

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 8

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 12.6.2208 and 12.6.2215) PROPOSED AMENDMENT
pertaining to exotic species)
classification)

TO: All Concerned Persons

1. On May 21, 2014 at 7:00 p.m., the Fish and Wildlife Commission (commission) will hold a public hearing at the Fish, Wildlife and Parks Headquarters, 1420 East 6th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The commission 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 May 2, 2014, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, PO Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jesssnyder@mt.gov.

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

12.6.2208 LIST OF CONTROLLED SPECIES (1) The following birds are classified as controlled species:

(a) through (g) remain the same.

(h) Coturnix genus (old world quail);

(h) through (s) remain the same but are renumbered (i) through (t).

(2) remains the same.

(3) The following mammals are classified as controlled species:

(a) Wallaroo – *Macropus robustus*.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

12.6.2215 LIST OF PROHIBITED SPECIES (1) The following amphibians are classified as prohibited species:

(a) African clawed frog - *Xenopus laevis*; and

(b) North American bullfrog - *Rana catesbeiana*; and

(c) Red-eared slider – *Trachemys scripta elegans*.

(2) and (3) remain the same.

(4) The following mammals are classified as prohibited species:

(a) Argali sheep – *Ovis ammon*;

(a) through (i) remain the same but are renumbered (b) through (j).

- ~~(j)~~ (k) Southern flying squirrel - *Glaucomys volans*; and
- ~~(l)~~ Transcaspian ural sheep – *Ovis aries vignei*; and
- (k) remains the same but is renumbered (m).
- (5) and (6) remain the same.
- (7) The following birds are classified as prohibited:
- (a) California quail – *Callipepla californica*;
- (b) Gambel's quail – *Callipepla gambelii*.

AUTH: 87-5-704, 87-5-705, 87-5-712, MCA

IMP: 87-5-707, 87-5-708, 87-5-711, 87-5-712, MCA

REASON: The commission has authority to adopt rules regarding the importation, possession, and sale of exotic wildlife as recommended by the "classification review committee" (committee). The committee may recommend that a species be classified as noncontrolled, controlled, or prohibited for importation, possession, and sale to protect Montana's native wildlife and plant species, livestock, horticultural, forestry, agricultural production, and human health and safety from the harmful effects of unregulated exotic animals. If the commission approves the committee's recommendations, the commission begins administrative rulemaking to incorporate the recommendations into the classification lists.

The commission is proposing adding old world quail and wallaroo to the list of controlled species. The commission is proposing adding red-eared sliders, argali sheep, transcaspian ural sheep, California quail, and Gambel's quail to the list of prohibited species.

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: Department of Fish, Wildlife and Parks Enforcement Division, PO Box 200701, Helena, Montana, 59620-0701; fax (406) 444-7894; or e-mail milee@mt.gov, and must be received no later than May 30, 2014.

5. Michael Lee or another hearing officer appointed by the department has been designated to preside over and conduct these hearings.

6. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, PO Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the 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/ Aimee Fausser
Aimee Fausser
Rule Reviewer

/s/ Dan Vermillion
Dan Vermillion
Chairman
Fish and Wildlife Commission

Certified to the Secretary of State April 14, 2014.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING ON
17.36.101, 17.36.102, 17.36.103,)	PROPOSED AMENDMENT AND
17.36.104, 17.36.106, 17.36.110,)	ADOPTION
17.36.116, 17.36.310, 17.36.312,)	
17.36.328, 17.36.330, 17.36.331,)	(SUBDIVISIONS/ON-SITE
17.36.332, 17.36.333, 17.36.334,)	SUBSURFACE WASTEWATER
17.36.335, 17.36.336, 17.36.340,)	TREATMENT)
17.36.605, 17.36.802, and 17.36.804)	
and the adoption of New Rules I and II)	
pertaining to subdivision applications)	
and review, subdivision requirements,)	
subdivision waivers and exclusions,)	
subdivision review fees, and on-site)	
subsurface wastewater treatment)	
systems)	

TO: All Concerned Persons

1. On May 19, 2014, at 9:00 a.m., the Department of Environmental Quality will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., May 5, 2014, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.36.101 DEFINITIONS For purposes of subchapters 1, 3, 6, and 8, the following definitions apply:

(1) "Accessory building" means a subordinate building or structure on the same lot as the main building, which is under the same ownership as the main building, and which is devoted exclusively to an accessory use such as a garage, workshop, art studio, guest house, or church rectory.

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

~~(2)~~ (3) "Bedroom" means any room that is or may be used for sleeping. An unfinished basement is considered as an additional bedroom.

(3) through (5) remain the same, but are renumbered (4) through (6).

(7) "Commercial unit" means the area under one roof that is occupied by a business or other nonresidential use. A building housing two businesses is considered two commercial units.

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

~~(7)~~ (9) "Connection" means a water or wastewater line that connects provides water or sewer service to a single building or living unit to a shared, multiple user or public water or wastewater system main building with accessory buildings. The term is synonymous with "service connection." For purposes of ARM 17.36.328, "connection" means a water or sewer line that connects a subdivision to a public system.

(8) through (11) remain the same, but are renumbered (10) through (13).

~~(12) "Dwelling" or "residence" means any structure, building, or portion thereof, which is intended or designed for human occupancy and supplied with water by a piped water system.~~

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

(15) "Existing system" means a water supply or wastewater disposal system, in a proposed subdivision, that was installed prior to the submittal of a subdivision application under this subchapter.

(14) remains the same, but is renumbered (16).

(17) "Facilities" means public or private facilities for the supply of water or disposal of sewage, storm water, or solid waste and any pipes, conduits, or other stationary method by which water, storm water, sewage, or solid wastes might be transported or distributed.

(18) "Fill" means artificially placed soil.

~~(15)~~ (19) "Floodplain" means the area adjoining the watercourse or drainway that would be covered by the floodwater of a flood of 100-year frequency except for sheetflood areas that receive less than one foot of water per occurrence and are considered zone b areas B or a shaded X zone by the Federal Emergency Management Agency. The floodplain consists of the floodway and the floodfringe, as defined in ARM 36.15.101.

(16) through (18) remain the same, but are renumbered (20) through (22).

~~(19)~~ (23) "Impervious layer" means any layer of material in the soil profile that has a percolation rate slower than 420 240 minutes per inch.

~~(20)~~ (24) "Individual water system" means any water system that serves one living unit or commercial structure unit. The total number of people served may not exceed 24 and that is not a public water supply system as defined in 75-6-102, MCA.

~~(21)~~ (25) "Individual wastewater system" means a wastewater system that serves one living unit or commercial structure unit. The total number of people served may not exceed 24 and that is not a public sewage system as defined in 75-6-102, MCA.

(22) remains the same, but is renumbered (26).

~~(23)~~ (27) "Living unit" means the area under one roof occupied by a family that can be used for one residential unit and that has facilities for sleeping, cooking, and sanitation. For example, a A duplex is considered two living units.

(24) and (25) remain the same, but are renumbered (28) and (29).

(30) "Main" means any line providing water or sewer to two or more service

connections, any line serving a water hydrant that is designed for firefighting purposes, or any line that is designed to water or sewer main specifications.

(26) and (27) remain the same, but are renumbered (31) and (32).

~~(28)~~ (33) "Multiple-user wastewater system" means a non-public wastewater system that serves, or is intended to serve, three through 14 living units or three through 14 commercial structures more than two living units or commercial units or a combination of both and that is not a public sewage system as defined in 75-6-102, MCA. The total number of people served may not exceed 24. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data by 2.5.

~~(29)~~ (34) "Multiple-user water supply system" means a non-public water supply system designed to provide water for human consumption to serve three through 14 living units or three through 14 commercial structures that serves, or is intended to serve, more than two living units or commercial units or a combination of both and that is not a public water supply system as defined in 75-6-102, MCA. The total number of people served may not exceed 24. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data by 2.5.

(30) and (31) remain the same, but are renumbered (35) and (36).

~~(32)~~ (37) "Parcel" means a part of land which is created by a division of land or a space in an area used for recreational camping vehicles or mobile homes. The term is synonymous with "tract" and "lot" for purposes of this chapter.

~~(33)~~ (38) "Percolation test" means a standardized test used to assess the infiltration rate in of soils, performed in accordance with Appendix A in Department Circular DEQ-4.

~~(34) "Piped water system" means a plumbing system that conveys water into a structure from any source including, but not limited to, wells, cisterns, springs, or surface water.~~

(35) and (36) remain the same, but are renumbered (39) and (40).

(41) "Professional engineer" means an engineer licensed or otherwise authorized to practice engineering in Montana pursuant to Title 37, chapter 67, MCA.

~~(37)~~ (42) "Public wastewater system" means a system for collection, transportation, treatment, or disposal of wastewater that serves 15 or more families or 25 or more persons daily for a period of at least any 60 or more days in a calendar year. In estimating the population that will be served by a proposed residential system, the department reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data by 2.5, so that ten or more proposed residential connections will be considered a public system.

