. The reference to "complaint" has been changed to "grievance" to be more consistent with the language of resident rights.

ARM 37.100.175

The department is proposing amendments to define services that are prohibited in an AFCH. Current rule prohibits day care services within AFCHs; however, it allows for an exception to be granted by the regional administrator. This exception has been taken out. Young children in day care do carry with them the potential of



illnesses that can spread and cause serious if not fatal infections in elderly residents, thus, placing them at high risk. Concern for staff ratio and attentiveness in an AFCH that also provides day-care services to children compromises the supervision and care needed for the elderly. Lastly, the needs of children and elders can be conflicting and cause undue harm on either population.

This rule is being amended to comply with the requirements of 50-5-216, MCA. This rule specifies the exceptions set forth in New Rule I which indicate the circumstances when skilled nursing care is not prohibited in AFCHs.

The rule is amended to prohibit an AFCH from being dually licensed as a youth foster care for the same concern that day care poses as stated above. However, the rule does allow licensure as an AFCH for families who are fostering a child(ren) and are in the process of adopting that child(ren). The changes also allow families to provide kinship care as defined in 52-2-602, MCA to ensure the preservation of the provider's family.

The department is amending (5) by adding statutory requirements to prohibit smoking in healthcare facilities. Many concerns have arisen with the inclusion of AFCHs in nonsmoking provisions of 50-40-104, MCA. The provision is not included in the healthcare facilities statute which AFCHs operate under; therefore, providers are generally unaware of this. Providers have expressed concern regarding limiting resident's right to smoke and the provider's own right to smoke within their private residence which provides adult foster care services. The intent of the rule is to reinforce this statutory provision and to make it readily accessible to providers.

#### ARM 37.100.105 and 37.100.110

The department is repealing these rules as they are outdated. The licensure of adult foster care facilities is no longer housed in the Child and Family Services Division (CFSD) so these rules are no longer applicable. Further placement of adults into these facilities is also no longer the responsibility of CFSD.

#### Fiscal Impact

Providers will see a minor fiscal impact as a training requirement for first-aid and CPR. There is no anticipated fiscal impact to the department.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., February 13, 2014.

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

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

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

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

12. This rulemaking proceeding was begun prior to July 1, 2013; therefore, the requirements of 2-4-111, MCA, do not apply.

/s/ Francis X. Clinch  
Francis X. Clinch  
Rule Reviewer

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

Certified to the Secretary of State January 6, 2014.

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

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through III, and the	)	PROPOSED ADOPTION AND
amendment of ARM 37.80.101,	)	AMENDMENT
37.80.102, 37.80.103, 37.80.201,	)	
37.80.202, 37.80.203, 37.80.206,	)	
37.80.301, 37.80.305, 37.80.306,	)	
37.80.316, and 37.80.502 pertaining	)	
to child care assistance	)	

TO: All Concerned Persons

1. On February 6, 2014, at 3:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on January 30, 2014, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I INTENTIONAL PROGRAM VIOLATIONS (1) An intentional program violation occurs when:

- (a) a parent or guardian receives, or attempts to receive, child care assistance based on a false or misleading statement, misrepresentation, concealment, or withholding of relevant facts or information;
- (b) a parent or guardian knowingly fails to comply with the requirements for receiving child care assistance;
- (c) a provider receives, or attempts to receive, a child care assistance payment based on a false or misleading statement, misrepresentation, concealment, or withholding of relevant facts or information; or
- (d) a parent, guardian, or provider knowingly fails to comply with the requirements of the Montana Child Care Act, this chapter, or ARM Title 37, chapter 95.

(2) The department will evaluate an intentional program violation on a case-by-case basis to determine whether to impose a sanction as provided in [New Rule II].

(3) The department must impose sanctions for the following intentional program violations:

- (a) providing false employment information, including concealing employment;
- (b) providing false information regarding wages or other income;
- (c) misrepresenting or failing to disclose household membership;
- (d) failing to disclose a criminal conviction as identified in ARM 37.80.306(3);
- (e) claiming child care assistance for care provided by an ineligible provider;
- (f) misrepresenting the amount of child care needed or used;
- (g) falsifying sign-in/sign-out records; and
- (h) attempts to undermine or circumvent program requirements designed to ensure child safety, including background checks, group sizes, and child-to-staff ratios.

(4) The department may sanction other intentional program violations based on the circumstances of the violation.

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

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

#### NEW RULE II INTENTIONAL PROGRAM VIOLATION SANCTIONS

(1) The department has the discretion, based on the circumstances of the violation, to determine the appropriate sanction for the first intentional program violation. The department may impose any of the following sanctions on a parent/guardian or provider for a first intentional program violation:

- (a) issue the intentional program violation even if there is no overpayment due;
- (b) require repayment of child care assistance payments related to the program violation; or
- (c) require repayment of child care assistance payments related to the program violation and terminate the parent/guardian or provider, or both, from the Child Care Assistance Program.

(2) If a parent or guardian receives a second intentional program violation, the department will require the repayment of all child care assistance payments related to the violation and the parent will be terminated from the Child Care Assistance Program.

(3) If a provider receives a second intentional program violation, the department will require the repayment of all child care assistance payments related to the violation and may terminate the provider from the program, if appropriate.

(4) A notice of an intentional program violation is an adverse action of the department. The department will send timely notice of this adverse action, including fair hearing rights under ARM 37.80.104 and 37.5.103.

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

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

NEW RULE III AUTHORIZATION OF SERVICES – CERTIFICATION PLANS

(1) Child care assistance is provided for through an authorization of services and a certification plan. The authorization of services and certification plan include the following information:

- (a) number of children authorized to receive child care assistance;
- (b) number of hours per week authorized;
- (c) number of months authorized;
- (d) name of the child care provider; and
- (e) amount of monthly copayment that the parent must pay to the provider.

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

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

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

37.80.101 PURPOSE AND GENERAL LIMITATIONS (1) This chapter pertains to ~~payment for child care services provided to parents eligible for benefits funded under section 5082 of the Omnibus Reconciliation Act of 1990, Public Law 101-508, entitled "Child Care and Development Block Grant Act of 1990", as amended in 1996, and the "Personal Responsibility and Work Opportunity Reconciliation Act" of 1996. These rules also pertain to subsequent refunding of this program. In addition, this chapter's requirements for certification of legally certified providers under ARM 37.80.306 apply to all child care programs administered by the department where the department allows participation of legally certified providers to~~ the Best Beginnings Program, which administers payment for child care services.

(2) ~~Child care~~ Financial assistance may be available to ~~cover~~ pay a portion of a working parent's child care costs. Payment may only be made to: ~~the cost of child care incurred by working parents who are income eligible and who demonstrate a need for child care assistance in support of employment, subject to the following restrictions:~~

(a) ~~If all or part of the cost of child care is provided by another source, child care assistance will be reduced by the amount paid by the other source.~~ a licensed child care center;

(b) ~~If child care services are provided to a parent who is an employee of a child care business free or at a reduced cost as an employment benefit, the parent's child care assistance will be based on the amount the parent is required to pay out of the parent's own pocket for care of the parent's own child.~~ a registered group child care home;

(c) ~~A parent may not receive child care assistance for providing care to the parent's own child, but child care assistance may be available to pay for child care provided by another provider to allow the parent to attend child care education or training activities.~~ a registered family child care home; or

(d) ~~A parent who provides child care to another's child while their own child is cared for by someone else is not eligible for child care assistance, unless they are an employee of a child care provider that is unable to care for the parent's child. The~~

foregoing does not prevent child care assistance to an employee of a child care provider whose child receives care from that provider, so long as children other than those of the employee and the employee's employer are also attending the facility. a legally certified provider.

~~(3) A parent who is not making monthly payments on outstanding child care overpayments is not eligible for further child care assistance. Any parent who misses a payment as required by the terms of an overpayment repayment agreement or order and who does not become fully current in making all payments required under the agreement or order within the times described below will not be eligible to receive child care assistance until the parent has become fully current in making all payments required under the agreement or order, or unless the department has agreed to modify the payment schedule under the repayment agreement or order.~~

~~(a) Unless the department has agreed to a modified repayment schedule, a parent will cease being eligible to receive child care assistance if the parent has not become fully current in making all required payments on or before the 90th calendar day following the first missed payment. The period of ineligibility will begin on the 90th calendar day following the first missed payment and will end when the parent has become fully current in making all payments required under the repayment agreement or order.~~

~~(b) Unless the department has agreed to a modified repayment schedule, a parent will cease being eligible to receive child care assistance if the parent has not become fully current in making all required payments on or before the 60th calendar day following the second missed payment. The period of ineligibility will begin on the 60th calendar day following the second missed payment and will end when the parent has become fully current in making all payments required under the repayment agreement or order.~~

~~(c) Unless the department has agreed to a modified repayment schedule, a parent will cease being eligible to receive child care assistance if the parent has not become fully current in making all required payments on or before the 30th calendar day following of the third missed payment. The period of ineligibility will begin on the 30th calendar day following the third missed payment and will end when the parent has become fully current in making all payments required under the repayment agreement or order.~~

~~(d) Unless the department has agreed to a modified repayment schedule, a parent will cease being eligible to receive child care assistance when the parent has missed more than three payments, and the parent will not be eligible to receive further child care assistance until the parent has become fully current in making all payments required under the repayment agreement or order.~~

~~(4) Eligibility of parents and the amount of child care assistance provided under this chapter is based on income as set out in ARM 37.80.202. Households whose gross income exceeds 150% of the federal poverty guidelines are not eligible. Each household must actively seek all income for which the household has a legal claim.~~

~~(5) Households that are not receiving temporary assistance for needy families (TANF) may receive child care assistance for 30 calendar days while eligibility is being verified. Households may benefit from 30 calendar days of~~

~~presumptive eligibility which is an option at any time an application is submitted and a case is not already open. To apply for presumptive eligibility, a household must:~~

~~(a) submit a completed child care application which indicates the household is likely to be eligible;~~

~~(b) provide a completed authorization to release information form; and~~

~~(c) submit an appropriate child care service plan.~~

~~(6) If the household intentionally provides false information for the purpose of receiving child care assistance from a presumptive eligibility determination, the household will be responsible for repaying the overpayment.~~

~~(7) All providers must be certified for the purpose of receiving payment under a state assisted child care program. Certification under a state assisted child care program is separate and apart from registration as a group or family child care home, or licensure as a child care center, and means simply that the provider has been approved as eligible to receive state payment for child care services as allowed by this chapter. Those operating as a group or family child care home or child care center as defined by department rule and the Montana Child Care Act remain subject to child care facility registration and licensing rules in addition to requirements for certification under this chapter.~~

~~(8) Eligibility of parents and providers for child care assistance is contingent on meeting all applicable requirements under this chapter.~~

~~(9) Payment of funds under this chapter also depends on continued funding. Termination of any and all benefits may occur based on the loss or depletion of federal funding.~~

~~(10) Provision of benefits for child care services under this chapter, or under any other department child care program, does not create an employer-employee relationship between the department and the provider and may not be deemed to obligate the department to provide employment-related benefits to child care providers.~~

~~(11) Except as provided in (5), child care assistance payments are not available unless both the parent and the provider meet all eligibility requirements specified in this chapter.~~

~~(12) An application for child care assistance will be denied if the applicant fails to submit all required documentation within 30 calendar days of the date on which the application is received by the resource and referral agency. Applicants must be offered one 15-calendar-day extension to submit required documentation in the possession of a third party.~~

~~(13) (3) The Child Care Assistance Program will be administered in accordance with:~~

~~(a) remains the same.~~

~~(b) the Montana Child Care Manual in effect on September 7, 2012. The Montana Child Care Manual, dated September 7, 2012 March 1, 2014, is adopted and incorporated by this reference. The manual contains the policies and procedures utilized in the implementation of the department's Child Care Assistance Program. A copy of the Montana Child Care Manual is available at each child care resource and referral agency; at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., P.O. Box~~

202925, Helena, MT 59620-2925; and on the department's web site at [www.childcare.mt.gov](http://www.childcare.mt.gov).

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

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.102 DEFINITIONS As used in this chapter, the following definitions apply:

(1) ~~"Abuse/misuse of funds" means administrative violations of departmental, agency, or program regulations, which impair the effective and efficient execution of programs. These violations may result in losses or they may result in denial or reduction in lawfully authorized benefits to participants.~~ "Authorization of Services" means the span of time, number of hours per week, and schedule that an eligible child is approved for care at a particular provider's facility. In addition, it indicates the monthly payment amount that the family is approved to receive for the indicated child at the indicated facility. The authorization of services is used to create the Certification Plan.

(2) ~~"Certification plan" means a notice issued by the child care resource and referral agency which authorizes child care assistance and specifies the number of children for whom the document prepared by the department, or its agent, that states the amount of child care assistance is authorized, the number of hours per week for which assistance is authorized, the number of months for which authorization is granted, the name of the child care provider, and the amount of the monthly copayment which the parent must pay to the provider. Certification plans are subject to change based on circumstances affecting eligibility or the provision of child care assistance. to be paid and includes any additional information required by the department. This document is generated after the authorization of services has been created.~~

(3) ~~"Child care" means supplemental parental care as defined in ARM 37.95.102 provided by either at a licensed or registered child care facility or by a legally unregistered certified provider, for a child:~~

~~(a) from birth through the day prior to the 13th birthday a child less than 13 years of age or an individual less than 19 years of age with special needs. The terms "child care" and "day care" have the same meaning and are used interchangeably in this subchapter;~~

~~(b) who is a child with special needs; or~~

~~(c) who is under the age of 19 and under the supervision of a court.~~

~~(4) "Child care assistance" means payment made to a child care provider on behalf of a parent or guardian for child care.~~

~~(4) (5) "Child care facility" has the same meaning as the term "day care facility" as defined in ARM 37.95.102 means a licensed child care center, a registered group child care home, a registered family child care home, or a certified provider home.~~

~~(5) Child Care Manual means the Montana Child Care Manual incorporated by reference in ARM 37.80.101.~~



(6) "Child care resource and referral agency" or "resource and referral agency" means ~~the entity or organization with which an agent of the department contracts~~ authorized to administer the child care assistance program, including determination of determine eligibility for benefits, certification of providers to receive payments, and the process payment of to providers, and carry out other functions as authorized by the department.