~~(38)~~ (43) "Public water supply system" means a system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for any 60 or more days in a calendar year. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of

living units by 2.5, so that ten or more proposed residential connections will be considered a public system.

~~(39)~~ (44) "Recreational camping vehicle" means a ~~vehicle that is used for non-permanent residence and is moved frequently~~ vehicular unit designed primarily as temporary living quarters for recreational, camping, travel, or seasonal use, and that either has its own power or is mounted on, or towed by, another vehicle. The basic types of RVs are camping trailer, fifth wheel trailer, motor home, park trailer, travel trailer, and truck camper.

(40) through (44) remain the same, but are renumbered (45) through (49).

~~(45)~~ (50) "Septic tank" means a ~~storage~~ wastewater settling tank in which settled sludge is in immediate contact with the wastewater flowing through the tank while the organic solids are decomposed by anaerobic action.

(46) remains the same, but is renumbered (51).

~~(47)~~ (52) "Shared wastewater system" means a wastewater system that serves, or is intended to serve, two living units or commercial ~~structures~~ units or a combination of both. The total number of people served may not exceed 24 and that is not a public sewage system as defined in 75-6-102, MCA.

~~(48)~~ (53) "Shared water system" means a water system that serves, or is intended to serve, two living units or commercial ~~structures~~ units or a combination of both. The total number of people served may not exceed 24 and that is not a public water supply system as defined in 75-6-102, MCA. In estimating the population served, the reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data.

(49) through (51) remain the same, but are renumbered (54) through (56).

~~(52)~~ (57) "Soil profile" means a description of the soil strata to a depth of eight feet using the United States Department of Agriculture (USDA) soil classification system method, which can be found in Appendix B, Department Circular DEQ-4.

(53) through (55) remain the same, but are renumbered (58) through (60).

~~(56)~~ "Septic tank" means a ~~storage settling tank in which settled sludge is in immediate contact with the sewage flowing through the tank while the organic solids are decomposed by anaerobic bacterial action.~~

(57) through (61) remain the same, but are renumbered (61) through (65).

~~(62)~~ (66) "Wastewater" means water-carried wastes ~~that is discharged from a dwelling, building, or other facility, including, but not limited to:~~

(a) through (d) remain the same.

~~(63)~~ (67) "Wastewater treatment system" or "wastewater disposal system" means a system that receives wastewater for purposes of treatment, storage, or disposal. The term includes, ~~but is not limited to, pit privies and experimental systems~~ all disposal methods described in Department Circulars DEQ-2 and DEQ-4.

(64) remains the same, but is renumbered (68).

(69) "Well isolation zone" means the area within a 100-foot radius of a water well.

(65) remains the same, but is renumbered (70).

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The term "accessory building" is defined in new definition (1). The term is used in the revised definition of "connection" in order to allow a water or sewer line that serves a main building and accessory buildings to be classified as a service connection rather than as a main. The proposed definition of "accessory building" is the same as the definitions in Department Circular DEQ-4, 2013 edition (DEQ-4) and in the public water supply and public sewage system rule at ARM 17.38.101(3)(a). Because design standards are different for service lines and mains, this definition is necessary to ensure that the standards are consistently applied for public and non-public water supply and sewage systems.

A non-substantive change is proposed to the definition of "bedroom" in (2) to delete an unnecessary "as."

The term "commercial unit" is defined in new (7). The term is used in the definitions of individual, shared, and multiple-user water and wastewater systems. The proposed definition of "commercial unit" is the same as the definition in DEQ-4. The definition is necessary to clarify how shared and multiple-user systems are defined.

The proposed amendments to the definition of "connection" in (7) conform this definition to the definitions in DEQ-4 and in the public water supply and public sewage system rule at ARM 17.38.101(3)(h). Because the design standards are different for service connections and mains, this amendment is necessary to ensure that the standards are consistently applied for public and non-public water supply and sewage systems.

The proposed amendments delete the definition of "dwelling." The term "dwelling" is currently used primarily in references to single or multiple "family dwellings." The proposed amendments to these rules would replace the term "family dwelling" with "living unit," so this definition is no longer needed.

The term "existing system" is defined in new (15). The term is used in ARM 17.36.327 and ARM 17.36.335, which set out requirements for existing non-public water supply and sewage systems in proposed subdivisions. The new definition codifies the department's current interpretation that a system is considered to be "existing" if it was installed prior to the submittal of a subdivision application. A system that was approved, but not installed, prior to the submittal of a subdivision application would not be "existing" under this definition. The definition is necessary to clarify which systems are subject to the provisions of ARM 17.36.327 and ARM 17.36.335. The rule contains requirements for the adequacy of systems that are already in place.

The term "facilities" is defined in new (17). The definition is the same as the definition in statute at 76-4-102(6), MCA, except that storm water has been added. The Sanitation in Subdivisions Act requires the department to review storm water drainage in subdivisions and the department has determined that storm water drainage structures are "facilities" as defined in the Act. Expressly referencing storm water in this definition is necessary to clarify that storm water facilities are subject to Sanitation in Subdivisions Act requirements.

The term "fill" is defined in new (18). The term is used primarily in ARM 17.36.321 to prohibit fill systems in new subdivisions except for replacement drainfield areas. The proposed definition conforms to the definition in DEQ-4 and is

necessary to clarify the application of ARM 17.36.321.

A non-substantive amendment is proposed to the definition of "floodplain" in ARM 17.36.101(15) to conform to the language in the floodplain statute at 76-5-104(10), MCA.

The proposed amendment to the definition of "impervious layer" in ARM 17.36.101(19) changes, from 120 to 240 minutes per inch, the percolation rate at which material is considered impervious by the reviewing authority. The amendment conforms this definition to that in DEQ-4 and is necessary because adequate wastewater treatment can be achieved in soils with slower percolation rates.

The proposed amendments to the definitions of "individual water system" and "individual wastewater system" in ARM 17.36.101(20) and (21) replace the term "commercial structure" with "commercial unit." This is necessary in order to use the defined term "commercial unit." The amendments also delete the limitation to 24 people served, and replace it with a reference to the statutory definitions of public water supply and public sewage system. The amendments are necessary because the 24-person limit does not accurately identify the threshold between a non-public and a public system contained in 75-6-102, MCA.

The proposed amendments to the definition of "living unit" in (23) delete the reference to "occupied by a family" and replace it with "that can be used for one residential unit." This is necessary because not all residential uses involve use by a family. The amendments also identify the basic features of a living unit, which are that it has facilities for sleeping, cooking, and sanitation. The amendments conform this definition to that in DEQ-4 and are necessary to identify which structures constitute living units for purposes of these rules.

The term "main" is defined in new (30), using the same definition as in DEQ-4 and in the public water supply and sewage system rule at ARM 17.38.101(3)(d), except that the term "multiple" is replaced by "two or more" to avoid potential confusion that could be caused by the definition of "multiple-user wastewater" or "multiple-user water supply" systems, which systems have three or more connections. The term is used in the footnotes to the setback table in ARM 17.36.323, as amended. The new definition is necessary to clarify the meaning of the setback table and to maintain general consistency with the public water supply and sewage system definitions.

The definitions of "multiple-user wastewater system" and "multiple-user water supply system" in (28) and (29) are amended to replace the term "commercial structure" with "commercial unit." This is necessary in order to use the defined term "commercial unit." The amendments also provide that multiple-user systems can consist of more than two living units, commercial units, or a combination of residential and commercial units. This codifies an existing department interpretation of the definitions and is necessary to provide guidance to applicants about the meaning of the rules. The amendments also delete the limitation to 24 people served and replace it with a reference to the statutory definition of public water supply and public sewage systems. This amendment is necessary because the 24-person limit does not accurately identify the threshold between a non-public and a public system. The amendments also modify the formula for determining when proposed residential water and sewage systems in subdivisions will be subject to the requirements for public systems. The current rule multiplies the number of proposed

living units times the county average of persons per living unit, based on the most recent census data. The amendments standardize the persons per living unit to 2.5. This is necessary to ensure that the requirements for public systems are applied consistently across the state to developments of a certain size.

The proposed amendments to the definition of "parcel" in (32) provide that spaces for recreational camping vehicles (RV) or mobile homes are not parcels. This amendment is necessary because most RV and mobile home spaces are not separate tracts of land. The proposed amendments to the lot size provisions in ARM 17.36.340 provide that the requirements of that rule apply to the entire area within which the RV or mobile home park is located, not to the spaces within the park. The amendments also provide that the term "parcel" is synonymous with "lot" and "tract." These two amendments are necessary to conform the definitions to the definition terminology in the Sanitation in Subdivisions Act, which uses the term "parcel."

The proposed amendment to the definition of "percolation test" in (33) references the procedures for performing percolation tests set out in DEQ-4 Appendix A. This amendment conforms to the definition in DEQ-4 and is necessary to identify requirements applicable to percolation test procedures.

The proposed amendments delete the definition of "piped water system" in (34). The deletion is necessary because the term is used only in the definition of "dwelling," which the proposed amendments would replace with the term "living unit."

The term "professional engineer" is defined in new (41), using the same definition as in DEQ-4. The definition provides that references to professional engineer in these rules refer to a person licensed pursuant to Title 37, chapter 67, MCA. The definition is necessary to implement rules and to ensure that engineered designs are prepared by properly qualified people.

The definitions of "public wastewater system" and "public water supply system" in (37) and (38) are amended to make minor changes to conform to the statutory definitions of public systems in 75-6-102(13) and (14), MCA. The amendments also set out the formula for determining when proposed residential water or sewage systems in subdivisions will be subject to the design standards for public systems. The amendments are necessary to be consistent with statutory definitions, to clarify when public design standards apply, and to conform the definition of "public wastewater system" to that in DEQ-4.

The definition of "recreational camping vehicle" in (39) is amended to conform to the definition in DEQ-4 and to the definition in the trailer court licensing rules adopted by the Department of Public Health and Human Services. ARM 37.111.201(28). The amendment is necessary to provide consistency between the application of these rules and the trailer court licensing provisions.

The definition of "septic tank" in (45) is amended to make minor changes for clarification and to conform to the definition in DEQ-4.

The definitions of "shared wastewater system" and "shared water system" in ARM 17.36.101(47) and (48) are amended to replace the term "commercial structure" with "commercial unit." This is necessary in order to use the defined term "commercial unit." The amendments also clarify that shared user systems can consist of two living units, commercial units, or a combination of both. This codifies an existing department interpretation of the definitions and is necessary to provide guidance to applicants about the meaning of the rules. The amendments also delete

the limitation to 24 people served and replace it with a reference to the statutory definition of public water supply and public sewage systems. This amendment is necessary because the 24-person limit does not accurately identify the threshold between a non-public and a public system. The amendment conforms to the definition of "shared wastewater system" in DEQ-4. The amendments to the definition of "shared water system" also delete the reference to the formula for determining when a shared system is subject to the design standards for public systems. The reference is not necessary because shared systems can be public based on the definition in 75-6-102, MCA, but will not reach the public threshold based on the county average of persons per living unit.

The definition of "soil profile" in (52) is amended to include a reference to the soil classification method set out in DEQ-4 Appendix B. The amendment is necessary to provide guidance to applicants about where the required procedures can be found.

The proposed amendments delete the definition of "septic tank" at (56). The definition is not necessary because the term has been defined at ARM 17.36.101(45).

The definition of "wastewater" in (62) is amended to delete the reference to wastewater that is discharged from a dwelling, building, or other facility. The amendment is necessary to include systems that do not discharge from a building, such as a waste segregation system. The proposed amendment also conforms this definition to that in DEQ-4.

The definition of "wastewater treatment system" in (63) is amended to replace the reference to pit privies and experimental systems with a reference to all disposal methods described in Department Circulars DEQ-2 and DEQ-4. Pit privies and experimental systems are addressed in DEQ-4, together with a number of other types of systems. The amendment is necessary to provide a more complete reference to the types of wastewater treatment systems.

The term "well isolation zone" is defined in new (69). The definition is the same as in statute at 76-4-102(18), MCA. Repeating the definition in the rules is necessary for ease of reference.

17.36.102 APPLICATION--GENERAL (1) To initiate review of a subdivision under 76-4-125 or 75-4-134, MCA, a person must submit a complete application; ~~signed by the owner of the subdivision or an authorized representative,~~ to the department. The application must be signed by all owners of record of the property proposed to be subdivided. In the application, the owners may designate an authorized representative responsible for subsequent correspondence with the reviewing authority. If the department has certified a local department or board of health to review subdivisions pursuant to 76-4-104, MCA, the application must be submitted to the local reviewing authority.

(2) through (4) remain the same.

(5) In addition to meeting the requirements of this chapter, subdivisions designed for the placement of mobile homes or recreational camping vehicles may be subject to the requirements of ARM Title 37, chapter 111, subchapter 2.

(6) If a proposed subdivision includes facilities for ~~subsurface~~ wastewater treatment or disposal, including gray water irrigation, the developer shall

notify the designated agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The designated agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local requirements.

AUTH: 76-4-104, MCA

IMP: 76-4-104, 76-4-125, MCA

REASON: ARM 17.36.102(1) is proposed to be amended to require a subdivision owner to sign the initial subdivision application, but to allow the owner to designate in the application an authorized representative to conduct subsequent correspondence with the reviewing authority. All owners of record of the property to be subdivided must sign the application. The requirement of the owner signatures on the application is necessary to show that the application has been authorized by the owners, even though subsequent submittals may be provided by an authorized consultant.

Section (6) is proposed to be amended to require notice to the agent of the local board of health of all proposed wastewater treatment facilities, not just those providing subsurface treatment. The amendment is necessary to ensure that the local health authority receives notice of systems such as lagoons and incinerator toilets.

17.36.103 APPLICATION--CONTENTS (1) In addition to the completed application form required by ARM 17.36.102, the following information must be submitted to the reviewing authority as part of a subdivision application:

(a) and (b) remain the same.

(c) if public or multiple-user water supply or wastewater systems are proposed, one copy of the design report and one set of plans and specifications may be submitted until the plans are approvable, after which three copies of final plans and specifications must be submitted;

(d) a lot layout documents as required by ARM 17.36.104;

(e) ~~if nonmunicipal water supply or wastewater systems are proposed, a~~ vicinity map or plan showing the locations of the following features if they are within the area impacted by 100 feet of proposed or approved subdivision mixing zones, or within 100 feet (whichever is greater) of the proposed subdivision water supply or wastewater system treatment facilities, or within 100 feet of the perimeter of the proposed subdivision:

(i) lakes, streams, irrigation ditches, wetlands, and springs; and

(ii) existing, previously approved, and proposed wells, wastewater treatment systems, and mixing zones;

(f) remains the same.

(g) if ground water is proposed as a water source, the applicant shall submit the following information:

(i) the location of the proposed ground water source, which must be shown on the lot layout, indicating distances to any potential sources of contamination within 500 feet and any known mixing zone as defined in ARM 17.30.502. If the reviewing authority identifies a potential problem, it may require that all potential

sources of contamination be shown in accordance with Department Circular PWS-6; and

(ii) a description of the proposed ground water source, including approximate depth to water bearing zones and lithology of the aquifer;

~~(g)~~ (h) if water is to be supplied by means other than individual on-site wells, information about ~~water right ownership~~ and water use agreements;

~~(h)~~ (i) if subsurface wastewater treatment systems are proposed:

(i) and (ii) remain the same.

(iii) direction and percentage of slope across the treatment area ~~(or a contour map with a minimum contour interval of two feet); and~~

(iv) remains the same.

~~(j)~~ (i) if gray water irrigation systems are proposed:

(i) descriptions of the soils within 25 feet of proposed gray water irrigation areas. Soils must be described in accordance with ~~Appendix B of d~~ Department Circular DEQ-4. Each test ~~hole~~ hole must be keyed by a number on a copy of the lot layout or map with the information provided in the report; and

(ii) remains the same.

~~(j)~~ (k) a copy of the nondegradation analysis and calculations as required by ARM 17.30.715. If the proposed wastewater disposal facilities for a subdivision are subject to the discharge permit requirements of Title 75, chapter 5, MCA, and ARM Title 17, chapter 30, the applicant shall first obtain the discharge permit and provide the reviewing authority with a copy of the discharge permit nondegradation determination;

(k) through (q) remain the same, but are renumbered (l) through (r).

(s) except for connections to existing public systems addressed under ARM 17.36.328(2)(b)(iv), if the proposed water supply is from wells or springs, either:

(i) a letter from the Department of Natural Resources and Conservation stating that the water supply is exempt from water rights permitting requirements; or

(ii) proof of a water right, as defined in 85-2-422, MCA.

(r) through (t) remain the same, but are renumbered (t) through (v).

AUTH: 76-4-104, MCA

IMP: 76-4-104, 76-4-125, MCA

REASON: The proposed amendment to (1)(c) would allow a subdivision applicant to initially submit one set of plans and specifications, instead of three. The amended rule would require three copies after the plans and specifications are approvable. The amendment is necessary to streamline the application process and to avoid unnecessary copying of preliminary plans and specifications.

The proposed amendments to (1)(d) make minor changes to clarify the requirements for providing a vicinity map with a subdivision application.