(7) "Child with special needs" means a child ~~who is age 18 or younger~~ under 19 years of age who requires additional assistance because of an emotional or physical disability, ~~and/or a~~ cognitive delay, or both that is verified by medical records or other appropriate documentation.

(8) through (10) remain the same.

(11) ~~"Express eligibility" means the procedure used to determine income eligibility for Supplemental Nutrition Assistance Program (SNAP) participants who apply for the Best Beginnings Child Care Scholarship program.~~

(12) (11) "Federal poverty guidelines (FPG)" or "Federal Poverty Level (FPL)" means the poverty guidelines published annually by the U.S. Department of Health and Human Services based on information compiled by the U.S. Bureau of the Census. ~~The department adopts and incorporates by reference the federal poverty guidelines published at 69 FR 7336 on February 13, 2004 and updates are issued on an annual basis. The guidelines define the income levels for families that the federal government considers to be living in poverty. A Upon request, a copy of the guidelines is available from the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., P.O. Box 202952, Helena, MT 59620-2925.~~

(13) ~~"Fraud" means a legal term which encompasses the intentional, wrongful obtaining of either money or some other advantage or benefit from government programs or commercial operations. Fraud includes theft, embezzlement, false statements, illegal commissions, kickbacks, conspiracies, obtaining contracts through collusive arrangements, and similar devices.~~

(14) (12) "Full-time child care" means care certified for 30 or more hours per week on a regular basis, ~~as regular basis is defined in ARM 37.95.102.~~

(15) and (16) remain the same, but are renumbered (13) and (14).

(17) ~~"Individual with a disability" means a person with a physical, mental, or emotional defect, illness, or impairment diagnosed by a licensed physician, psychiatrist, or psychologist which is sufficiently serious as to eliminate or substantially reduce the individual's ability to obtain and retain employment for a period expected to last at least 30 calendar days.~~

(18) ~~"In loco parentis" means a person who lives with the child and has assumed the care and control of the child.~~

(15) "Intentional program violation (IPV)" means conduct by a parent or provider described in [New Rule I].

(19) (16) "Legally certified provider" means a person providing child care under this chapter, who qualifies to receive child care assistance without meeting the requirement of Title 37, chapter 95 or under any child care program administered by the department allowing for legally certified providers, who is not required to be registered or licensed as a child care facility and is not a preschool or drop-in facility,

including providers whose child care services are provided in the home of the parents.

~~(a)~~ A legally certified provider ~~certified under this chapter, or under any child care program administered by the department allowing for participation of legally certified providers,~~ may care for up to two children or all the children from the same household, and may provide child care in the home of the parents.

~~(20)~~ (17) "Monthly income" means gross monthly income of the parent or parents residing with the child and the income of adults in the household who are included in the calculation of household size as provided in ARM 37.80.202. The income of a parent not residing with the child ~~shall~~ will be counted as monthly income under this chapter only in cases where such parent's income is available to support the household of the child. Any child support provided by a parent not residing with the child to the household of such child ~~shall~~ will be counted as monthly income, and such child support ~~shall~~ will be deemed to constitute the extent to which the nonresidential parent's income is available to the household. The following sources of income are the only sources that will not be counted in determining gross monthly income:

- ~~(a)~~ Pell educational loans, scholarships, and grants;
- ~~(b)~~ national merit scholarships;
- ~~(c)~~ Carl Perkins federal scholarships;
- ~~(d)~~ state student incentive grants;
- ~~(e)~~ national direct student loan program funds;
- ~~(f)~~ guaranteed student loan program, section 502 funds;
- ~~(g)~~ Congressional teachers scholarships;
- ~~(h)~~ nursing student loans;
- ~~(i)~~ other needs-based scholarships;
- (j) through (n) remain the same, but are renumbered (b) through (f).

~~(e)~~ (g) a minor's earned income, if attending ~~secondary education~~ high school or a GED-type program; and

- ~~(p)~~ (h) supplemental security income (SSI) payments; ~~and~~
- ~~(q)~~ secondary or postsecondary education scholarships.

(18) "Overpayment" means a payment of child care assistance to a parent or provider, by the department or its agent, that is greater than the amount the parent or provider is properly authorized to receive by federal or state law. An overpayment may result from the intentional or unintentional action of a parent, guardian, provider, department, or department's agent.

~~(21)~~ (19) "Parent" or "parent or guardian" means: ~~the birth or adoptive parent, legal guardian, or other person acting in loco parentis.~~

- (a) a biological or adoptive parent of a child;
- (b) a foster parent;
- (c) a guardian generally authorized to act as the child's parent;
- (d) an individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative with whom the child lives; or
- (e) an individual who is legally responsible for the child's welfare.

~~(22)~~ (20) "Provider" means ~~both~~ legally certified, ~~and~~ legally certified-in-home providers, and licensees and registrants of other child care facilities.

~~(23) "Short-term emergency" means a break in employment which does not exceed three months and which is caused by an unforeseen medical condition of a parent or a child, excluding a normal pregnancy or normal delivery of a child.~~

~~(24) "Special circumstances" means those circumstances that might influence equal access or cultural challenges that, if not granted, would interfere with continuity of care for children.~~

(25) and (26) remain the same, but are renumbered (21) and (22).

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

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.103 CONFIDENTIALITY (1) Use and disclosure of information ~~pertaining to an applicant for, or recipient of child care assistance~~ is allowed only for the following purposes:

(a) ~~to administer child care assistance under this chapter, which includes but is not limited to:~~

~~(i) determining eligibility and the amount of assistance;~~

~~(ii) providing assistance to eligible persons;~~

~~(iii) conducting audits and investigations; and~~

~~(iv) prosecuting criminal or civil proceedings relating to assistance;~~

(b) through (d) remain the same.

(e) to provide the applicant or recipient's current address to a state or local law enforcement officer, if the officer documents that the person is a fugitive felon whose arrest is the responsibility of the officer; additionally, the officer shall must provide the name and social security number of the recipient by written request;

(f) to provide information necessary for emergency medical or other critical needs; ~~Notice of release shall be given as soon as possible to the applicant or participant;~~

(g) and (h) remain the same.

(2) An applicant or recipient of child care assistance is entitled to information regarding the applicant or recipient's case upon request, except:

(a) remains the same.

~~(b) when the requested information was provided on the condition that it not be shared with the applicant or recipient; or~~

(c) remains the same, but is renumbered (b).

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

IMP: 52-2-704, 53-2-211, MCA

37.80.201 NONFINANCIAL REQUIREMENTS FOR ELIGIBILITY AND PRIORITY FOR ASSISTANCE (1) In addition to the income requirements of ARM 37.80.202, the following nonfinancial requirements must be met in order for payments under this chapter to be made:

(a) remains the same.

(b) The monthly minimum hourly work requirement does not apply to:

(i) through (vi) remain the same.

(vii) in extreme circumstances of verifiable medical, financial, and physical hardship, a decision to approve eligibility or continued eligibility in cases not otherwise meeting the required eligibility standards can be made by either the Child Care Program manager or the chief of the Early Childhood Services Bureau. ~~Approval decisions will be based on how the hardship impacts the family and whether the family would likely meet the eligibility criteria for child care assistance when the hardship is no longer present.~~

(2) and (3) remain the same.

(4) If a ~~birth or adoptive~~ parent of a child does not live with the child and is not paying child support under a child support order recognized by a Montana district court, the custodial parent must apply for and cooperate with child support enforcement services from the department's Child Support Enforcement Division. The department determines cooperation with Child Support Enforcement Division by maintaining an open case when a case can be established or by the parent providing all appropriate requested documentation to Child Support Enforcement Division for them to open a child support case. A custodial parent who fails without good cause to apply for such services and to cooperate with the Child Support Enforcement Division will be decertified for benefits under this chapter as of the date of such failure. Good cause is defined as specified in ARM 37.78.215.

(5) remains the same.

(6) Due to limited funding for child care assistance, some households which meet all requirements for eligibility may not receive benefits. If there are insufficient funds to provide benefits to all eligible households, priority for benefits will be determined as follows:

(a) through (c) remain the same.

(d) All other eligible non-TANF households ~~shall~~ will be prioritized by ranking household income as a percentage of the Federal Poverty Guidelines (FPG). The household with the lowest percentage of income, relative to FPG, has the highest priority when funding becomes available.

(e) remains the same.

(7) Under no circumstances may payment be made for child care provided by a parent or person ~~acting in loco parentis~~ who assumes all the responsibilities of the parent of the child, even if such parent does not reside in the child's household. In addition, no payment under this chapter may be made for child care provided by any person who is included as a member of the same household as the child for purposes of determining eligibility for TANF cash assistance or child care assistance under this chapter.

(8) through (10) remain the same.

(11) During the hours school is in session, Any a licensed or registered child care provider or a legally certified provider is not eligible for child care assistance for children who fall within the age groups traditionally serviced by the public school system, or alternately a private or home school and who are attending said school for educational purposes during traditional school hours are not eligible for child care payments a child six years of age or older on or before September 10 of the current year. ~~The department will not pay for a child during normal school hours when a child is home schooled.~~

AUTH: 40-4-234, 52-2-704, 53-4-212, MCA  
IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201,  
53-4-211, 53-4-601, 53-4-611, MCA

37.80.202 FINANCIAL REQUIREMENTS FOR ELIGIBILITY; PAYMENT FOR CHILD CARE SERVICES; PARENT'S COPAYMENT (1) remains the same.

(2) Households that are not receiving temporary assistance for needy families (TANF) are presumed eligible to receive child care assistance for 30 calendar days while application information is verified.

(a) To qualify for presumptive eligibility, a household must:

(i) submit a complete application that states the household meets eligibility requirements;

(ii) authorize the release of information to the department; and

(iii) submit an appropriate child care service plan.

(b) An applicant who intentionally provides false information for the purpose of receiving child care assistance must repay the child care assistance and is ineligible to participate in the program.

~~(2)~~ (3) Assets owned by the members of the household ~~or in which the members of a household have an interest~~ are not considered in determining whether a household is eligible for child care assistance.

~~(3)~~ (4) Parents eligible for assistance are responsible for paying a monthly copayment in the amount specified in the sliding fee scale table ~~incorporated in (14).~~

(a) In general, the household's copayment is a percentage of the household's gross monthly income, based on the household's gross monthly income as compared to the FPG for a household of that size. Generally, households with income which is a higher percentage of the FPG are required to pay a higher percentage of their gross monthly income as a copayment than households whose income is a smaller percentage of the FPG. All parents receiving TANF-funded cash assistance ~~shall~~ must pay the \$10 minimum copayment amount as specified in the sliding fee scale, regardless of household size or income.

(b) In the event that the actual cost of child care for the month is less than the required copayment ~~which the parent would be required to pay according to the sliding fee scale~~ the parent will be required to pay the actual cost of care rather than the specified copayment.

(c) Parents are solely responsible for paying the copayment to the child care provider. Parents who fail to make the required payment or make arrangements satisfactory to the provider ~~for payment~~ will be ineligible for child care assistance until the amount due has been paid or arrangements satisfactory to the provider have been made.

(d) remains the same.

~~(4)~~ (5) In computing a household's size for purposes of determining eligibility and the parent's copayment, the following persons must be included as members of the household:

(a) remains the same.

(b) all persons who live in the same household as the child or children and who are the child's:

(i) ~~natural or adoptive~~ parents, or stepparents;

~~(ii) brothers and sisters, or stepbrothers and stepsisters, or half brothers and half sisters who are siblings, step-siblings, or half-siblings~~ age 17 and younger;

(c) ~~a person~~ an adult who lives in the same household as the child or children and who is the child's legal guardian or ~~is acting in loco parentis~~ who assumes all the responsibilities of the parent for the child; and

(d) remains the same.

~~(5)~~ (6) In computing a household's size for purposes of determining eligibility and the parent's copayment, the ~~household~~ parent has the option of choosing to include or exclude as a household member any other person residing with the child.

~~(a)~~ After the household exercises its option to include or exclude a person when eligibility is initially being determined, the household cannot subsequently choose a different option, unless the optional members leave the household.

~~(6)~~ (7) In computing the household's income for purposes of determining eligibility and the parent's copayment, the income of all persons counted in computing household size must be counted. ~~The income of persons not counted in computing household size will not be counted.~~

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

~~(8)~~ (9) Persons providing child care services subsidized under this chapter will be paid at the lesser of the provider's usual and customary rate or the rates specified in ARM 37.80.205. This total monthly payment due to the child care provider is computed by multiplying the applicable payment rate times the number of child care hours or days for the month for which payment is allowed under this chapter. The portion of the total monthly payment ~~which~~ that the department is required to pay is computed by subtracting the parent's monthly copayment from the total monthly payment due.

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

~~(10)~~ (11) No child care assistance payments can be issued until an authorization and corresponding certification plan ~~which~~ that authorizes payment for child care services has been created by the child care resource and referral agency.

(11) and (12) remain the same, but are renumbered (12) and (13).

~~(13)~~ (14) A household that receives any amount of child care assistance to which the household was not entitled ~~shall~~ must repay all child care assistance to which the household was not entitled, regardless of whether the applicant, the recipient, the department, or contractors acting on behalf of the department caused the overpayment.

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

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

37.80.203 REQUIREMENT TO REPORT CHANGES (1) remains the same.

(2) Applicants and recipients of child care assistance must report to the resource and referral agency administering their case any change in the following circumstances within ten calendar days from the date the applicant or recipient learns of the change:

(a) through (d) remain the same.

(e) mailing address, residential address, and phone number; ~~and~~

~~(f) any change in:~~

~~(i) (f) compliance by the applicant or recipient with any order or determination of DPHHS the department's Child Support Enforcement Division;~~

~~(ii) and (iii) remain the same, but are renumbered (g) and (h).~~

~~(3) remains the same.~~

~~(4) A household that receives any amount of child care assistance to which the household was not entitled, including due to the parent's failure to report changes in circumstances as required by this rule, shall must repay all child care assistance received but to which the household was not entitled the overpayment.~~

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

IMP: 52-2-704, 52-2-713, 53-2-108, 53-2-201, MCA

37.80.206 CERTIFIED ENROLLMENT (1) through (3) remain the same.

(4) Child care facilities must notify the child care resource and referral agency when a child is absent without explanation for five consecutive working days unless the child has been attached to a different provider. If the provider fails to notify the child care resource and referral agency when a child is absent without explanation for five consecutive working days, the department is not required to pay for any care from the date the child last attended the facility.

AUTH: 52-2-704, MCA

IMP: 52-2-704, MCA

37.80.301 REQUIREMENTS FOR CHILD CARE FACILITIES,

COMPLIANCE WITH EXISTING RULES, CERTIFICATION (1) Child care facilities must be in compliance with ~~applicable~~ the licensing and registration requirements ~~as specified in ARM 37.95.101, 37.95.1010, 37.95.1011, 37.95.1015, 37.95.1016, 37.95.1020, and 37.95.1021~~ Title 37, chapter 95 to receive payment under this chapter. Loss of eligibility for funds under this chapter for failing to comply with child care facility licensing and registration requirements including group size and staff-to-child ratios, as well as program requirements, as stipulated in the Best Beginnings Child Care Scholarship Manual is in addition to other remedies available for such violations.

(2) The provider is responsible for informing parents who are receiving child care assistance under this chapter that the provider's ~~has lost their~~ license, registration, or certification has been revoked or expired. The provider may not bill the household for payments denied by the department due to the provider's failure to comply with licensing, certification, or registration requirements.

(3) remains the same.

(4) A provider's eligibility to receive state payment under a state-assisted child care program may be terminated if:

(a) remains the same.

(b) the provider refuses access to the child care setting and child records during business hours to the following personnel:

(i) remains the same.

(ii) child care resource and referral agency personnel investigating ~~child care services~~; or

(iii) remains the same.

(5) All child care providers shall must maintain current sign-in/sign-out records for each child receiving child care assistance and utilize them as follows:

(a) Each time the child enters or leaves the provider's care, the parent or other individual authorized to deliver or pick up the child shall must initial or sign the sign-in/sign-out sheet. An electronic signature system may be used if it employs a unique and confidential identification process for individuals.

(b) Sign-in/sign-out records must indicate the child's name, the date, the hour, and the minute when the child enters and leaves the provider's care.

(c) The provider shall must make sign-in/sign-out records available to child care resource and referral agency staff and state and local government health, safety, or law enforcement representatives upon request.

(d) The provider shall must keep sign-in/sign-out records for five years beyond the date of attendance.

(e) Sign-in/sign-out records must be maintained on a daily, chronological basis that show the attendance of all children. If the provider maintains a sign-in/sign-out record by individual child or family, it does not meet the requirements of this rule.

AUTH: 52-2-704, MCA

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

#### 37.80.305 LEGALLY CERTIFIED PROVIDERS: INTRODUCTION

~~(1) Except where otherwise specified, legally certified providers are not subject to department licensing or registration requirements applicable to "child care facilities" as the term is defined by statutes and rules. Nevertheless, legally~~ Legally certified providers must be properly certified under this chapter to receive payment for child care services.

AUTH: 52-2-704, MCA

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

#### 37.80.306 LEGALLY CERTIFIED PROVIDERS: CERTIFICATION REQUIREMENTS AND PROCEDURES (1) remains the same.

~~(2) An application for certification or recertification will be denied under any of the following circumstances:~~

~~(a) the applicant fails to submit all required documentation within 30 days of the date on which the application is received by the resource and referral agency;~~

~~(b) the applicant is the child's parent or a person who is living with the child and acting in loco parentis or is a person who is included in the same household as the child for purposes of determining eligibility for TANF cash assistance or child care assistance under this chapter;~~

~~(c) the applicant discriminates in the provision of child care services on the basis of the race, sex, religion, creed, color, or national origin of the parent or the child;~~



~~(d) the applicant has currently been denied a child care provider registration or license or would be denied a registration or license if the applicant applied, or the applicant has been denied a child care provider registration or license in the past or has had a child care provider registration or license revoked for cause in the past;~~

~~(e) the background check process has exceeded 90 days in duration; or~~

~~(f) the applicant has an open child protection services (CPS) case under investigation.~~

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

~~(a) If an individual required to have a background check has lived outside the state of Montana at any time after the individual's 18th birthday, the individual must complete an FBI fingerprint background check and will be required annually thereafter at the applicant's expense.~~

~~(4) In addition to completing all required application forms for certification under this chapter, applicants for certification to provide child care as legally certified providers, and all adults in their household, must truthfully attest in writing that he or she:~~

~~(a) has not been named as the perpetrator in a report substantiating abuse or neglect of a child, or been named as a perpetrator in a report substantiating abuse or neglect of a person protected under the Montana Elder and Persons with Developmental Disabilities Abuse Prevention Act or of a person protected by a similar law in another jurisdiction or had parental rights terminated while an adult;~~

~~(b) has not been convicted or adjudicated of a crime involving harm to children, or physical or sexual violence against any person, including misdemeanor or felony convictions;~~

~~(c) is not facing a pending criminal charge involving harm to children, or physical or sexual violence against any person;~~

~~(d) does not have a pending criminal charge for a crime that bears upon the applicant's fitness to have responsibility for the safety and well-being of children;~~

~~(e) is not currently diagnosed or receiving therapy or medication for a mental illness or emotional disturbance which might create a risk to children in care. Mental illness or emotional disturbance which might create a risk to children in care shall be determined by a licensed psychologist or psychiatrist. Prior to certification, the department may require that an applicant obtain a psychological or psychiatric evaluation at his or her own expense if there is reasonable cause to believe such a mental illness or emotional disturbance exists;~~

~~(f) is not chemically dependent upon drugs or alcohol or been convicted or adjudicated of a crime involving drugs or alcohol, including misdemeanor or felony convictions. Chemical dependence on drugs or alcohol shall be determined by a licensed physician or licensed addiction counselor. Prior to certification, the department may require that the provider obtain an evaluation at his or her own expense if there is reasonable cause to believe chemical dependence exists;~~

~~(g) has not been convicted or adjudicated of a crime involving child endangerment, including misdemeanor or felony convictions;~~

~~(h) has not been convicted or adjudicated of a crime involving the unlawful possession of a weapon, including misdemeanor or felony convictions; or~~

~~(i) is the principal responsible for providing child care and is not acting as an agent for another.~~

(3) If the background checks reveal any of the following, the application will be denied:

(a) Child Protective Services (CPS) substantiation against the applicant or other adult in the household, or an open CPS case against the applicant or adult in the household;

(b) conviction of a crime involving sex;

(c) conviction of a crime involving violence;

(d) conviction of a crime involving drugs;

(e) conviction of DUI within three years of the application date (applies only to the applicant, not the other adults in the household);

(f) conviction of child endangerment;

(g) conviction of a crime involving a weapon, including firearms or knives;

(h) conviction of any crime that bears upon the applicant's fitness to have responsibility for the safety and well-being of children; and

(i) "Pending charges" by a law enforcement agency for a crime that would otherwise be a disqualifying record, if convicted.

(4) An application will also be denied for the following reasons:

(a) applicant fails to provide all necessary documentation needed to determine eligibility within the 30-day time limit;

(b) parent and provider reside at the same residence and the proposed caregiver is not an approved relative caregiver;

(c) applicant's statement of health form reveals the applicant or other adult in the household has an ongoing illness that bears upon the applicant's ability to have responsibility for the safety and well-being of children;

(d) applicant discriminates in the provision of child care services on the basis of the race, sex, religion, creed, color, or national origin of the parent or the child; or

(e) the background check process has exceeded 90 days.

~~(5) The legally certified provider's conviction for driving under the influence of alcohol or drugs more than three years prior to the application date does not constitute grounds for denial. Convictions of driving under the influence for other adults within the household that occur within three years of the application will not be grounds for denial as long as the other adults do not transport children while in the care of the legally certified provider.~~

~~(6)~~ (5) Legally certified providers must also meet the following requirements to be certified under this chapter:

(a) remains the same.

(b) within 60 calendar days of approval, attend a training or orientation session provided or approved by the department ~~which~~ that includes health and safety issues;

(c) remains the same.

(d) care for no more than two children at a time, unless the children are from the same family. If the children are from separate families, then a legally certified provider may care for no more than two children; ~~and~~

(e) must provide appropriate verification of the attestations and other requirements in this rule upon request from the department. The department may deny eligibility based upon inaccuracy or falsification of such attestations, and/or failure to fulfill the other requirements of this rule. Prior to and during certification,

the department may also require disclosure to parents of information known to the department involving any acts of the provider bearing on the provider's ability to safely care for children; and

(f) ~~Only~~ only legally certified providers may transport children while in their care.

(7) remains the same, but is renumbered (6).

AUTH: 52-2-704, MCA

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

### 37.80.316 REQUIREMENTS AND PROCEDURES FOR CHILD CARE

PAYMENTS (1) Except as provided in (2) and (3), the provider will receive payment for child care services when the care is provided outside the child's home. ~~When the care is provided by a great-grandparent, grandparent, step-grandparent or step-great-grandparent, aunt, or uncle who resides in the parent or child's home or the care is provided in the parent or child's home, payment may be made to the parent.~~

(2) and (3) remain the same.

(4) In the case of direct payment to the parents, the parents and/or the provider bear sole responsibility:

(a) remains the same.

(b) for resolving ~~any and all~~ disputes as to proper payment arising between the parent(s) and the provider.

(5) The provider must submit a claim for covered child care services on the billing form provided by the department. Except as provided in (4)(a), a completed billing form with all information and documentation necessary to process the claim must be received by the resource and referral agency of the department within 60 calendar days after the last day of the calendar month in which the service was provided. Timely filing of claims in accordance with the requirements of this rule is a prerequisite for payment. In addition:

(a) and (b) remain the same.

(c) The claim must be verifiable through the provider's sign-in/sign-out records as required in ARM 37.80.301(5).

(d) through (6) remain the same.

AUTH: 52-2-704, MCA

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

### 37.80.502 CHILD CARE UNDERPAYMENT, OVERPAYMENT, AND

OVERCLAIM: CRIMINAL PROSECUTION (1) A child care provider or a parent who has reason to believe an overpayment or underpayment of child care assistance has occurred ~~shall~~ must notify the department within ten days.

(2) The department ~~is entitled to~~ may recover the amount of any child care payment made to a child care provider or to a parent which is in excess of the amount to which the provider or parent was entitled, regardless of whether the overpayment was caused by the department, by the provider, or by the parent.

(a) through (5) remain the same.

~~(6) When a provider or a parent receives child care assistance in excess of the amount to which the provider or parent is entitled due to a willful action of the provider or parent, the department may pursue criminal charges against the provider or parent. Criminal prosecution may be pursued in addition to recovery of the overpayment as provided in (2) and (3) of this rule.~~

~~(a) A willful action includes but is not limited to the making of a false or misleading statement, a misrepresentation, or the concealment or withholding of facts or information.~~

~~(7) If a willful action is an overclaim, the following will occur:~~

~~(a) The first willful overclaim will result in:~~

~~(i) an assessment of 10% of the amount actually due being added to the amount of repayment due if an overpayment has already been made to the claimant;~~

~~(ii) if an overclaim is discovered before payment is made, deduction of 10% of the amount due from the amount paid to the claimant; and~~

~~(iii) if the provider is responsible, the loss of web invoicing privileges for six months and the imposition of the requirement that copies of sign in/sign out sheets must be submitted with invoices for the following three months.~~

~~(b) The second willful overclaim will result in:~~

~~(i) an assessment of 25% of the amount actually due being either added to the amount of repayment due to the department or deducted from the amount of payment due to the claimant, depending upon whether payment to the claimant has already been made; and~~

~~(ii) if the provider is responsible for the overclaim, the loss of web invoicing privileges permanently and imposition of the requirements that the provider must submit copies of sign in/sign out sheets with invoices for the following six months.~~

~~(c) The third willful overclaim will result in the household or provider responsible being ineligible to participate in the child care development fund child care assistance, grant, and quality child care programs for seven years.~~

~~(8) Overpayments issued to program types whose business structure is sole proprietorship, partnership, or corporation and the business dissolves or otherwise becomes defunct and the department is unable to collect monies owed, the principals, shareholders, officers, or other individuals involved with the business at the time of dissolution are disqualified from receiving Child Care and Development Fund (CCDF) funds under any other business name or entity. Any shareholder, officer, partner, owner, or other individual involved in the management of a child care business that does not reimburse the department for overpayments made to the child care business is disqualified from receiving Child Care and Development Fund (CCDF) funds or being certified as a provider.~~

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

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

## 5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing New Rules I through III and amendments to ARM 37.80.101, 37.80.102, 37.80.103, 37.80.201, 37.80.202, 37.80.203, 37.80.206, 37.80.301, 37.80.305, 37.80.306,

37.80.316, and 37.80.502, pertaining to child care assistance. The Best Beginnings Program is administered by the department to provide low-income parents and guardians with financial assistance to pay for day care.

#### New Rule I

In New Rule I the department is proposing to delete the term "willful" in ARM 37.80.502. By adopting New Rule I, it will more accurately state what actions by parents, guardians, and providers would be considered an intentional program violation by the department. The term "intentional program violation" is consistent with other public assistance programs administered by the department and it more accurately describes what conduct results in a penalty or sanction in the program. The department does not anticipate any adverse effect or any fiscal impact associated with New Rule I.