The proposed amendments to (1)(e) delete the limitation of this subsection to non-municipal systems. This is necessary to allow for review of potential impacts to, and from, all types of proposed water supply and wastewater treatment facilities. The proposed amendments state that the vicinity map must show all features listed in (1)(e)(i) and (ii) if they are within 100 feet of proposed or approved subdivision mixing zones. This is necessary to clarify the meaning of the current language

"within the area impacted by mixing zones." The proposed amendments retain the current requirement that the listed features be shown on the map, if they are within 100 feet of proposed water supply or wastewater treatment systems, although the amendment replaces the term "system" with the defined term "facilities." Finally, the proposed amendments to (1)(e) require that the listed features be shown on the map, if they are within 100 feet of the perimeter of the proposed subdivision. This is necessary to allow for review of potential contamination impacts between the proposed subdivision and the immediate vicinity.

Proposed new (1)(g) repeats the information requirements in ARM 17.36.330(2) regarding ground water proposed for a drinking water source. The amendment is necessary to identify in this rule all of the major items required to be submitted with an application.

The proposed amendment to (1)(h) deletes the requirement for information about water rights. This is necessary because proposed new (1)(s) sets out the requirements for applicants to provide water rights information.

Current (1)(j) is proposed to be renumbered and amended to clarify the requirements for providing a water quality nondegradation analysis with a subdivision application. If a proposed subdivision wastewater treatment system will require a department discharge permit under the Water Quality Act, the amendment will require the applicant to obtain the discharge permit before completing the subdivision application. The amendment is necessary to ensure that the department subdivision review program uses the same nondegradation analysis that is used in reviewing the discharge permit.

The proposed amendments add a new (1)(s), which would require applicants to provide information to the department about the status of the water rights for any proposed water supply using wells or springs. Except for connections to existing public water supply systems, which are addressed under ARM 17.36.328(2)(b)(iv), the amendment would require the applicant to provide either proof of a water right or a letter from the Montana Department of Natural Resources and Conservation (DNRC) stating that the proposed subdivision water supply is exempt from DNRC permitting requirements. If the applicant cannot provide the water rights information, the department would not issue a Sanitation in Subdivisions Act approval for the subdivision. Section 76-4-104(6)(b), MCA, dictates that the department require adequate evidence that a water supply that is sufficient in terms of quality, quantity, and dependability will be available before a subdivision can be approved. In the past, subdivisions have been developed and lots have been sold in areas where an exemption or a water right cannot be granted. The amendment is necessary to allow the department to better assess the dependability of a proposed subdivision water supply and to help prevent the development of a subdivision when water is not legally available for use.

17.36.104 APPLICATION--LOT LAYOUT DOCUMENT (1) The applicant shall provide four copies of a lot layout documents for the proposed subdivision. The lot layout documents must be on a sheets no larger than 11" x 17". ~~Multiple lots should be shown on one sheet,~~ at a scale no smaller than 1" = 200'. The reviewing authority may require a larger scale if needed to enhance readability. Multiple sheets may be used for large developments, provided that individual lots are not split

across two sheets. If multiple sheets are used, a single sheet must also be provided, using an appropriate scale, that shows the entire development.

(2) The following information must be provided on the lot layout documents. Other information (e.g., percolation test results, soil profile descriptions) may be included on the lot layout documents only if the documents remains legible:

(a) through (f) remain the same.

(g) locations, and sizes, and design details of existing and proposed storm water structures (culverts, ponds, dry wells, etc.);

(h) and (i) remain the same.

(j) information as set out in Table 1 for the specific water supply and wastewater systems in the subdivision. All systems must be labeled as "existing" or "proposed."

TABLE 1
REQUIREMENTS FOR LOT LAYOUTS

	Subdivisions served by nonmunicipal wells	Subdivisions served by nonmunicipal wastewater systems	Subdivisions served by municipal water	Subdivisions served by municipal wastewater systems
Existing and proposed wells, and 100-ft setback setbacks <u>in ARM 17.36.323 Table 2 [contained in MAR Notice No. 17-359 published in this register], and features listed in ARM 17.36.103(1)(e)</u>	X	X	X	X
Water lines (suction and pressure)			X	X
Water lines (extension and connections)		X	X	
Existing and proposed wastewater systems (drainfield, replacement area, and existing septic tanks)	X	X		

Existing and proposed gray water irrigation systems	X	X	X	X
Percent and direction of slope across the drainfield	X	X		
Sewer lines (extensions and connections)	X	X	X	X
Lakes, springs, irrigation ditches, wetlands and streams	X	X		
Percolation test locations, if provided, keyed to result form		X		
Soil pit locations keyed to soil profile descriptions		X		
Ground water monitoring wells keyed to monitoring results form		X		
Floodplain boundaries	X	X	X	X
Cisterns		X		
Existing and proposed building locations		X		
Driveways		X		
Road cuts and escarpments or slopes > 25 percent		X		
Mixing zone boundaries and direction of ground water flow	X	X		
<u>Locations, sizes, and design details of existing and proposed storm water facilities</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>

AUTH: 76-4-104, MCA

8-4/24/14

MAR Notice No. 17-358

IMP: 76-4-104, 76-4-125, MCA

REASON: The proposed amendments to ARM 17.36.104(1) provide the requirements for lot layout documents. The amendments allow the reviewing authority to require a larger scale on documents if needed to enhance readability. The amendments clarify that multiple sheets may be used. When multiple sheets are used, lots may not be split across two sheets, and a single sheet must also be provided that shows the entire development. These amendments are necessary to facilitate the review of larger developments.

The proposed amendment to (2)(g) clarifies that lot layout documents must include design details for proposed and existing storm water structures. The same requirement is proposed to be added to Table 1. Table 1 is also proposed to be amended to require that all setbacks be shown on lot layout documents, not just the setback between wells and drainfields, and that the documents must show all features listed in ARM 17.36.103(1)(e). The amendments to Table 1 also require that proposed, as well as existing, buildings be shown on the lot layout documents. This is necessary to allow the reviewing authority to evaluate whether the lot size is adequate for the proposed development, as required by the proposed amendments to the lot size rule at ARM 17.36.340(2)(d). These amendments are necessary to ensure that lot layout documents provide sufficient information to allow review for compliance with applicable requirements.

17.36.106 REVIEW PROCEDURES--APPLICABLE RULES (1) The procedures for review of subdivision applications by the reviewing authority are as follows:

(a) Upon receipt of a subdivision application, ~~a resubmittal, or additional information provided by the applicant,~~ the department will have 55 days to ~~deny,~~ approve, ~~or conditionally approve,~~ or deny the subdivision application. ~~If , unless~~ an environmental impact statement is required, in which case action must be taken within 120 days.

(b) and (b)(i) remain the same.

(c) If an application is incomplete, the reviewing authority shall deny the application, setting forth, in writing, the deficiencies to the applicant or the applicant's representative. If the additional information is submitted within 30 days after the date of the denial letter, the reviewing authority shall review the resubmitted application within 30 days after receipt. If the review is conducted by a local department or board of health that is certified under 76-4-104, MCA, the department shall make a final decision on the resubmitted application within ten days after the local reviewing authority completes its review. If the additional information is not submitted within 30 days after the date of the denial letter, the review time frames in (a) and (b) apply.

(2) through (2)(c) remain the same.

(3) Subdivision lots recorded with sanitary restrictions prior to July 1, 1973, shall be reviewed in accordance with requirements set forth in this chapter. In cases where any requirements of this chapter would preclude the use for which each lot was originally intended, then the applicable requirements (including the absence thereof) in effect at the time such lot was recorded shall govern except that sanitary

restrictions in no case shall be lifted from any such undeveloped lot which cannot satisfy any of the following requirements:

(a) if a subsurface wastewater treatment system is utilized, soil conditions must provide for safe treatment and disposal of wastewater effluent; and

(b) unless a waiver is granted pursuant to ARM 17.36.601 after consultation with the local health department;

(a) and (b) remain the same, but are renumbered (i) and (ii).

~~(c) (iii)~~ no part of the lot utilized for the subsurface wastewater treatment system may be located in a 100-year floodplain; and

~~(d) if a subsurface wastewater treatment system is utilized, soil conditions must provide for safe treatment and disposal of wastewater effluent; and~~

(e) remains the same, but is renumbered (iv).

(4) Plans for proposed subdivision facilities that will be public water supply or public sewage disposal systems must be reviewed in accordance with the provisions of Title 75, chapter 6, MCA, and ARM Title 17, chapter 38, subchapter 1. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units by 2.5.

AUTH: 76-4-104, MCA

IMP: 76-4-104, 76-4-125, MCA

REASON: The proposed amendment to (1)(a) provides that resubmittals and additional information are not subject to the 55-day application review timeframe. Statutory changes in 2011 addressed the time frame for review of additional information. The rules incorporate the statutory changes at ARM 17.36.106(1)(c), which provides that additional information submitted within 30 days after an application is denied must be reviewed within 30 days after receipt. The proposed amendments to ARM 17.36.106(1)(c) also state that the failure of the applicant to submit the requested additional information within 30 days after the application is denied will reset the review period to the 55-day review time for new applications. This amendment establishes the review period for late-submitted additional information. Review of late submissions often requires additional time because of the need for reviewers to refamiliarize themselves with the application.