#### New Rule II

In New Rule II the department is proposing to change what actions it takes in response to program violations. The current language regarding "willful violations" and penalties in ARM 37.80.502 is difficult for program participants to understand and difficult for the department to enforce. The department is proposing to replace the current system with a system that allows one intentional program violation in most instances and allows the department to terminate participation on the second violation. This would result in more consistent and effective program integrity corrective actions and allow the department flexibility to respond quickly to serious infractions.

The department does not anticipate any adverse effect or any fiscal impact associated with New Rule II.

#### New Rule III

The department is proposing New Rule III to make the information about certification plans easier to find. This information was previously stated in the definition rule of this chapter. The department does not anticipate any adverse effect or any fiscal impact associated with New Rule III.

#### ARM 37.80.101

This rule describes the purpose and general limitations for the Best Beginnings Program, which administers payment for child care services. The department is editing its child care services administrative rules to improve clarity. As part of those revisions, the department is removing language from this rule that is stated elsewhere in rule. The existing rule incorporates by reference the Montana Child Care Manual effective January 27, 2012. The department proposes to revise the policy manual effective March 1, 2014. Manuals and draft manual materials are available for review on the department's web site at [www.bestbeginnings.mt.gov](http://www.bestbeginnings.mt.gov) and

all offices of public assistance. The department does not anticipate any adverse effect or any fiscal impact associated with the changes to ARM 37.80.101.

ARM 37.80.102

The department is proposing changes by deleting definitions that are not used in this chapter or are no longer necessary. The department does not anticipate any adverse effect or any fiscal impact associated with the proposed amendments to ARM 37.80.102.

ARM 37.80.103

The department is proposing to amend ARM 37.80.103. The proposed amendments are not a substantive change. The proposed amendments are intended to clarify the language in this rule. The department does not anticipate any adverse effect or any fiscal impact associated with the change to this rule.

ARM 37.80.201

The department is proposing to amend ARM 37.80.201 to clarify and simplify language describing school-age children. The department does not anticipate any adverse effect or any fiscal impact associated with the change to this rule.

ARM 37.80.202

The department is proposing to amend ARM 37.80.202 to include information regarding presumptive eligibility, which has been removed from ARM 37.80.101. Presumptive eligibility requirements are proposed to be stated in this rule to improve clarity. The changes to this rule are not substantive changes and the department does not anticipate any adverse effect or any fiscal impact.

ARM 37.80.203

The department is proposing to amend ARM 37.80.203 to clarify the requirement to repay an overpayment and to be consistent with New Rules I, II, and III. The department does not anticipate any adverse effect or any fiscal impact associated with this proposed amendment.

ARM 37.80.206

The department is proposing to clarify the guidelines regarding the use of Certified Enrollment days. This benefit is for the parents who are required by policy to notify their child care resource and referral agency within one day of a change in providers. Should the parent select a new provider, the Best Beginnings Child Care Scholarship can only pay the provider attached to the family and ensure there is no overlap in coverage. As of August 2013, there were approximately 1300 child care

facilities in Montana. The department does anticipate adverse effects to providers associated with the proposed amendments to ARM 37.80.206.

ARM 37.80.301

The department is proposing to clarify language regarding the loss of eligibility because of noncompliance as well as removing cross references to rules that have been repealed. The department does not anticipate any adverse effect or any fiscal impact associated with the proposed amendments to ARM 37.80.206.

ARM 37.80.305

The department is proposing to delete redundant language and improve clarity with these amendments to ARM 37.80.305. The department does not anticipate any adverse effect or any fiscal impact associated with the proposed amendments.

ARM 37.80.306

The department is proposing revisions regarding what criminal activity precludes an individual from becoming or continuing as a legally certified provider. The new rule language is more closely aligned to Montana's criminal code.

The department has considered what circumstances, including prior criminal conduct or charges of criminal conduct, may reasonably be related to an individual's ability to provide safe child care. If an individual's past conduct, or a household member's past conduct, indicates that he or she may be a risk to a child, the department will not allow the individual to participate in subsidized child care as a legally certified provider.

The department is also proposing to add a new subsection (4)(c) that allows the denial of legally certified provider status to an individual based on an illness that may impair his or her ability to provide safe quality child care. This determination would be on a case-by-case basis. The determination that an individual is denied legally certified provider status based on illness would be an appealable adverse action. The individual would have the opportunity for a hearing on the matter. The department does anticipate an adverse effect associated with the proposed change to ARM 37.80.306.

ARM 37.80.316

The department is proposing to remove redundant language from ARM 37.80.316. The department does not anticipate any adverse effect or any fiscal impact associated with the proposed amendments to this rule.

ARM 37.80.502

The department is proposing to revise language regarding "willful" action on the part of parents or providers. This amendment is proposed because the term "willful" in the context of these rules is unclear and difficult to establish. This proposed change in terminology is consistent with the new language of New Rules I, II, and III concerning intentional program violations. The department does not anticipate any adverse effect or any fiscal impact associated with the proposed amendments to ARM 37.80.501.

Summary of the changes to the Child Care Policy Manual that are being incorporated by reference:

Section 1-3 Definitions

This manual section is being revised to align the age brackets with those used by the Licensing Bureau in the Quality Assurance Division for children in family and group child care facilities. Other changes are not substantive in nature while adding occasional wording for clarification purposes. The department does not anticipate any adverse effect or any fiscal impact associated with this change to policy.

Section 1-4 Scholarship Rates

This manual section is being revised to reflect a new reimbursement rate for providers set at 102 percent of the 2009 Market Rate survey. This increase was directed by the Legislature during the 2013 legislative session. The projected expense for this action is \$489,482 in SFY 2014 and \$988,754 in SFY 2015. In addition, the department moved from the 2009 Federal Poverty Index (FPI) to the 2012 FPI for subsidy payments for families on the Best Beginnings Child Care Scholarship Program. The amount is similar to the amount allocated by the 2014 legislative session for this purpose. Committee action added \$1,250,000 over the biennium to cover this increase. The department does not anticipate any adverse effect associated with the change to this policy.

Section 1-8 Provider Eligibility – Overview

This manual section is being revised to require child care facilities to comply with licensing and registration requirements pertaining to group size and staff-to-child ratios. Attendance records must include the name of the facility and include all children in attendance by day and not separated by family groups. These changes will ensure tracking of children when attendance is in questions as part of the complaint and investigation process. The department does not anticipate any adverse effect or any fiscal impact associated with this change to policy.

Section 6-2 Serving the Family – Legally Certified Providers

This manual section is being revised to make clear what types of background checks are conducted and the frequency of those checks. The information outlining the types of deniable records has been revised to increase readability and



understanding and to more clearly match the corresponding ARM section. Information about orientation offered online is added. The requirement that orientation be completed annually is removed if there is no break in certification. The department does not anticipate any adverse effect or any fiscal impact associated with this change to policy.

#### Section 6-7 Serving the Family – Invoice and Payment Process

This manual section is being revised to include language regarding the newly implemented online invoicing option for providers caring for children whose families are on the Scholarship Program. In addition, certified enrollment days accrue to families receiving the scholarship and therefore go with the parent when the family changes providers. Providers may use the allocated amount when families leave a facility without providing notice, except when the family has already chosen a new provider. Effective date of the new service determines which provider is eligible to receive reimbursement. This may have an adverse effect on providers for whom no parental notice was given.

#### Section 6-8 Corrections & Overpayments

This manual section is being revised to remove language related to willful actions and include language related to intentional program violations and intentional program violation sanctions. The language related to intentional program violations and intentional program violation sanctions is intended to clarify the process for parents and providers related to corrections and overpayments. This may have an adverse effect on some parents and providers because prior policy allowed three violations; however, prior policy also issued penalties which were a percentage of the overpayment amount and those penalties no longer exist.

6. The department intends to adopt these rule adoptions and amendments effective March 1, 2014.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., February 13, 2014.

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

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

a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 7 above or may be made by completing a request form at any rules hearing held by the department.

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

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

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Geralyn Driscoll  
Geraldyn Driscoll  
Rule Reviewer

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

Certified to the Secretary of State January 6, 2014.

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 37.85.105 pertaining to the ) PROPOSED AMENDMENT  
revision of fee schedules for Medicaid )  
provider rates in January 2014 )

TO: All Concerned Persons

1. On February 5, 2014, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on January 29, 2014, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY  
ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID  
PROVIDER FEE SCHEDULES (1) remains the same.

(2) The department adopts and incorporates by reference, the resource-based relative value scale (RBRVS) reimbursement methodology for specific providers as described in ARM 37.85.212 on the date stated.

(a) through (g) remain the same.

(h) Optometric services receive a 112% provider rate of reimbursement adjustment to the reimbursement for allied services as provided in ARM 37.85.105(2) effective ~~July 1, 2013~~ January 1, 2014.

(i) Reimbursement for physician administered drugs described at ARM 37.86.105 is determined at 42 CFR 414.904 ~~(2013)~~ and is effective ~~July 1, 2013~~.

(3) The department adopts and incorporates by reference, the fee schedule for the following programs within the Health Resources Division, on the date stated.

(a) and (b) remain the same.

(c) The hearing aid services fee schedule, as provided in ARM 37.86.805, is effective ~~July 1, 2013~~ January 1, 2014.

(d) through (k) remain the same.

(l) Montana Medicaid adopts and incorporates by reference the Region D Supplier Manual which outlines the Medicare coverage criteria for Medicare covered durable medical equipment, local coverage determinations (LCDs), and national coverage determinations (NCDs) as provided in ARM 37.86.1802, effective ~~July 1, 2013~~ January 1, 2014. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM 37.86.1807, is effective ~~July 1, 2013~~ January 1, 2014.

(m) through (5) remain the same.

(6) The department adopts and incorporates by reference, the fee schedule for the following programs within the Developmental Services Division, on the date stated.

(a) Mental health services for youth, as provided in ARM 37.87.901 in the Medicaid Youth Mental Health Services Fee Schedule, is effective ~~November 1, 2013~~ January 1, 2014.

(b) and (c) remain the same.

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

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

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to three fee schedules in ARM 37.85.105. The three fee schedules of this rule are listed below with an explanation of the amendments and why they are necessary. Two of the fee schedule proposed amendments are within the Health Resources Division rules and the third proposed amendment is within the Developmental Services Division rules.

The other proposed amendment concerns physician-administered drugs. The department intends to remove the date information in ARM 37.85.105(2).

#### ARM 37.85.105

#### HEALTH RESOURCES DIVISION

#### Physician-Administered Drugs

The Montana Medicaid Program is administered by the department to provide health care to Montana's qualified low income and disabled residents (hereinafter "Medicaid clients"). It is a public assistance program paid for with state and federal funds appropriated to pay health care providers (hereinafter "Medicaid providers") for the covered medical services they deliver to Medicaid clients. The Legislature delegates authority to the department under 53-6-101(8) and 53-5-113, MCA, to set the reimbursement rates Montana pays Medicaid providers for Medicaid clients covered services.

The department reimburses physician-administered drugs using Average Sales Price methodology as described at 42 CFR 414.904. This pricing methodology is maintained by the Centers for Medicare and Medicaid Services (CMS) and is updated quarterly by them. The department accepts the CMS update file and adjusts its pricing for physician-administered drugs. To keep this rule current requires periodic amendment. The amendment will better align the reimbursement of physician-administered drugs with the methodology used by the Medicaid Outpatient Pharmacy Program. Outpatient drugs are reimbursed using a reimbursement method that responds to fluctuations in drug prices due to market volatility. Pricing of physician-administered drugs will continue to be updated quarterly with no change in methodology or business practice.

#### Fiscal Impact

There is no fiscal impact.

#### Optometric and Optician Fee Schedules

The department is proposing amendments to ARM 37.85.105(2)(h) for reimbursement of optometric services. The proposed rule change is necessary to update the Medicaid posted fee schedule effective January 1, 2014, for optometric and optician providers. The Medicare rates being used will be updated to accurately reflect those codes that are updated with the January update to Medicare reimbursements.

The optometric and optician fee schedules use the same reimbursement method as Medicare fees for some of the allowed codes. When Medicare does its biannual price change and/or code change in January every year, these codes must have their reimbursement fees changed also. This rule quotes the date of the fee schedules that the Montana Medicaid Optometric Program uses and when any changes are made to the posted fee schedules the date of that change is reflected on the schedule itself.

The change is necessary to keep the rule updated and current to reflect proper payment of posted fees allowed for procedures.

#### Fiscal Impact

The proposed amendments to this rule are expected to have no fiscal impact for optometrists as they have not billed these codes in the past, and an increase in reimbursement to opticians of an estimated \$3,536.35 is expected for the remainder of the state fiscal year (SFY) 2014. There is an expected increase to the opticians only of \$7,072.69 for the SFY of 2015.

The proposed rule amendments could affect an estimated 156 optometrists and 25 opticians. The increased funding will aid in providing services for the 101,087 members within Montana who receive optometric benefits.

Hearing Aids and Durable Medical Equipment

The department is proposing to amend ARM 37.85.105(3)(c) for reimbursement of hearing aid services. This proposed amendment to the fee schedule date is necessary to reflect yearly changes in Medicare rates.

The department is proposing to amend ARM 37.85.105(3)(l) for reimbursement of durable medical equipment to reflect yearly changes in Medicare rates. The Medicare Region D Supplier Manual, Local Coverage Determinations (LCD) policy articles, and National Coverage Determinations (NCD) fee schedule is being updated to January 1, 2014, to reflect changes in Medicare policy.

Fiscal Impact

ARM 37.85.105(3)(c) Hearing Aid Services, Reimbursement

The fiscal impact is negligible for SFY 2014 and 2015.

ARM 37.85.105(3)(l) Prosthetic Devices, Durable Medical Equipment, and Medical Supplies, General Requirements, and Fee Schedule

SFY 2014

State General Fund: \$22,822      Federal Funds: \$44,840      Total Funds: \$67,662

SFY 2015

State General Fund: \$47,992      Federal Funds: \$94,080      Total Funds: \$142,072

The proposed amendments are estimated to affect: 324 DME providers, 20 hearing aid providers, 24 audiology providers, and 101,479 Medicaid recipients.

DEVELOPMENTAL SERVICES DIVISION

The department is proposing to amend ARM 37.85.105(6)(a) to implement a rate increase for Targeted Case Management for Youth With Serious Emotional Disturbances (SED). The rate increase is being done because the 63rd Legislature increased rates to remedy a perceived inequity between adult and youth case management rates.

The department is also proposing to remove the reference to the facility-specific ancillary rate for Psychiatric Residential Treatment Center (PRTF) on the Medicaid Youth Mental Health Fee Schedule. This proposed amendment is necessary to implement changes that were made in ARM 37.87.1223 which allow ancillary services to be paid directly to providers.

Fiscal Impact

To increase the targeted case management rate the Legislature appropriated \$2,811,236 in total funds for state fiscal year (SFY) 2014 and \$2,867,563 for SFY 2015. The appropriated amounts listed do not include additional referral services attributable to increased case management.

Approximately 500 youth receive PRTF services annually. Approximately 4,000 youth receive targeted case management services annually.

5. The department intends to apply these proposed rule amendments retroactively to January 1, 2014. A retroactive application of the proposed rule amendments 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., February 13, 2014.

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.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ John C. Koch  
John C. Koch  
Rule Reviewer

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

Certified to the Secretary of State January 6, 2014.



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

In the matter of the adoption of New )  
Rule I and the amendment of ARM )  
37.86.2907 and 37.86.3001 )  
pertaining to ICD CM and PCS )  
Services: adoption of ICD-10 )

NOTICE OF PUBLIC HEARING ON  
PROPOSED ADOPTION AND  
AMENDMENT

TO: All Concerned Persons

1. On February 5, 2014, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on January 29, 2014, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I ICD CLINICAL MODIFICATION (CM) AND PROCEDURAL CODING SYSTEM (PCS) SERVICES (1) The department adopts and incorporates by reference the Diagnosis coding practice of International Classification of Diseases (ICD) published by the World Health Organization. The ICD is used as a health care classification system for diseases and health conditions.

(a) For dates of service on or before September 30, 2014, the ICD edition being utilized will be the ninth revision (ICD-9) to code the diagnosis of services.

(b) For dates of service October 1, 2014 and thereafter the ICD edition being utilized will be the tenth revision (ICD-10) to code the diagnosis of services. ICD-10 consists of the following codes sets:

- (i) ICD-Clinical Modification (CM); and
- (ii) ICD-Procedure Coding System (PCS).

(c) For inpatient claims with a discharge date on or after October 1, 2014, the tenth revision (ICD-10) must be utilized.

(d) Outpatient claims with dates of service that span the utilization dates must be split based on date of service in order to utilize the appropriate edition as noted in (a) and (b).

(e) Per 45 CFR 162.1002, ICD-10 will replace ICD-9 for dates of service October 1, 2014 and after. A copy of the ICD codes may be obtained at <http://www.medicalcodingbooks.com/>.

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

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

37.86.2907 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) The department will assign an APR-DRG to each Medicaid client discharge in accordance with the current APR-grouper program version, as developed by 3M Health Information Systems. The assignment and reimbursement of each APR-DRG is based on:

(i) the ICD-9-CM principal diagnoses for dates of discharge prior to and including September 30, 2014, and the ICD-10-CM principal diagnoses for dates of discharge October 1, 2014 and thereafter;

(ii) all ICD-9-CM secondary diagnoses for dates of discharge prior to and including September 30, 2014, and the ICD-10-CM secondary diagnoses for dates of discharge October 1, 2014 and thereafter;

(iii) all ICD-9-CM medical procedures performed during the client's hospital stay for dates of discharge prior to and including September 30, 2014, and the ICD-10-PCS medical procedures performed during the client's hospital stay for dates of discharge October 1, 2014 and thereafter;

(iv) through (2) 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, MCA

37.86.3001 OUTPATIENT HOSPITAL SERVICES, DEFINITIONS

(1) through (10) remain the same.

(11) "ICD-9-CM" means the International Classification of Diseases, Ninth Revision based on the official version of the United Nations World Health Organization's Ninth Revision, effective for dates of service or discharge date prior to and including September 30, 2014.

(12) "ICD-10-CM" means the International Classification of Diseases, Tenth Revision based on the official version of the World Health Organization's Tenth Revision for diagnosis coding, effective for dates of service or discharge date October 1, 2014 and thereafter.

(12) through (20) remain the same, but are renumbered (13) through (21).

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

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

## 5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing New Rule I and is proposing to amend ARM 37.86.2907 and 37.86.3001 pertaining to the International Classification of Diseases, Clinical Modification (ICD CM) and Procedure Coding System (PCS) Services: adoption of ICD-10.

The ICD is a set of diagnostic codes published by the World Health Organization (WHO). In 1990 the WHO updated the ICD code set creating the tenth edition (ICD-10). Other countries began adopting this code set as early as 1994. The transition from ICD-9 to ICD-10 for the United States is mandated by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). All covered entities under HIPAA are required to adopt the new ICD-10 codes for services provided on or after October 1, 2014.

### New Rule I

Proposed New Rule I will specify the dates for which ICD edition should be utilized based on the date of service or date of discharge. In addition New Rule I will mandate the replacement of the ICD-9 code set with ICD-10 (45 CFR 162.1002) and will specify where providers can obtain code information. It is necessary in order for the department to comply with federal law and regulations.

### ARM 37.86.2907 and 37.86.3001

Within the current Administrative Rules of Montana, the description of ICD is listed as the ninth revision (ICD-9). With the proposed amendments to ARM 37.86.2907 and 37.86.3001, the ICD references will be updated to include ICD-10 definitions and effective date as well as clarification of the ICD-9 effective dates. It is necessary in order for the department to comply with federal law and regulations.

### Fiscal Impact

The implementation of ICD-10 is required for all covered entities under HIPAA. The fiscal impact on a provider practice can vary based on the size of the practice and the amount of changes to the business operations that are necessary. The estimated costs for Medicaid providers in Montana can be anywhere from \$83,290 up to \$2,728,780 per provider. However, this cost will be amortized over the provider's practice, because all insurers who must be HIPAA-compliant will be using the ICD-10 codes.

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., February 13, 2014.

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.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will significantly and directly impact small businesses.

/s/ John C. Koch  
John C. Koch  
Rule Reviewer

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

Certified to the Secretary of State January 6, 2014.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 42.19.401, 42.19.405, 42.19.406, ) PROPOSED AMENDMENT  
and 42.19.501 pertaining to property )  
tax assistance and exemptions )

TO: All Concerned Persons

1. On February 6, 2014, at 3 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on January 27, 2014. Please contact Laurie Logan, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

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

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

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

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

~~(ii) confusion caused by the infirmity may have arisen.~~

(2) The benefit is a reduction in taxable value that applies to the first \$100,000 or less of the taxable market value of any improvement on real property, including trailers, manufactured homes, or mobile homes, and appurtenant land not

exceeding five acres owned or under contract for deed and actually occupied for at least seven months a year as the primary residential dwelling of one or more qualified applicants. Buildings used for agricultural purposes do not qualify for the benefit.

(3) For purposes of this benefit, the appurtenant land not exceeding five acres shall not include any separately described or assessed parcels of land, regardless of whether the parcel is contiguous with or adjacent to the parcel upon which the primary residence is located, unless the primary residence is a mobile home or manufactured home that is assessed separately from the land. In which case, the benefit will apply to the land upon which the primary residence is located only if the land and the mobile home are owned by the applicant.

(4) An application must be filed, on or before April 15 of the year for which the benefit is sought, on a form available from the local department office. Applications postmarked after April 15 will be considered for the following tax year.

(5) The department may waive the April 15 deadline if the applicant:

(a) participated in the program in the prior year;

(b) was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness, and can demonstrate:

(i) one or more of the impediments, while not necessarily continuous, existed at sufficient levels between January 1 and April 15 of the tax year in which the applicant is applying, that prevented timely filing of the application; or

(ii) confusion caused by the infirmity may have prevented timely filing of the application.

~~(2)~~(6) The department may waive the requirement set out in (1) April 15 deadline on a case-by-case basis, if the applicant:

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

~~(b) upon receipt of submits~~ a written statement, plus any documents explaining the circumstances of why the applicant failed to meet the deadline any circumstances not identified in (5) that prevented timely filing of the application.

~~(3)~~(7) The department may accept and process the application and proof of income if waive the April 15 deadline on a case-by-case basis if the applicant:

(a) did not previously participate in the PTAP;

(b) meets the requirements of (5) or (6); and

(c) provides a completed application that is submitted or postmarked no later than July 1 of the year for which benefit is sought.

(8) Willful misrepresentation of facts pertaining to income or the impediments that prevent timely application filing will result in the automatic rejection of the application.

~~(4)~~(9) The applicant is required to list total household income from all sources, excluding losses, depletion, and depreciation, that is attributable to all owner occupants who are applying for the assistance. Total household income includes, but is not limited to income of all other owners of the property the income that is attributable to all owner occupants who occupied the property as their primary residence seven months of the preceding calendar year.

~~(5)~~(10) Income Total household income includes, but is not limited to:

(a) through (m) remain the same.

(11) The department requires specific documentation if the applicant:

~~(6) If the applicant is required to file  
(a) files an income tax return, a copy of the Montana state income tax return must be attached to the application;~~

~~(7) If the applicant  
(b) qualifies for an extension of time to file the applicant's their income tax return, the applicant must indicate this on the application and, no later than October 25, provide a copy of their completed income tax return for the tax year immediately preceding the year of the application; or~~

~~(8) If the applicant  
(c) is not required to file an income tax return, they must complete the appropriate portion of the application and submit documentation, that supports identifies the reported income, as defined in ~~(4)~~(9). Examples of the ~~required~~ acceptable documentation include, but are not limited to;~~

~~(i) social security statements;~~

~~(ii) pension statements; or~~

~~(iii) bank statements.~~

~~(9) The department will review the application and any supporting documents. The department may review income tax records to determine accuracy of information. The department will approve or deny the application. A decision to deny such an application due to the inability to provide sufficient information will be forwarded to and reviewed by an area manager or regional manager.~~

~~(10) remains the same but is renumbered (12).~~

~~(11) Any reduction in taxable value will apply to the first \$100,000 or less of the taxable market value of any mobile home or improvement on real property and appurtenant land not exceeding five acres.~~

~~(12) For purposes of this benefit, the land beneath and immediately adjacent to the residence shall not include any separately described or assessed parcels of land, regardless of whether the parcel is contiguous with or adjacent to the parcel upon which the qualified residence is located. In those cases in which the qualified residence is a mobile home that is assessed separately from the land, the benefit will apply to the land upon which the qualified residence is located only if the land and the mobile home are owned by the applicant.~~

~~(13) The PTAP benefit is not available when a qualified applicant purchases a dwelling after the application deadline for the tax year in which the application is submitted. In this situation, the department will consider the application for the following year.~~

~~(14) The PTAP benefit is not available when a qualified applicant sells the dwelling. The tax benefit does not transfer to the new owner and the new owner is responsible for the proration of the taxes from the date of sale.~~

AUTH: 15-1-201, MCA

IMP: 15-6-134, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.19.401 to more closely mirror the EPTAP language in ARM 42.19.406 and to ensure consistent and equitable treatment between the different property tax assistance programs. The department further proposes to amend the rule to remove

redundancy in the language and to add clarity by providing further explanation within the rule in response to inquiries and feedback received from taxpayers. The department further proposes to add the acronym PTAP to the rule title and content.

42.19.405 DEFINITIONS The following definitions apply to rules found in this ~~subchapter~~ chapter.

(1) "Ancillary" means buildings of secondary importance in comparison to the primary residence, including but not limited to garages and storage sheds.

(2) "Entity" means a corporation, fiduciary, or pass-through entity, as defined in ~~15-30-101~~ 15-30-2101, MCA, and an association, joint-stock company, syndicate, trust or estate, or any other nonnatural person.

(3) "Dwelling" means the following, depending upon the type of tax assistance program. For the purpose of:

(a) a property tax assistance program (PTAP) application, it means any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outbuildings and appurtenances belonging to the applicant, and as much surrounding land, not exceeding five acres, as is reasonably necessary for use of such a dwelling. Qualifying land is limited to the legally described parcel upon which the qualified residence is located; or

(b) an extended property tax assistance program (EPTAP) application, it means any class four residential dwelling in Montana that is a single-family dwelling unit, unit of a multiple-unit dwelling, trailer, manufactured home, or mobile home, and as much surrounding land, not exceeding one acre, as is reasonably necessary for use of such a dwelling. Qualifying land is limited to the legally described parcel upon which the qualified residence is located.

~~(2)~~(4) "Household" is an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses.

(5) "Income" applies to the property tax exemption for qualified disabled veterans and means:

(a) the applicant's income, if the applicant files their federal tax return as single or head of household;

(b) the applicant's and spouse's income, if they file their federal tax return as married; or

(c) the applicant's income, if the applicant does not file a federal tax return; the applicant must report their income based upon what their filing status would be if they were required to file a federal tax return.

(6) "Primary residence" means the following, depending upon the type of tax assistance program. For the purpose of:

(a) the PTAP it means a residential dwelling that was owned and occupied for more than seven months of the preceding calendar year;

(b) the EPTAP it means a Montana residential dwelling actually occupied by itself or in combination with another residential dwelling in Montana for at least seven months a year; or

(c) the property tax exemption for qualified disabled veterans, it means a residential dwelling that is occupied by the disabled veteran or their surviving spouse at the time the application is filed.



(7) "Total household income" means the following, depending upon the type of tax assistance program. For the purpose of:

(a) the PTAP, it means the income as reported on the Montana tax return or returns for the year in which the assistance is being claimed excluding losses, depletion, and depreciation and before any federal or state adjustments to income; or

(b) the EPTAP, it means the sum of the income of all members of the household and all other persons who are owners of the property. Income, as used in this section, includes income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home. Net business income is gross income less ordinary expenses but before deducting depreciation or depletion allowance, or both. Income also includes the income of any natural person or entity that is a trustee of or controls 25 percent or more of the applicant entity. For single-family rental dwellings, total household income does not include the income of the tenant.