The existing provisions in (3) set out the procedures for review of subdivision lots recorded with sanitary restrictions prior to July 1, 1973. Prior to that date, lots could be created without Sanitation Act review, but could not legally be developed until the sanitation review occurred and sanitary restrictions were lifted. Section (3) lists five minimum requirements that must be satisfied before sanitary restrictions can be lifted. The current rule applies these minimum requirements only to undeveloped lots. The proposed amendments would apply the minimum requirements to all lots, but would allow waivers of four of the five requirements after consultation with the local health department. Waivers would be subject to ARM 17.36.601, which requires that a waiver not cause adverse health or environmental effects. The one requirement that could not be waived is the requirement that soil conditions provide for safe treatment and disposal of effluent. The proposed amendments are necessary to apply the minimum requirements more uniformly, while still retaining flexibility to adjust the requirements when appropriate.

Proposed new (4) states that plans for subdivision facilities that are public systems must be reviewed under the public water supply laws in Title 75, chapter 6, MCA, and implementing regulations. This requirement is set out in statute at 76-4-131, MCA, but the inclusion in these rules is necessary to provide guidance to applicants about applicable requirements. The proposed amendment also states that the reviewing authority will estimate the future population of a subdivision based on 2.5 people per living unit. This provision is already set out in the proposed amendments to the definitions in ARM 17.36.101, but the inclusion here is necessary to provide information in this rule about how public water laws are implemented in subdivision review.

17.36.110 CERTIFICATE OF APPROVAL (1) through (2) remain the same.

~~(3) Pursuant to a contract between the department and a local reviewing authority, minor changes to a certificate of subdivision approval may be made through an approval by the local reviewing authority of an "as-built" lot layout document. Amendment of the certificate of approval shall be effective upon filing of the approved "as-built" lot layout document with the clerk and recorder's office, with a copy sent to the department. Only the following changes may be made through the "as-built" procedure:~~

~~(a) relocation of structures, water systems, or sewer systems, provided that the changes comply with Title 76, chapter 4, part 1, MCA, this chapter, and all related rules and regulations; and~~

~~(b) changes to structures, water, or wastewater systems that do not significantly affect the approval statement of the subdivision.~~

AUTH: 76-4-104, MCA

IMP: 76-4-104, 76-4-125, MCA

REASON: The proposed amendment would delete (3), which sets out a procedure for making minor changes to a certificate of subdivision approval through use of an "as-built" lot layout document. The deletion is necessary because New Rule I will address the procedures for amending certificates of approval.

17.36.116 CERTIFICATION OF LOCAL DEPARTMENT OR BOARD OF HEALTH (1) A local department or board of health, if it requests certification, must be certified as the reviewing authority if the following requirements are met and the sanitarian or engineer is qualified as described in (2):

(a) the local department or board of health employs a registered licensed sanitarian or a registered professional engineer responsible to perform the actual review. Those local governments employing more than one registered sanitarian or registered professional engineer shall designate one such person to be responsible for the review program; and

(b) unless delegated under 75-6-121, MCA, a local department or board of health may not review public water supply systems, public sewage systems, or extensions of or connections to these systems, except that a local department or board of health may be certified to review subdivisions proposed to connect to existing municipal water and wastewater systems previously approved by the

department if no extension of the system is required; and

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

(2) A ~~registered~~ licensed sanitarian or registered professional engineer, prior to performing subdivision review, shall:

(a) through (a)(vi) remain the same.

(b) have a minimum of one year's experience performing subdivision review under the direct supervision of the department or of a department-approved ~~registered~~ licensed sanitarian or ~~registered~~ professional engineer.

(3) through (4) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, 76-4-105, MCA

REASON: The proposed amendments to (1) replace the term "registered" sanitarian with "licensed" sanitarian. This is necessary to use the correct term for Montana's professional certification programs for sanitarians. The amendments also delete the reference to "registered" professional engineers. The term is unnecessary because the proposed amendments to ARM 17.36.101 provide a definition for the term "professional engineer." The definition contains a requirement that the engineer be licensed or otherwise authorized to practice engineering in Montana. The reference to a "registered" engineer has been deleted throughout the rules. The proposed amendments also restate statutory provisions restricting the authority of local departments and boards of health to review public water supply and sewage systems in subdivisions. The provisions are in statute at 76-4-104(3)(b), MCA. Restating the provisions in this rule is necessary to provide a more complete statement of the requirements applicable to certification of local authorities to perform Sanitation in Subdivisions Act review.

17.36.310 STORM DRAINAGE (1) The applicant shall submit a storm drainage plan to the reviewing authority. The plan must include a design report, calculations, and plan sheets sufficient to provide construction details of the storm drainage system and must conform with the requirements of either (2) or (3).

(2) Except as provided in (3), a storm drainage plan must be designed in accordance with ~~d~~Department Circular DEQ-8.

(a) for lots proposed for uses other than as single-family dwellings, a storm drainage plan submitted under (2) must be prepared by a ~~registered~~ professional engineer and the storm drainage system is subject to the requirements in [New Rule III];

(b) remains the same.

(3) Regardless of the type of use or the number of commercial or residential units proposed, a storm drainage plan is not subject to the requirements of (2) if all of the requirements in (3)(a) through (h) are met. To be exempt from the requirements of (2), a storm drainage plan must be submitted demonstrating that:

(a) remains the same.

(b) the area of disturbance within ~~the proposed subdivision~~ each proposed lot has a slope of 3% percent or less;

(c) unvegetated areas including, but not limited to, road surfaces, road cuts

and fills, roofs, and driveways, comprise less than 15% percent of the total acreage of ~~the proposed subdivision~~ each proposed lot;

(d) drainage structures, such as road ditches, exist or, if necessary, will be constructed;

(e) completion of the proposed subdivision will not increase the amount of pre-development storm water runoff, during the 100-year 24-hour storm event, between proposed lots and from the proposed subdivision area to an adjoining property;

(f) the proposed subdivision will not alter pre-development pass-through water flow patterns; and

(g) the applicant provides the reviewing authority with a 7 1/2 minute USGS topographic map showing the proposed subdivision and, if available, a map with contour intervals no greater than 20 feet that shows drainage patterns; and

(h) no buildings or drainfields in the subdivision will be flooded during the 100-year 24-hour storm event.

(4) through (7) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, 76-4-125, MCA

REASON: Section (1) requires that an applicant submit a storm drainage plan to the reviewing authority that complies with the requirements of either (2) or (3). The proposed amendment to (1) provides additional detail about the required contents of the plan. The amendment is necessary to facilitate review of storm drainage systems and to ensure that the systems meet applicable requirements.

Section (2) sets out requirements for storm drainage plans for subdivisions that do not meet the exemption criteria in (3). Under (2), storm drainage plans must follow Department Circular DEQ-8 (DEQ-8) and, if required by (2)(a), must be designed by a licensed professional engineer. The proposed amendment to (2)(a) deletes the reference to a "registered" professional engineer. See Reason for ARM 17.36.116. The amendment also provides a cross-reference to the requirements in New Rule II for engineer-designed systems. The cross-reference is necessary to provide guidance about requirements that are applicable to storm drainage plans that are designed by a professional engineer.

Section (3) sets out criteria for exempting subdivisions from the requirements in (2). The proposed amendments clarify that, regardless of the type of use or the number of commercial or residential units proposed, a storm drainage plan is exempt from the requirements of (2) if all of the exemption criteria in (3) are met. The proposed amendments clarify that, to qualify for the exemption in (3), a plan must be submitted to the reviewing authority that demonstrates compliance with all of the criteria in (3). The proposed amendments to (3)(b) and (c) would require each lot in a subdivision to meet the slope and impervious area limits provided in the exemption. Applying the limits to individual lots is necessary because drainage problems can be created by failure of some lots in a subdivision to meet these requirements, even though the subdivision as a whole meets them. The proposed amendment to (3)(d) clarifies that existing as well as proposed drainage structures may be considered by the reviewing authority because existing structures can also

provide draining control.

Subsection (3)(e) currently provides that the proposed development may not increase pre-development flows of storm water from the subdivision. Development typically creates impermeable areas, such as buildings and roads, which reduce the capability of the land within the subdivision to absorb storm water, which can increase the rate of runoff from the subdivision over historic runoff levels.

Subsection (3)(e) requires a storm water plan to show that any excess runoff will be managed to prevent an increase in the rate at which the runoff historically left the subdivision. The proposed amendments to (3)(e) require that the pre-development runoff also be maintained between proposed lots within the subdivision. The amendments also identify the 100-year 24-hour storm event as the maximum storm event that must be managed. The requirements are contained in DEQ-8 and are necessary to prevent undesirable runoff impacts, even from exempt parcels.