AUTH: 15-1-201, MCA

IMP: 15-6-193, ~~15-30-101~~ 15-30-2101, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.19.405 by changing the introduction to the rule to cover terms used throughout the chapter rather than limiting the definitions to terms used in a single subchapter.

The proposed amendments expand and define additional terms and are being proposed to enhance taxpayer understanding of the criteria for qualifying for the different programs, because each program has different qualifying criteria and can be confusing to the taxpayer. Additionally, the department proposes to update an implementing citation due to recodification.

#### 42.19.406 EXTENDED PROPERTY TAX ASSISTANCE PROGRAM

(EPTAP) (1) The department will determine which taxpayers and dwellings used as primary residences, as defined in ARM 42.19.405, are potentially eligible for the ~~extended property tax assistance program EPTAP~~ and will mail applications to those taxpayers. The department determines the taxpayers who are potentially eligible during the first year of the reappraisal cycle based upon the following requirements set forth in 15-6-193, MCA:

(a) ~~A potentially eligible property is limited to a qualified residence which means any class four residential dwelling in Montana that is a single-family dwelling unit, unit of a multiple-unit dwelling, trailer, manufactured home, or mobile home, and as much surrounding land, not exceeding 1 acre, as is reasonably necessary for use of such a dwelling. Qualifying land is limited to the legally described parcel upon which the qualified residence is located. The dwelling must be actually occupied by itself or in combination with no more than one other class four residential dwelling in Montana for at least 7 months of each preceding year;~~

(b) through (d) remain the same, but are renumbered (a) through (c).

(2) An individual unit of a multiple-unit dwelling that meets the qualification requirements of (1)(a) through (1)(~~d~~)(c) may be eligible for the benefits allowed under ~~this program~~ the EPTAP, provided that the owner of the individual unit meets

the occupancy requirement in ~~(1)(a)~~ as defined in ARM 42.19.405. The department will mail one application form to the owner of a multiple-unit dwelling to determine if the owner meets the occupancy requirement on an individual unit, and if not, there will be no benefit granted to the owner of a multi-unit dwelling through this program the EPTAP.

(3) remains the same.

(4) In order to receive the tax rate adjustment, the qualified residence property owner of record, the qualified residence property owner's agent, or a qualifying entity of a qualified residence must annually complete and forward an application to the: Department of Revenue, P.O. Box 8018, Helena, Montana 59604-8018

Department of Revenue  
PO Box 8018  
Helena, Montana 59604-8018.

~~Beginning with tax year 2010 and all subsequent tax years, the completed application must be postmarked no later than April 15 in order for an applicant to receive the tax rate adjustment for the year the tax rate adjustment is sought.~~

(5) An application must be filed, on or before April 15 of the year for which the benefit is sought, on a form provided by the department. Applications postmarked after April 15 will not be considered, for the tax rate adjustment provided for under this section unless:

(6) The department may waive the April 15 deadline if the applicant:

(a) the applicant participated in the program in the prior year;

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

(b) the taxpayer can demonstrate:

(i) one or more of the impediments listed above, while not necessarily continuous, existed at sufficient levels in the period of between January 1 to and April 15 of the tax year in which the applicant is applying, to prevent that prevented timely filing of the reporting form application; or

(ii) confusion caused by the infirmity may have prevented timely filing of the application.

(7) The department may waive this requirement, the April 15 deadline, on a case-by-case basis, and upon receipt of a written statement, plus any documentation explaining circumstances where if the applicant:

(i) an applicant who participated in

(a) qualified for the program in the prior year; and

(b) would meet meets income requirements in the current year; and

(c) submits a written statement, plus any documents explaining any circumstances not identified in (6) that prevented timely filing of the application.

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

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

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

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

(8) The department may waive the April 15 deadline, on a case-by-case

basis, if the applicant:

(a) did not previously participate in the EPTAP;

(b) meets the requirements of (6) or (7); and

(c) provides a completed application that is submitted or postmarked no later than July 1 of the year for which the benefit is sought.

~~(5)~~(9) The applicant is required to list total household income from all sources, including, but not limited to:

(a) through (c) remain the same.

(6) through (9) remain the same but are renumbered (10) through (13).

~~(10)~~(14) The completed application form must include:

(a) the applicant's social security number (SSN) or federal employer identification number (FEIN); and

(b) copies of the applicant's ~~federal individual, partnership, estates or trusts, or corporate~~ Montana income tax return, including all state and federal schedules, for the tax year immediately preceding the year of the application. For example: complete copies of the appropriate ~~2009~~ 2013 tax year return must accompany a ~~2010~~ 2014 application for the extended property tax assistance program, which is due by April 15, ~~2010~~ 2014.

~~(11)~~(15) If the applicant has applied for an extension of time to file the applicant's income tax return, the applicant must provide a completed ~~individual estimated income tax worksheet~~ Individual Estimated Income Tax Worksheet (ESW) for the tax year immediately preceding the year of the application. This form is available at on the department's web site, revenue.mt.gov, or at the local revenue department office.

~~(12)~~(16) If the applicant is not required to file an income tax return, the applicant must provide documentation that identifies the applicant's income as defined in ~~(5)~~(9). Examples of ~~the required~~ acceptable documentation include, but are not limited to:

(a) social security statements;

(b) pension statements; or

(c) bank statements.

~~(13)~~(17) Failure to provide the required information in (4) through ~~(12)~~(16) will result in the application being denied. All tax return information will be treated as confidential by the department.

(14) through (19) remain the same, but are renumbered (18) through (23).

~~(20)~~(24) The new taxable value calculated due to the ~~extended property tax assistance program~~ EPTAP will be available for review at the local department office.

AUTH: 15-1-201, MCA

IMP: 15-6-193, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.19.406 to enhance taxpayer understanding of the qualifying criteria for the EPTAP tax benefit by removing redundancy in the rule language, to more closely mirror the language with ARM 42.19.401 for consistency, and to provide further explanation in response to areas of taxpayer inquiries.

The department also proposes to add the acronym EPTAP to the rule title and content, and to capitalize proper names where used in the rule, as a matter of housekeeping.

42.19.501 PROPERTY TAX EXEMPTION FOR QUALIFIED DISABLED VETERANS

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

(2) The exemption applies to any improvement on real property, including trailers, manufactured homes, or mobile homes, and appurtenant land, not to exceed five acres, that is owned and occupied by a veteran or a veteran's spouse provided for in 15-6-211, MCA. Land in excess of five acres and buildings used for agricultural purposes will not be exempt.

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

(4) An application must be filed, on or before April 15 of the year for which the exemption is sought, on a form available from the local department office. Applications postmarked after April 15 will be considered for the following tax year.

(5) The department may waive the April 15 deadline if the applicant:

(a) the applicant participated in the program in the prior year;

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

(b) the taxpayer can demonstrate:

(i) one or more of the impediments listed above, while not necessarily continuous, existed at sufficient levels in the period of between January 1 to and April 15, of the tax year in which the applicant is applying, to prevent that prevented timely filing of the application; or

(ii) confusion caused by the infirmity may have prevented timely filing of the application.

(6) The department may waive the requirement set out in this section, April 15 deadline, on a case-by-case basis, and upon receipt of a written statement, plus any documentation explaining circumstances where if the applicant:

(i) an applicant who participated in

(a) qualified for the program in the prior year; and

(b) meets the income requirements in the current year; and

(ii) confusion caused by the infirmity may have arisen

(c) submits a written statement, plus any document explaining any circumstances not identified in (5) that prevented timely filing of the application.

~~(2)(7) The department may waive the requirement set out in (1) on a case-~~

~~by case basis, if April 15 deadline if the applicant:~~

~~(a) the applicant qualified for the program in the prior year; and did not previously receive the exemption;~~

~~(b) upon receipt of a written statement, plus any documents explaining the circumstances of why the applicant failed to meet the deadline. meets the requirements of (5) or (6); and~~

~~(c) provides a completed application that is submitted or postmarked no later than July 1 of the year for which the exemption is sought.~~

~~(3)(8) The department may accept and process the applications and proof of income if submitted or postmarked no later than July 1 of the year for which the benefit is sought.~~

~~(9) Willful misrepresentation of facts pertaining to income or the impediments that prevent timely application filing will result in the automatic rejection of the application.~~

~~(4)(10) The following documents must accompany the application:~~

~~(a) through (c) remain the same.~~

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

~~(i) social security statements;~~

~~(ii) pension statements; or~~

~~(iii) bank statements.~~

~~(5) The department or its agent will review the application and the supporting documents and may perform a field evaluation. The department or its agent will approve or deny the application. A decision to deny such an application due to the inability to provide sufficient information will be forwarded to and reviewed by an area manager or regional manager.~~

~~(6)(11) The department shall disapprove an application if it contains false information under the following or in circumstances in which where the taxpayer fails to properly apply:~~

~~(a) the taxpayer is required to file an income tax return for the year in which the applicant seeks the exemption and does not provide a copy of the return;~~

~~(b) the taxpayer is not required to file an income tax return for the year in which the applicant seeks the exemption and does not provide the documentation required in (3); (10); or~~

~~(c) the taxpayer does not sign the application; or~~

~~(d) the department determines an application includes false information.~~

~~(7) and (8) remain the same, but are renumbered (12) and (13).~~

~~(9) The residence of the disabled veteran or the surviving spouse of a disabled veteran is defined as "that house or dwelling owned by the applicant on the date of application of the tax year for which exemption is sought, which is occupied by the applicant for more than seven months per year, and which may include a garage whether attached or detached." All other buildings, outbuildings, or improvements shall not be exempt.~~

~~(10) For purposes of this benefit, the land beneath and immediately adjacent to the residence shall not include any separately described or assessed parcels of~~

~~land, regardless of whether the parcel is contiguous with or adjacent to the parcel upon which the qualified residence is located. Land in excess of five acres will not be exempt.~~

~~(11) In those cases in which the qualified residence is a mobile home that is assessed separately from the land, the benefit provided by 15-6-211, MCA, will apply to the land upon which the qualified residence is located only if the land and the mobile home are owned by the applicant.~~

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

~~(13) The application referred to in (1) must be submitted on an annual basis pursuant to the requirements in (1). If the department or its agent does not receive an annual application from the property owner and the property owner is not eligible for the previously described waiver, the property tax exemption will be rescinded.~~

AUTH: 15-1-201, MCA

IMP: 15-6-211, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.19.501 to enhance taxpayer understanding of the qualifying criteria for the property tax exemption for qualified disabled veterans benefit by removing redundancy in the rule language. As proposed to be amended, the rule will more closely mirror the language in ARM 42.19.401 and will provide further explanation in response to topics raised by taxpayer inquiries. The department further proposes to make grammatical and punctuation amendments for consistency within the rule.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail [lalogan@mt.gov](mailto:lalogan@mt.gov) and must be received no later than February 13, 2014.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this notice is available on the department's web site at [revenue.mt.gov](http://revenue.mt.gov). Select the "Resources" tab at the top of the homepage and then locate the "Proposal Notices - Hearing Information" section below. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which

includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the proposed amendments to the rules contained in this notice will not significantly and directly impact small businesses.

/s/ Laurie Logan  
LAURIE LOGAN  
Rule Reviewer

/s/ Alan Peura acting for  
MIKE KADAS  
Director of Revenue

Certified to the Secretary of State January 6, 2014

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rule I pertaining to property records	)	PROPOSED ADOPTION,
and the amendment of ARM	)	AMENDMENT, AND REPEAL
42.19.1401, 42.19.1403, 42.19.1404,	)	
42.19.1407, 42.19.1410, and	)	
42.19.1412, and repeal of ARM	)	
42.19.1405 and 42.19.1406 pertaining	)	
to local government tax increment	)	
financing districts	)	

TO: All Concerned Persons

1. On February 6, 2014, at 1:30 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on January 27, 2014. Please contact Laurie Logan, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or lalogan@mt.gov.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I OFFICIAL RECORD FOR REAL AND PERSONAL PROPERTY (1) The real property record and personal property record located in the Computer Assisted Mass Appraisal System (CAMAS) is the department's official record.

(2) The current year of the appraisal cycle and the latest version of the property record in CAMAS is the most current data.

(3) Historical or hard copies of property record cards, field notes, or residential or commercial data collection documents are not considered part of the official record unless recorded as such in the current year of the appraisal cycle and on the most recent electronic version of the property record.

AUTH: 15-1-201, 15-7-306, MCA  
IMP: 15-7-304, MCA



REASONABLE NECESSITY: The department proposes to adopt New Rule I in response to a recommendation by the Legislative Audit Division following the department's conversion to its new Computer Assisted Mass Appraisal System (CAMAS) in 2008.

The previous computer system required the department to maintain hard copies of all valuation information. However, CAMAS allows the department to maintain all property valuation information electronically.

With CAMAS to capture and store all relevant data, the department no longer updates the hard copy records and instead records all updates only on the electronic record maintained for each parcel. As such, the electronic record in the department's CAMAS contains the most current valuation information for the purposes of property tax assessments, tax collection, and funding of all taxing jurisdictions, and is regarded by the department as the official record.

While the department may also retain existing property record cards, field notes, or other printed materials for informational or historical purposes, those physical records may become outdated over time and not necessarily represent the most current characteristics of the property as found in the official electronic version.

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

42.19.1401 DEFINITIONS The following definitions apply to this subchapter:

(1) remains the same.

(2) "Targeted economic development district (TEDD)" means a district created pursuant to 7-15-4279, MCA, that contains a provision for tax increment financing as provided for in 7-15-4282, MCA.

~~(2)(3)~~ "Tax increment financing district (TIFD)" means the area within the external boundaries of an urban renewal district (URD) area, industrial district, technology district, or aerospace transportation and technology district or a targeted economic development district (TEDD) that:

~~(a) has been legally created pursuant to the provisions of Title 7, chapter 15, parts 42 and 43~~ 7-15-4282, MCA; and

~~(b) contains a provision for the use of tax increment financing.~~

(4) "Urban renewal district (URD)" means a district created pursuant to 7-15-4202 through 7-15-4218 and 7-15-4280 through 7-15-4284, MCA, that contains a provision for tax increment financing as provided for in 7-15-4282, MCA.

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

AUTH: 15-1-201, MCA

IMP: 7-15-4202, 7-15-4203, 7-15-4204, 7-15-4205, 7-15-4206, 7-15-4207, 7-15-4208, 7-15-4209, 7-15-4210, 7-15-4211, 7-15-4212, 7-15-4213, 7-15-4214, 7-15-4215, 7-15-4216, 7-15-4217, 7-15-4218, 7-15-4279, 7-15-4280, 7-15-4281, 7-15-4282, 7-15-4283, 7-15-4284, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.19.1401 to define terms used in rules within this subchapter that are being

amended to implement Senate Bill 239, L. 2013, which generally revised tax increment financing districts. The department further proposes to update the implementing statutes for the rule accordingly.

42.19.1403 NEW URBAN RENEWAL DISTRICTS (URD) TAX INCREMENT FINANCING DISTRICTS – INFORMATION REQUIRED TO ENABLE THE

DEPARTMENT TO CERTIFY BASE TAXABLE VALUE (1) The department will certify the base taxable value of a newly created ~~urban renewal TIFD~~ URD if the department determines that the following information exists and has been provided to the department:

- (a) remains the same.
- (b) a copy of the resolution of necessity required by 7-15-4210, MCA, adopting the statement of blight. The resolution must have an effective date prior to the date on which the ~~TIFD~~ URD is created;
- (c) a map representing the ~~TIFD's~~ URD's boundary including a legal description of the ~~TIFD~~ URD;
- (d) through (i) remain the same.
- (j) the name of the ~~TIFD~~ URD; and
- (k) a list of the geocodes for all real property, the assessor codes for all personal property, and a description of all centrally assessed property located within the ~~TIFD~~ URD at the time of its creation.

(2) The local government that has created the ~~TIFD~~ URD will provide the information described in (1) to the department when it notifies the department that the ~~TIFD~~ URD has been created.

(3) The department will not certify the base taxable value of a newly created URD if the district crosses any school district boundary.

AUTH: 15-1-201, MCA

IMP: 7-15-4202, 7-15-4210, 7-15-4215, 7-15-4216, 7-15-4282, 7-15-4284,  
MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.19.1403 to implement Senate Bill 239, L. 2013, which generally revised tax increment financing districts. The proposed amendments improve efficiency and accuracy in the administration of urban renewal districts and add clarity to the rule with the addition of new (3). The department further proposes to revise the title of the rule to remove the term tax increment finance district and to add in the acronym URD.

42.19.1404 INDUSTRIAL TAX INCREMENT FINANCING NEW TARGETED ECONOMIC DEVELOPMENT DISTRICTS (TEDD) – INFORMATION REQUIRED TO ENABLE THE DEPARTMENT TO CERTIFY BASE TAXABLE VALUE (1) The

department will certify the base taxable value of a newly created ~~industrial TIFD~~ TEDD if the department determines that the following information exists and has been provided to the department:

- (a) a copy of the local government's finding that the property within the ~~TIFD~~ TEDD consists of a continuous area with an accurately described

boundary;

~~(b)~~ a copy of the ordinance zoning the area within the TIFD for light or heavy industrial use local government's finding that the area within the TEDD is large enough to host a diversified base of multiple independent tenants;

~~(c)~~ evidence a copy of the local government's finding that the zoning within the TIFD TEDD is in accordance with the local government's growth policy as defined in 76-1-103, MCA;

~~(d)~~ a copy of the local government's growth policy;

~~(e)~~ a copy of the local government's finding that the property within the TIFD TEDD is not included within an existing urban renewal tax increment financing district;

~~(f)~~ a copy of the local government's finding, adopted prior to the creation of the TEDD, that the area within the TIFD TEDD is deficient in infrastructure necessary to encourage and retain value-adding industry improvement for industrial development, including any documentation upon which the finding of deficiency is based;

~~(g)~~ a copy of the local government's growth policy;

~~(h)~~ copies of all documentation upon which the local government's finding of deficiency was based;

~~(i)~~ a copy of the local government's comprehensive development plan that:

~~(j)~~ was adopted prior to the creation of the TEDD;

~~(k)~~ identifies the use and purpose for which the TEDD was created;

~~(l)~~ ensures that the area within the TEDD is large enough to host a diversified base of multiple tenants and was not designed to serve the need of a single tenant; and

~~(m)~~ is in conformance with the local government's growth policy;

~~(n)~~ a copy of the notice of public hearing required under 7-15-4299, MCA;

~~(o)~~ a certified copy of the ordinance approving the industrial district TEDD and the tax increment financing provision pursuant to 7-15-4284, MCA;

~~(p)~~ a map representing the TIFD's TEDD's boundary including a legal description of the TIFD TEDD;

~~(q)~~ the name of the TIFD TEDD; and

~~(r)~~ a list of the geocodes for all real property, the assessor codes for all personal property, and a description of all centrally assessed property located within the TIFD TEDD at the time of its creation.

(2) The local government that has created the TIFD TEDD will provide the information described in (1) to the department when it notifies the department that the TIFD TEDD has been created.

(3) The department will not certify the base taxable value of a newly created TEDD if the district crosses any school district boundary.

AUTH: 15-1-201, MCA

IMP: 7-15-4282, 7-15-4284, 7-15-4299, 76-1-103, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.19.1404 to implement Senate Bill 239, L. 2013, which generally revised tax increment financing districts. The proposed amendments improve efficiency and

accuracy in the administration of the targeted economic development districts, add clarity to the rule with the addition of new (3), and add an implementing citation that corresponds with an amendment to (1)(c). The department further proposes to revise the title of the rule to refer to the term "targeted economic development district" and to include the acronym TEDD.

42.19.1407 DETERMINATION OF BASE YEAR TAXABLE VALUE OF A NEWLY CREATED TIFD TAX INCREMENT FINANCING DISTRICT (TIFD) (1) The base year taxable value for the ~~tax increment financing district (TIFD)~~ TIFD will be determined as follows:

(a) If the notice or supporting documentation, or both, required by ARM 42.19.1403 ~~through 42.19.1406~~ and 42.19.1404 is received by the department on or before February 1 of the calendar year following the creation of a valid TIFD, the department will determine the base year taxable value of the district as of January 1 of the calendar year in which the valid TIFD was created.

(b) If the notice or supporting documentation, or both, required by ARM 42.19.1403 ~~through 42.19.1406~~ and 42.19.1404 is received after February 1 of the calendar year following the creation of a valid TIFD, the department will calculate the base year taxable value of the district as of January 1 of the year in which the documentation was received. In these instances, the base year will be reported to the affected taxing jurisdictions by the first Monday in August of the calendar year following receipt of the notification.

(c) remains the same.

AUTH: 15-1-201, MCA

IMP: 7-15-4284, 7-15-4285, 15-10-420, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.19.1407 to remove references to ARM 42.19.1405 and 42.19.1406, which are being repealed based on the passage of Senate Bill 239, L. 2013. The department further proposes to revise the rule title and content to include the acronym TIFD for consistency with the use of acronyms in other rules in the same chapter.

42.19.1410 INFORMATION REQUIRED BY THE DEPARTMENT TO CERTIFY BASE YEAR TAXABLE VALUES OF AN AMENDED OR CHANGED TAX INCREMENT FINANCE FINANCING DISTRICT (TIFD) (1) The department will certify the base year taxable values of an amended or changed TIFD if the department determines, as it relates to property that is added to a TIFD, that the following information exists:

(a) if the amended district is ~~an urban renewal TIFD~~ a URD, the evidence required by ARM 42.19.1403; and

(b) if the amended district is ~~an industrial TIFD~~ a TEDD, the evidence required by ARM 42.19.1404;

~~(c) if the amended district is a technology TIFD, the evidence required by ARM 42.19.1405; and~~

~~(d) if the amended district is an aerospace technology and transportation TIFD, the evidence required by ARM 42.19.1406.~~

AUTH: 15-1-201, MCA

IMP: 7-15-4282, 7-15-4284, 7-15-4285, 15-10-420, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.19.1410 to implement Senate Bill 239, L. 2013, which generally revised tax increment financing districts. The proposed amendments eliminate references to the terms aerospace technology and transportation accordingly and adds the commonly referenced acronym TIFD to the rule title.

42.19.1412 REPORTING OF ISSUANCE OF BONDS OR RETIREMENT OF BONDS (1) To allow the department to determine the value of the newly taxable property as required under 15-10-420, MCA, a local governing body that authorizes ~~urban renewal URD bonds, industrial infrastructure development bonds, aerospace transportation and technology infrastructure development bonds, technology infrastructure development~~ TEDD bonds, or refunding bonds shall, no later than February 1 of each year, provide the department with a copy of each resolution or ordinance required under 7-15-4301, MCA.

(2) A local governing body that retires any bonds secured by tax increment, shall, no later than February 1 of each year, notify the department of the retirement.

(3) The documentation required by this rule shall be mailed to the Department of Revenue Legal Services Office at ~~P.O.~~ PO Box 7701, Helena, MT 59604-7701, with a copy to the Property Assessment Division at ~~P.O.~~ PO Box 8018, Helena, MT 59604-8018.

AUTH: 15-1-201, MCA

IMP: 7-15-4282, 7-15-4284, 7-15-4286, 7-15-4290, 7-15-4301, 15-10-420, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.19.1412 to implement Senate Bill 239, L. 2013, which generally revised tax increment financing districts. The proposed amendments eliminate references to the terms aerospace transportation and technology infrastructure accordingly, incorporate the use of acronyms into the rule content, and update punctuation.

5. The department proposes to repeal the following rules:

42.19.1405 NEW TECHNOLOGY TAX INCREMENT FINANCING DISTRICTS – INFORMATION REQUIRED TO ENABLE THE DEPARTMENT TO CERTIFY BASE TAXABLE VALUE which can be found on page 42-1988 of the Administrative Rules of Montana.

AUTH: 15-1-201, MCA

IMP: 7-15-4216, 7-15-4282, 7-15-4284, 7-15-4295, MCA

REASONABLE NECESSITY: The department proposes to repeal ARM 42.19.1405 because new technology tax increment financing districts were

eliminated from statute with the passage of Senate Bill 239, L. 2013, which generally revised tax increment financing districts.

42.19.1406 NEW AEROSPACE TRANSPORTATION AND TECHNOLOGY TAX INCREMENT FINANCING DISTRICTS – INFORMATION REQUIRED TO ENABLE THE DEPARTMENT TO CERTIFY BASE TAXABLE VALUE which can be found on page 42-1989 of the Administrative Rules of Montana.

AUTH: 15-1-201, MCA

IMP: 7-15-4216, 7-15-4282, 7-15-4284, 7-15-4296, MCA

REASONABLE NECESSITY: The department proposes to repeal ARM 42.19.1406 because new aerospace transportation and technology tax increment financing districts were eliminated from the statute with the passage of Senate Bill 239, L. 2013, which generally revised tax increment financing districts.

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: Laurie Logan, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than February 13, 2014.

7. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

8. An electronic copy of this notice is available on the department's web site at revenue.mt.gov. Select the "Resources" tab at the top of the homepage and then locate the "Proposal Notices - Hearing Information" section below. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

9. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 6 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have

been fulfilled. The primary sponsor of Senate Bill 239, L. 2013, Senator Edward Buttrey, was notified by regular mail on June 21, 2013, and subsequently notified by regular mail on December 4, 2013.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the proposed new, amended, and repealed rules contained in this notice will not significantly and directly impact small businesses.

/s/ Laurie Logan  
LAURIE LOGAN  
Rule Reviewer

/s/ Alan Peura acting for  
MIKE KADAS  
Director of Revenue

Certified to the Secretary of State January 6, 2014

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 23.3.505 and 23.3.506 pertaining )  
to type 2 endorsements for commercial )  
motor vehicle operators )

TO: All Concerned Persons

1. On November 14, 2013, the Department of Justice published MAR Notice No. 23-3-235 pertaining to the proposed amendment of the above-stated rules at page 2024 of the 2013 Montana Administrative Register, Issue Number 21.

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

3. The department received two comments. A general statement of support for this rulemaking action was made at the public hearing by Kristine Thatcher, Bureau Chief, Field Operations Bureau, and Patrick McJannet, Audit and CDL Section Supervisor, Motor Vehicle Division, Montana Department of Justice.

/s/ Matthew T. Cochenour  
Matthew T. Cochenour  
Rule Reviewer

/s/ Tim Fox  
Tim Fox  
Attorney General  
Department of Justice

Certified to the Secretary of State January 6, 2014.



BEFORE THE LICENSED ADDICTION COUNSELORS PROGRAM  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 24.154.301 definitions, )  
24.154.409 supervised work )  
experience, and 24.154.2301 )  
unprofessional conduct )

TO: All Concerned Persons

1. On November 27, 2013, the Department of Labor and Industry (department) published MAR Notice No. 24-154-9 regarding the public hearing on the proposed amendment of the above-stated rules, at page 2215 of the 2013 Montana Administrative Register, Issue No. 22.

2. On December 18, 2013, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the December 27, 2013, deadline.

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

General Comments:

COMMENT 1: One commenter discussed the problems inherent in chemical dependency practice and how such practice has changed throughout the years.

RESPONSE 1: The department acknowledges all comments received.

COMMENT 2: One commenter discussed in general the "rub" that must exist between graduate-level therapists versus those with two-year degrees.

RESPONSE 2: The department acknowledges all comments received.