The proposed amendments to (3)(f) clarify that the prohibition on alteration of pre-development flows applies to flows that historically originated outside the proposed subdivision area and passed through it. The amendment is necessary to be consistent with ARM 17.36.310(3)(e), which, as amended, allows alteration of pre-development flows that originate within the subdivision when they exceed the 100-year 24-hour storm event.

Proposed new (3)(h) prohibits inundation of buildings and drainfields in the proposed subdivision during the 100-year 24-hour storm event. The amendment is necessary to establish a minimum standard, consistent with DEQ-8, for management of storm water within the subdivision. As with the requirements in (a), these requirements prevent undesirable impacts and should apply to exempt parcels.

17.36.312 SUBDIVISIONS ADJACENT TO STATE WATERS

(1) remains the same.

~~(2) The department hereby adopts and incorporates by reference ARM Title 17, chapter 30, subchapters 6, 7, 10, and 12, which set forth water quality standards for state surface waters. Copies of ARM Title 17, chapter 30, subchapters 6, 7, 10, and 12, may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.~~

AUTH: 76-4-104, MCA

IMP: 76-4-104, 76-4-125, MCA

REASON: ARM 17.36.312 allows the department to require information about, and impose requirements on, sewage treatment and disposal systems in subdivisions if necessary to protect state waters. When imposing such requirements the department implements both the Sanitation Act and the Montana Water Quality Act. Because the Water Quality Act and rules are directly applicable to subdivision sewage systems, it is not necessary to incorporate the Water Quality Act rules in this subchapter. The incorporation also creates an ambiguity about whether the current Water Quality Act standards in DEQ-7 apply to subdivisions, or whether the applicable standards are those that were in effect at the time this incorporation rule was adopted. For these reasons, it is necessary to delete the incorporation by

reference section.

17.36.328 CONNECTION TO PUBLIC WATER SUPPLY AND WASTEWATER SYSTEMS (1) A New water supply and sewage disposal facilities in a proposed subdivision must be connected provided by a connection to a public water supply or wastewater system if any boundary of the subdivision is within 500 feet of any component of the public system and the public system meets the requirements of (2)(a) and (b). The department may grant a waiver, pursuant to ARM 17.36.601, of the requirement to connect to a public system if the applicant demonstrates that connection to the public system is physically or economically impractical, or that easements cannot be obtained. For purposes of this rule, a connection is economically practical if the cost of constructing the connection to the system is less than or equal to three times the cost of ~~installation of an~~ constructing approvable systems on the site.

(2) Unless a waiver is granted pursuant to ARM 17.36.601, Tthe reviewing authority may not approve the connection of a proposed subdivision to an existing public system unless:

- (a) remains the same.
- (b) the managing entity of the public system certifies to the reviewing authority, on a form acceptable to the department, that:
 - (i) through (iii) remain the same.
 - (iv) the appropriate water rights exist for this connection ~~or the managing entity has made application for the appropriate water rights for their system and any connections;~~ and
- (c) and (3) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendment to the title of ARM 17.36.328 adds the word "connection." This is necessary to clarify that this rule addresses when proposed subdivision water and sewer facilities must be connected to a nearby public system.

The proposed amendments to (1) clarify that the connection requirement applies only to proposed new facilities for water supply and sewage disposal. This codifies an existing department interpretation that existing systems are not subject to the connection requirement. The amendments also clarify that, when a waiver of the connection requirement is requested based on economic impracticality, only construction costs may be considered. Costs related to annexation, such as road improvements and sidewalks, are not relevant to the determination of whether to grant a waiver. This codifies the department's current interpretation of the meaning of the rule, and is necessary to provide guidance to applicants.

The proposed amendment to (2) allows an applicant to request a waiver from the requirements in (2)(a) through (c). This amendment is necessary to provide applicants, who can satisfy the criteria in ARM 17.36.601, the potential to acquire approval from the department for existing systems. This would allow for connections to systems that are in areas not subject to department jurisdiction and to systems

that are temporarily out of compliance but are under order to return to compliance. The proposed amendment to (2)(b)(iv) requires the managing entity of a public system to show that water rights exist for the proposed connection of a new subdivision. The amendment deletes the provision allowing the managing entity to simply show that the entity has made application for water rights. The amendment is necessary to be consistent with proposed new ARM 17.36.103(1)(g), which requires proof of a water right, or an exemption, as part of a subdivision application.

17.36.330 WATER SUPPLY SYSTEMS--GENERAL (1) The applicant shall demonstrate that water supply systems provide an adequate supply by showing that the following criteria are met:

- (a) remains the same.
- (b) the following flows must be provided:
 - (i) remains the same.
 - (ii) for multiple family ~~family~~ -user water supply systems, the requirements set out in ~~d~~Department Circular DEQ-3; and
 - (iii) for public water supply systems, the requirements set out in ~~d~~Department Circulars DEQ-1 and DEQ-3;
- (c) remains the same.

(2) If ground water is proposed as a water source, the applicant shall submit the following information:

- (a) the location of the proposed ground water source must be shown on the lot layout, indicating distances to any potential sources of contamination within 500 feet and any known mixing zone as defined in ARM 17.30.502. If a potential problem is identified, the reviewing authority may require that all potential sources of contamination be shown in accordance with ~~d~~Department Circular PWS-6, ~~1999~~ edition; and

- (b) and (3) remain the same.

(4) Each existing and proposed drinking water well in a proposed subdivision must be centered within a 100-foot radius well isolation zone. Pursuant to 76-4-104(6)(i), MCA, each proposed well isolation zone must be located wholly within the boundaries of the proposed subdivision where the well is located unless an easement or, for public land, other authorization is obtained from the landowner to place the proposed well isolation outside the boundaries of the proposed subdivision. This section does not apply to the divisions provided for in 76-3-207, MCA, except those under 76-3-207(1)(b), MCA.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendment to (1)(b)(ii) replaces the term "multiple family" with "multiple-user." The definitions in ARM 17.36.101 use the term "multiple-user," and the amendment is necessary to conform to the definitions.

The proposed amendment to (1)(b)(iii) requires public water supply systems to comply with applicable requirements in DEQ-1 and DEQ-3. DEQ-3 contains requirements applicable to small water supply systems. Adding a reference to DEQ-3 in this rule is necessary to identify all potential applicable requirements.

The proposed amendment to (2)(a) deletes a reference to the year of Department Circular PWS-6 (PWS-6). It is not necessary to identify the year in this rule because the correct editions of applicable department circulars are identified when the circulars are incorporated by reference in ARM 17.36.345.

Proposed new (4) requires that existing and proposed drinking water wells in proposed subdivisions be centered within a 100-foot-radius well isolation zone and, for certain subdivisions, requires that well isolation zones be located wholly within the boundaries of the proposed subdivision. This new section is necessary to implement 76-4-104(6)(i), MCA, as amended in 2013, and to protect wells in proposed subdivisions from sources of contamination located outside the subdivision.

17.36.331 NONPUBLIC WATER SUPPLY SYSTEMS: WATER QUALITY

(1) For non-public water supply systems, the following water quality requirements must be met:

(a) the applicant shall demonstrate that water quality is sufficient for the proposed subdivision. The reviewing authority may not approve a proposed water supply system if there is evidence that, after appropriate treatment, the concentration of any water quality constituent exceeds the human health standards in ~~d~~Department Circular DEQ-7, or the maximum contaminant levels established in ARM Title 17, chapter 38, subchapter 2. The necessary quality of water must be available at all times unless depleted by emergencies.

(b) the applicant shall obtain samples from wells in the proposed subdivision and shall provide analyses of the samples to the reviewing authority. If no wells exist in the proposed subdivision, the reviewing authority may accept samples from nearby water wells that are completed in the same aquifer as that proposed for the subdivision water supply. The samples may not be older than one year prior to the date of application. Water quality data must show the concentration of ~~nitrate (as nitrogen)~~ nitrates and nitrites and specific conductance. The reviewing authority may require testing of wells located near the proposed subdivision for additional constituents for which human health standards are listed in ~~d~~Department Circular DEQ-7, or in ARM Title 17, chapter 38, subchapter 2, if the reviewing authority believes that those constituents may be present in harmful concentrations. Analyses must be conducted by a laboratory certified by the Department of Public Health and Human Services for analyses of water samples for public water systems.

(i) and (ii) remain the same.

(iii) the requirement to sample for ~~nitrate (as nitrogen)~~ nitrates and nitrites and specific conductance does not apply if the reviewing authority determines that information from nearby water wells, which are completed in the same aquifer as that proposed for the subdivision water supply, or a hydrogeological report confirms that the proposed water supply will be of acceptable quality.

(c) the minimum setback distances set out in Table 3 2 of ARM 17.36.323 [contained in MAR Notice No. 17-359 published in this register] must be maintained for all new and existing water sources. A drinking water supply well may not be constructed within 100 feet of a ground water mixing zone granted pursuant to ARM Title 17, chapter 30, subchapter 5.