COMMENT 3: One commenter noted that the phrase "evidence-based" frightens people and the commenter was not surprised that entities might not be accepting of an "evidence-based" practice.

RESPONSE 3: The department acknowledges all comments received.

24.154.301 DEFINITIONS:

COMMENT 4: Commenters indicated that removing the definition of "evidence-based" would remedy problems with what is currently a vague and ambiguous definition. Commenters also asserted that removing the "evidence-based" definition

would remedy the fact that the existing definition does not contain a citation to material adopted by reference.

RESPONSE 4: The department agrees that striking the definition of "evidence-based" is appropriate at this time, while stakeholders for this license type further explore establishing an "evidence-based" standard of practice and a resultant definition.

COMMENT 5: Two commenters indicated the definition of "evidence-based" and the "practice guidelines" should be maintained, because they are well recognized and accepted among mental health professionals. One commenter stated that the "evidence-based" definition is critical to the practice of licensed addiction counseling, because it provides a high standard of practice and it is irresponsible to remove it as a standard.

RESPONSE 5: The department appreciates the fact that some licensees may want to establish an "evidence-based" standard of practice for the licensed addiction counselor profession. After consideration, the department determined that such a standard is best established in a different manner. No "practice guidelines" existed in the prior rules, nor were any previously proposed. Rather, the definition of "evidence-based" resulted from reference to it in the unprofessional conduct rule. Without more, that reference and resultant definition may confuse licensees regarding what fully the standard of practice is and how actions constitute a failure of that standard. The department believes stakeholders for this license type need to further explore establishing an "evidence-based" standard of practice and a resultant definition in the future.

#### 24.154.409 SUPERVISED WORK EXPERIENCE:

COMMENT 6: Commenters stated that the trifurcated supervised work experience system, based on the degree the licensees received, exceeded statutory authority and lacked supporting evidence for such a system. Commenters suggested that returning to the prior 1000 supervised work experience hours for all licensees, regardless of the degree received, would correct the stated problems.

RESPONSE 6: The department agrees returning to the prior supervised work experience requirement is appropriate at this time, while stakeholders for this license type further explore the supervised work experience system.

COMMENT 7: One commenter indicated that it does not make sense to require Licensed Clinical Professional Counselors, who desire a dual credential by also becoming Licensed Addiction Counselors, to obtain more supervisory experience than an applicant with an associate or baccalaureate degree.

RESPONSE 7: The department appreciates that several of its licensees are dual credentialed and that those licensees have already obtained supervised work experience hours with regard to their other licenses. After consideration, the

department determined that a separate dual credential standard is best established by proposing a new rule. Rather than trifurcating the supervised work experience for associate, baccalaureate, and master degrees, it is better to delineate a separate rule that would address the situation faced by master-degree applicants at a future date.

COMMENT 8: One commenter asserted that at least a two-tiered system should exist for supervised work experience, whereby associate-level applicants would have a higher supervised work experience requirement than baccalaureate or master-degree applicants. This commenter stated associate-level applicants require more supervised work experience, because an associate degree does not adequately prepare an applicant to practice licensed addiction counseling.

Consequently, to ensure protection for the public, the commenter requested that the department establish a two-tiered system. By returning to the prior 1000 supervised work experience hour requirement, this commenter indicated that the standard of care for the profession was lowered.

RESPONSE 8: Establishing a two-tiered system is outside the scope of the rule notice. The department acknowledges all comments received and notes that the legislature has indicated a person with an associate degree is just as equipped to practice licensed addiction counseling as applicants with baccalaureate or master degrees. After consideration, the department determined that establishing a different standard of practice based on the education an applicant receives is better addressed in a different manner and believes stakeholders for this license type need to further explore the supervised work experience system.

COMMENT 9: One commenter requested that the department add levels of care that are not defined by the ASAM, such as intensive in-home treatment.

RESPONSE 9: The department acknowledges all comments received and notes that this comment is outside the scope of the rule notice.

#### 24.154.2301 UNPROFESSIONAL CONDUCT:

COMMENT 10: Commenters supported striking the instances of unprofessional conduct that reference "evidence-based" practice, procedures, and assessments, stating this would remedy problems faced by licensees not knowing what actions or failures to act would equate to unprofessional conduct.

RESPONSE 10: The department agrees with the comments.

COMMENT 11: One commenter asked the department to keep the unprofessional conduct language proposed to be stricken, stating that removing the language would be irresponsible and will not provide for public protection. The commenter asserted that the public needs to know that licensed addiction counselors must follow evidence-based principles because doing so provides the highest level of care.

RESPONSE 11: As with the definition of "evidence-based," the department appreciates that some licensees may want to establish an "evidence-based" standard of practice for the licensed addiction counselor profession. After consideration, the department determined that such a standard is best established in a different manner. No "practice guidelines" existed in the prior rules, nor were any previously proposed. Rather, the definition of "evidence-based" resulted from reference to it in the unprofessional conduct rule. Without more, that reference and resultant definition may confuse licensees regarding what fully the standard of practice is and how actions constitute a failure of that standard. The department believes stakeholders for this license type need to further explore establishing an "evidence-based" standard of practice and resultant unprofessional conduct rules in the future.

4. The department has amended ARM 24.154.301, 24.154.409, and 24.154.2301 exactly as proposed.

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

/s/ PAM BUCY  
Pam Bucy, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 6, 2014

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 37.104.101, 37.104.102, )  
37.104.105, 37.104.109, 37.104.316, )  
37.104.319, 37.104.321, 37.104.329, )  
37.104.330, 37.104.401, 37.104.404, )  
and 37.104.405 pertaining to )  
emergency medical services (EMS) )

TO: All Concerned Persons

1. On November 14, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-655 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2039 of the 2013 Montana Administrative Register, Issue Number 21.

2. The department has amended ARM 37.104.102, 37.104.105, 37.104.109, 37.104.319, 37.104.321, 37.104.329, 37.104.330, 37.104.401, 37.104.404, and 37.104.405 as proposed.

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

37.104.101 DEFINITIONS The following definitions apply in subchapters 1 through 4:

(1) through (29) remain as proposed.

(30) "Service medical director" means a person who meets the requirements of a ~~service~~ medical director as provided in ARM 24.156.2701 and provides offline medical ~~director~~ direction for an emergency medical services as defined in 50-6-302, MCA.

(31) through (36) remain as proposed.

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

37.104.316 PERSONNEL REQUIREMENTS: BASIC LIFE SUPPORT GROUND AMBULANCE SERVICE (1) Except as provided for in 50-6-322, MCA, a basic life support ground ambulance service must ensure that at least two of the following individuals are on board the ambulance when a patient is loaded or transported, ~~with the proviso that having only two ECP-EMR personnel on a call is not allowed:~~

(a) an ECP-EMR ~~equivalent~~ with the proviso that having only two EMP-EMR personnel on a call is not allowed; ~~or~~

- (b) an EMT-basic equivalent; or
- (b) remains as proposed, but is renumbered (c).
- (2) and (3) remain as proposed.

AUTH: 50-6-323, MCA  
IMP: 50-6-323, 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 that the proposed personnel requirements under ARM 37.104.316 allow an ambulance to be staffed by only one ECP-EMR.

RESPONSE #1: While it is not the intent of the department to allow only one ECP-EMR to staff an ambulance, we can see how the current paragraph may be confusing to interpret. The department proposes adding language to ARM 37.104.316, which does not change the intent of proposed rules but may be clearer to understand.

COMMENT #2: Two commenters state that allowing ECP-EMRs to function on an ambulance is beyond the intent of the NHTSA National Scope of Practice Model document.

RESPONSE #2: The department disagrees. The NHTSA Scope of Practice document states: "This individual (EMR) possesses the basic knowledge and skills necessary to provide lifesaving interventions while awaiting additional EMS response and to assist higher level personnel at the scene and during transport." It further states, "In some systems, Emergency Medical Responders serve as a part of the crew on transporting EMS units..." The department's rules model the use of an EMR as described in this national document.

COMMENT #3: Two commenters noted that the definition in ARM 37.104.101(30) refers to ARM 24.156.2701, but does so incorrectly.

RESPONSE #3: The purpose of these rules is to assure that the department's service licensing rules and the board of medical examiner's ECP licensing rules are consistent. We appreciate the commenters noting this inconsistency and we accept their proposed solution.

COMMENT #4: One commenter suggested that ARM 37.104.109(2)(b) should be edited to read "...ECP is authorized by the ~~service~~ medical director to provide" and further justifies that only a medical director recognized by the Board of Medical Directors may authorize an ECP's practice.

RESPONSE #4: The department disagrees. ARM 37.104.101(30) clarifies that the service medical director is a physician or physician assistant recognized as a

medical director by the Board of Medical Examiners and provides offline medical direction for an emergency medical service as defined in 50-6-302, MCA. ARM 37.104.109 clarifies that the service medical director recognized by the department is responsible for the medical oversight and supervision of the service, including the ECPs working for the service.

5. The department intends to apply these rules retroactively to January 1, 2014. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

/s/ Shannon L. McDonald  
Shannon L. McDonald  
Rule Reviewer

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

Certified to the Secretary of State January 6, 2014

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 37.86.5111 pertaining to )  
passport to health program )

TO: All Concerned Persons

1. On November 14, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-656 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2047 of the 2013 Montana Administrative Register, Issue Number 21.

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

3. No comments or testimony were received.

4. The department intends to apply this rule retroactively to December 31, 2013. A retroactive application of the proposed rule does not result in a negative impact to any affected party.

/s/ John C. Koch  
John C. Koch  
Rule Reviewer

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

Certified to the Secretary of State January 6, 2014.



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 37.70.107, 37.70.311, )
37.70.401, 37.70.402, 37.70.406, )
37.70.407, 37.70.408, 37.70.601, and )
37.70.901 pertaining to the Low )
Income Energy Assistance Program )
(LIEAP) for the 2013-2014 heating )
season )

TO: All Concerned Persons

1. On November 14, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-657 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2050 of the 2013 Montana Administrative Register, Issue Number 21.

2. The department has amended ARM 37.70.311, 37.70.401, 37.70.402, 37.70.406, 37.70.407, 37.70.408, 37.70.601, and 37.70.901 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:

37.70.107 REFERRALS TO THE AUDIT AND PROGRAM COMPLIANCE BUREAU

(1) The Department of Public Health and Human Services (DPHHS), Audit and Program Compliance Bureau has the power and duty to:

(a) through (c) remain as proposed.

(2) Contractors may make reports of possible overpayments or fraud to the Department of Public Health and Human Services (DPHHS), Intergovernmental Human Services Bureau (IHSB), P.O. Box 202956, Helena, MT 59620-2953. IHSB will review cases referred prior to referral to the DPHHS, Audit and Program Compliance Bureau.

AUTH: 53-2-201, MCA

IMP: 53-2-201, 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: A LIEAP contractor submitted a comment suggesting a change to ARM 37.70.901 regarding emergency assistance. ARM 37.70.901(5)(a) and (b)

currently state that a LIEAP contractor must provide assistance within 48 hours after a request for emergency assistance is made in all cases and within 18 hours after a request is made if the emergency is life-threatening. The contractor commented that subsections (5)(a) and (b) should be amended to provide that the 18 or 48 hours should begin to run when the request is received within normal business hours, rather than when the request is made. The contractor stated that contractors should not be held to the 18- or 48-hour timelines if the household requesting assistance leaves a message or sends an e-mail outside normal business hours.

RESPONSE #1: The department will consider making the suggested change in the future but cannot adopt the change at this time. The Notice of Public Hearing on Proposed Amendment did not propose to amend (5)(a) and proposed only that a definition of life-threatening emergency be added to (5)(b); the department did not propose to add language specifying that the time to provide assistance begins to run when a request for assistance is received during normal business hours. Thus, the public has not been given notice of the suggested change, and members of the public have not had an opportunity to express their opinions about it as required by the Montana Administrative Procedure Act at 2-4-302, MCA.

COMMENT #2: A comment was received pointing out that in ARM 37.70.107 the name of the bureau that will receive fraud referrals, instead of the Department of Justice, is incorrect. It is named the Program Compliance Bureau rather than the Audit and Compliance Bureau as stated in the Notice of Public Hearing on Proposed Amendment.

RESPONSE #2: The department agrees and will change the name to the Program Compliance Bureau.

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

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

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

Certified to the Secretary of State January 6, 2014

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 38.5.2202 and 38.5.2302 )  
pertaining to pipeline safety )

TO: All Concerned Persons

1. On November 27, 2013, the Department of Public Service Regulation (PSC) published MAR Notice No. 38-5-222 pertaining to the proposed amendment of the above-stated rules at page 2230 of the 2013 Montana Administrative Register, Issue Number 22.

2. The PSC has amended ARM 38.5.2202 and 38.5.2302 as proposed.

3. No comments, testimony, or requests for public hearing were received.

/s/ JUSTIN KRASKE  
Justin Kraske  
Rule Reviewer

/s/ W.A. (BILL) GALLAGHER  
W.A. (Bill) Gallagher  
Chairman  
Department of Public Service Regulation

Certified to the Secretary of State, January 6, 2014.

## **NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE**

### **Interim Committees and the Environmental Quality Council**

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

#### **Economic Affairs Interim Committee:**

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

#### **Education and Local Government Interim Committee:**

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

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

- Department of Public Health and Human Services.

#### **Law and Justice Interim Committee:**

- Department of Corrections; and
- Department of Justice.

#### **Energy and Telecommunications Interim Committee:**

- Department of Public Service Regulation.

**Revenue and Transportation Interim Committee:**

- Department of Revenue; and
- Department of Transportation.

**State Administration and Veterans' Affairs Interim Committee:**

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

**Environmental Quality Council:**

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

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

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

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

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

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

### Use of the Administrative Rules of Montana (ARM):

- |               |   |
|---------------|---|
| Known Subject | 1. Consult ARM Topical Index.<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, 2013. This table includes those rules adopted during the period October 1, 2013, through December 31, 2013, 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, 2013, 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 2013 Montana Administrative Register.

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

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