(d) the reviewing authority may require greater than a 100-foot horizontal

separation between a well and surface water if there is a potential that the well may be influenced by contaminants (e.g., ~~giardia lamblia~~) in the surface water. In determining the appropriate separation between a well and surface water, the reviewing authority may consider factors such as well location, well construction, aquifer material, hydraulic connection between the aquifer and watercourse, and other evidence of the potential for surface water contamination. The reviewing authority may also require that the proposed water source be tested for surface water influence in accordance with ~~d~~Department Circular PWS-5, 1999 edition.

(e) remains the same.

(f) a surface water or ground water source under the direct influence of surface water, as described in ~~d~~Department Circular PWS-5, 1999 edition, may not be used as a water source for a non-public system.

(2) Public water supply systems are subject to the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendment to the title of the rule deletes the word "nonpublic." This is necessary because, as amended, the rule contains requirements for both non-public and public wells.

The proposed amendment to (1)(a) states that the necessary quality of water must be available at all times unless depleted by emergencies. This repeats a provision currently in the general provisions for water supply systems in ARM 17.36.330. Restating it here is necessary to identify in this rule all applicable requirements regarding water quality.

The proposed amendments change the nitrate sampling requirements in (1)(b) and (1)(b)(iii). With this change, testing for ammonia will not be required to show that an aquifer has adequate water quality. Ammonia dissipates quickly and is not an indicator of long-term water quality.

The proposed amendment to (1)(c) requires a 100-foot separation between a proposed drinking water well and a mixing zone. This amendment is necessary to ensure that drinking water wells are isolated from potential sources of contamination.

The proposed amendment to (1)(f) deletes a reference to the year of Department Circular PWS-5 (PWS-5). It is not necessary to identify the year in this rule because the correct editions of applicable department circulars are identified when the circulars are incorporated by reference in ARM 17.36.345.

Proposed new (2) identifies the requirements applicable to public water supply systems set out in the statutes and rules applicable to public water supply systems. Including the reference here is necessary to identify in this rule applicable requirements for public water supply systems in subdivisions.

17.36.332 ~~NONPUBLIC~~ WATER SUPPLY SYSTEMS: WATER QUANTITY AND DEPENDABILITY (1) The applicant shall demonstrate that ground water quantity is sufficient for the proposed subdivision. The necessary quantity of water must be available at all times unless depleted by emergencies. The applicant shall show that the following minimum flows are available:

(a) ~~a single-family~~ an individual water system must provide a sustained yield

of at least ~~40~~ ten gallons per minute over a one-hour period, six gallons per minute over a two-hour period, or four gallons per minute over a four-hour period. For purposes of the minimum flows identified in this rule, sustained yield must be based on water that is supplied from the aquifer, not from well bore storage; and

(b) a shared water system must provide a sustained yield of at least 15 gallons per minute over a one-hour period or ~~40~~ ten gallons per minute over a two-hour period;

(c) multiple-user water supply systems must meet the flow requirements in Department Circular DEQ-3; and

(d) public water supply systems must meet the flow requirements set out in Department Circulars DEQ-1 and DEQ-3.

(2) The minimum flows required in (1)(a) and (b) must be demonstrated through one or more of the following, as determined by the reviewing authority:

(a) through (d) remain the same.

~~(3) Multiple-user water supply systems must comply with department Circular DEQ-3.~~ For individual and shared water supply systems, the reviewing authority may require pumping tests for one or more wells to demonstrate sufficient quantity and dependability of the ground water sources. The tests must be conducted pursuant to ~~d~~Department Circular DEQ-3.

(4) The reviewing authority may restrict the volume of water withdrawn from a proposed water source for a subdivision in order to ensure that an adequate water supply will be available at all times.

(4) through (6) remain the same, but are renumbered (5) through (7).

~~(7) (8)~~ If water is to be supplied by means other than individual on-site wells, the reviewing authority shall also review the applicant's information, required under ARM 17.36.103(1)(h), about water right ownership and water use agreements to determine the quantity and dependability of the water supply.

(9) If the proposed water supply is from wells or springs, the water right information in ARM 17.36.103(1)(s) is required.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendment to the title of the rule deletes the word "nonpublic." This is necessary because, as amended, the rule contains requirements for both non-public and public wells.

The proposed amendment to (1) states that the necessary quantity of water must be available at all times unless depleted by emergencies. This repeats a provision currently in the general provisions for water supply systems in ARM 17.36.330. Adequate water quality is important for non-public systems, also.

The proposed amendment to (1)(a) replaces the term "single family water system" with "individual water system." The definitions in ARM 17.36.101 use the term "individual water system," and the amendment is necessary to conform to the definitions.

Proposed new (1)(c) and (d) reference applicable quantity requirements for multiple-user and public systems, respectively. Including the references here is necessary to identify in this rule all applicable requirements regarding water quantity.

The proposed amendment to (2) provides that the department has the authority to determine which of the listed methods are appropriate to demonstrate minimum flows. The amendment is necessary to ensure that the method or methods used are appropriate under the circumstances. For example, more exact testing may be necessary for aquifers for which adequacy is questionable.

The proposed amendments to (3) delete the first sentence, which references DEQ-3. The amendments move this reference to new (1)(c). The amendments also clarify that the purpose of pump testing is to demonstrate sufficient quantity and dependability of ground water sources.

Proposed new (4) restates a provision currently in ARM 17.36.330(3) that allows the reviewing authority to restrict the volume of water withdrawn from a proposed water source in order to ensure that an adequate supply will be available at all times. Restating this provision in this rule is necessary to identify applicable requirements pertaining to water quantity.

The proposed amendments to the renumbered (8) provide a reference to the requirement in the application rules that applicants submit information regarding water use agreements, if water is to be supplied by means other than individual on-site wells. The reference here is necessary to clarify that such information is required. The proposed amendments also delete the reference to water right ownership, because the requirement for water rights information is referenced in proposed new (9).

Proposed new (9) references the proposed new requirement in the application rules that applicants submit information regarding water rights, if the proposed subdivision water supply is from wells or springs. The reference to the application rules is necessary to identify applicable requirements regarding water quantity and dependability.

17.36.333 NONPUBLIC WATER SUPPLY SYSTEMS: DESIGN AND CONSTRUCTION (1) The applicant shall meet the following requirements relating to the design and construction of ~~nonpublic~~ water supply systems:

(a) remains the same.

(b) multiple-user water supply systems must be designed and constructed in accordance with ~~d~~Department Circular DEQ-3, and ARM Title 36, chapter 21, subchapter 6, unless the requirements of this subchapter are more stringent;

(i) ~~multiple-user water supply systems with six or more connections, including connections outside of a proposed subdivision, must be designed by a registered professional engineer and as-built plans must be submitted to the department within 90 days after completion of the system.~~ If an existing system is expanded to serve six or more connections, the expansion must be designed by a ~~registered~~ professional engineer. The reviewing authority may require smaller systems that it determines to be complex (e.g., a water supply system with substantial pressure difference through the distribution system) to be designed by a ~~registered~~ professional engineer. Systems required by this rule, which must be designed by a professional engineer, are subject to the requirements of [New Rule II];

(ii) and (c) remain the same.

(2) Public water supply systems are required to meet the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendments to the title of the rule and to (1) delete the word "nonpublic." This is necessary because, as amended, the rule identifies requirements for both non-public and public wells.

The proposed amendments to this rule delete the reference to a "registered" professional engineer. See Reason for ARM 17.36.116.

The proposed amendments to (1)(b)(i) delete the provision requiring that as-built plans be submitted, and add a provision stating that systems designed by a professional engineer are subject to New Rule II. Proposed New Rule II contains the requirement for submittal of as-built plans and contains other requirements applicable to all systems required by these rules to be designed by a professional engineer. See Reason for New Rule II.

Proposed new (2) identifies the requirements applicable to public water supply systems set out in the statutes and rules applicable to public water supply systems. The reference here is included to provide notice of applicable requirements for public water supply systems in subdivisions.

17.36.334 WATER SUPPLY SYSTEMS: OPERATION AND MAINTENANCE, OWNERSHIP, EASEMENTS, AND AGREEMENTS AND EASEMENTS (1) If a proposed subdivision includes a public or multiple-user water supply system, the applicant shall submit to the reviewing authority an operation and maintenance plan for the system. The plan must ensure that the multiple-user systems will be adequately operated and maintained. ~~The reviewing authority may require the applicant to create a homeowners' association, county water district, or other administrative entity that will be responsible for operation and maintenance and that will have authority to charge appropriate fees.~~

(2) Public systems must be owned by an individual or entity that meets the requirements of 75-6-126, MCA. The owner must be responsible for operation and maintenance and must have authority to charge appropriate fees.

(3) For multiple-user systems, the reviewing authority may require the applicant to create a homeowners' association, county water district, or other administrative entity that will be responsible for operation and maintenance and that will have authority to charge appropriate fees.

(4) Easements must be obtained if the reviewing authority determines they are needed to allow adequate operation and maintenance of the system or to comply with 76-4-104(6)(i), MCA. Easements must be in writing and signed by the grantor of the easement. In addition, the easement must:

(a) be filed with the county clerk and recorder at the time the certificate of subdivision approval issued under this chapter is filed; or

(b) if the same person owns both parcels, be shown on the plat or certificate of survey for the proposed subdivision.

~~(2)~~ (5) If a proposed subdivision includes a shared water supply system, or includes a water supply system shared by two or more commercial facilities, the reviewing authority may require the applicant to submit a draft user agreement that identifies the rights of each user. The user agreement must be signed by all users

when the lots are sold. ~~The applicant must also grant or obtain easements to allow adequate operation and maintenance of the system. Shared u~~User agreements and easements must be in a form acceptable to the department.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendments add to and change the word order in the title of the rule. This is necessary for the rule title to identify all of the subjects addressed in the rule and to show the order in which they are addressed.

The proposed amendments to (1) require public water supply systems to have an operation and maintenance plan. The amendment is necessary to help ensure that the operation and maintenance procedures for public systems are clearly documented. This amendment is also necessary to be consistent with the corresponding requirements for public sewage systems in ARM 17.36.326(1).

The proposed amendments also delete the provisions for administration of multiple-user systems from this section. These provisions are moved to new (3) for clarity and to conform the rule format to that of the corresponding rule for sewage systems in ARM 17.36.326.

Proposed new (2) identifies the ownership requirements for public water supply systems by referencing the statutory requirements in 75-6-126, MCA. The amendment is necessary to inform subdivision applicants about the statutory requirements.

Proposed new (4) modifies the easement requirements currently found in (2) and adds a recording requirement. The current easement requirements are in a section that addresses shared systems. The amendment is necessary to allow the reviewing authority to require easements for any type of system if needed to allow adequate operation and maintenance of the system or to comply with the provisions in statute that allow well isolation zones to cross subdivision boundaries through easements. The proposed amendments also require that easements be in writing and signed by the grantor or, if the same person owns both parcels, require that the easement be shown on the plat or certificate of survey for the subdivision. This amendment is necessary to ensure that the easement is of record and therefore effective.

The proposed amendments to (2), renumbered as (5), delete the easement requirements, which are moved to new (4).

17.36.335 NONPUBLIC WATER SUPPLY SYSTEMS: EXISTING SYSTEMS (1) The provisions of (2) through (3)(b) apply only to existing non-public water supply systems in proposed subdivisions. Public water supply systems must meet the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

(2) Existing non-public water supply systems within a proposed subdivision must meet all requirements of this chapter or, if previously approved by the reviewing authority, the rules in effect at the time of approval. The department may grant a waiver, pursuant to ARM 17.36.601, from:

(a) the setback requirements in ARM 17.36.323; and

(b) the well construction requirements of ARM 17.36.333, if the applicant provides adequate evidence that compliance with such requirements is not necessary to ensure an adequate water supply.

~~(2)~~ (3) The For existing non-public water supply systems within a proposed subdivision, the applicant shall submit information to allow the reviewing authority to review the quality, quantity, and dependability of the existing system.

(a) and (b) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendments delete "nonpublic" from the title of the rule and add a new (1) to clarify that the provisions of renumbered (2) through (3)(b) apply only to existing non-public water supply systems in proposed subdivisions. The amendments provide notice that the requirements applicable to existing public water supply systems within a proposed subdivision are those set out in Title 75, chapter 6, MCA, and rules promulgated thereunder. These amendments are necessary to clearly identify the requirements that are applicable to existing public and non-public water supply systems in proposed subdivisions.

Proposed new (2)(a) allows the department to grant, for existing non-public wells in proposed subdivisions, a waiver from the setback requirements in ARM 17.36.323. The waiver provision is necessary to provide flexibility to approve the location of existing water supply systems if the waiver criteria in ARM 17.36.601 are met. Existing systems may not be able to meet setback requirements. This should be allowed if no environmental or public health harm would occur, which ARM 17.36.323 assures.

The proposed amendments renumber (2) and provide that the section is applicable only to non-public water supply systems.

17.36.336 ALTERNATE WATER SUPPLY SYSTEMS (1) The provisions of this rule apply only to proposed non-public alternate water supply systems in subdivisions. Public water supply systems must meet the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

(1) through (3) remain the same, but are renumbered (2) through (4).

~~(4)~~ (5) The reviewing authority may require that the applicant collect information regarding quality, quantity, and dependability of the water supply at specified times of the year.

(a) The reviewing authority may require water quality sampling to test for direct influence by surface water. Such sampling may include:

(i) and (ii) remain the same.

(iii) testing for organisms that indicate direct influence by surface waters according to ~~Department Circular PWS-5, 1999 edition~~; and

(iv) and (b) remain the same.

~~(5)~~ (6) Cisterns may be utilized ~~only for individual water supplies. The reviewing authority may authorize such use only if:~~

(a) through (c) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendments to ARM 17.36.336 add a new (1) to clarify that the provisions of (2) through (6)(c) apply only to proposed non-public alternate water supply systems in subdivisions. The amendments clarify that the requirements applicable to public water supply systems within a proposed subdivision are those set out in Title 75, chapter 6, MCA, and rules promulgated thereunder. These amendments are necessary to clearly identify the requirements that are applicable to public and non-public alternate water supply systems in proposed subdivisions.

The proposed amendment to (4)(a)(iii) deletes a reference to the year of PWS-5. It is not necessary to identify the year in this rule because the correct editions of applicable department circulars are identified when the circulars are incorporated by reference in ARM 17.36.345.

The proposed amendment to (5) allows cisterns for uses other than individual water supplies if the criteria in the rule are met. The limitation to individual water systems is not necessary. Cisterns can provide a water source that is adequate in terms of the quantity, quality, and dependability, regardless of the size of system.

17.36.340 LOT SIZES: EXEMPTIONS (1) This rule sets out, for purposes of the review of proposed subdivisions, the requirements for minimum lot or parcel size and the criteria for varying the minimum size. ~~Proposed subdivisions involving mobile homes, trailer courts, campgrounds, multiple family dwellings, and commercial or industrial development are also subject to this rule.~~

~~(a) If an applicant proposes to use subsurface wastewater treatment systems, as described in DEQ-4, the minimum lot size must be one acre for each living unit and one acre for up to 700 gallons per day of design wastewater flow for commercial and other non-residential uses. The department may allow smaller lot sizes pursuant to waiver as provided in (1)(b) and ARM 17.36.601. The reviewing authority may, without a waiver, allow smaller lot sizes in accordance with the criteria set out in (1)(c) and (d). The reviewing authority may require larger lot sizes as provided in (1)(e).~~

~~(b) The department may allow, pursuant to a waiver under ARM 17.36.601, lot sizes smaller than one acre only for lots created before July 1, 1973, and for alteration of lots created before April 15, 2003, as provided in (1)(b)(i), and only after approval by the local health department. To qualify for a waiver, the applicant shall provide adequate evidence as set out in (1)(b)(ii) and (iii) to demonstrate that water quality is protected.~~

~~(i) For purposes of this rule, "alteration" of lots created before April 15, 2003, means redefining lots by relocating common boundaries. An alteration of lots under this rule must also meet the following requirements:~~

~~(A) it must be impracticable to create lots that comply with the minimum lot size required in (1)(a) and the alteration must improve, or at least not reduce, the capability for wastewater treatment on the affected lots;~~

~~(B) the alteration may not result in an increase in the number of affected lots;~~

~~(C) the alteration may not decrease the total acreage of all affected lots; and~~

~~(D) the number of existing wastewater systems on the affected lots may not be increased, although existing wastewater systems may be altered or replaced.~~

~~(ii) The applicant shall provide site-specific information regarding soil and aquifer characteristics, mixing zones, and impacts on surrounding properties taking into account existing and potential uses. The applicant shall also provide evidence showing that:~~

~~(A) level two treatment, as defined in ARM 17.30.702(9), is provided if a limiting layer is within 15 feet of the natural ground surface. The reviewing authority may require the applicant to construct soil test pits or ground water monitoring wells to demonstrate the depth to a limiting layer;~~

~~(B) soil properties are suitable for treatment and disposal of wastewater; and~~

~~(C) the lot has adequate space for the wastewater treatment system and replacement area, water supply, and all permanent structures including, but not limited to, driveways, houses, garages, ditches, service lines, easements, and utilities.~~

~~(iii) In order to determine site suitability, the reviewing authority may require the applicant to provide additional site-specific information, including results of ground water or soils analyses.~~

~~(c) The reviewing authority may allow lot sizes smaller than one acre, but not less than 20,000 ft² if all of the conditions in any one of (1)(c)(i) or (ii) are met:~~

~~(i) the water supply or wastewater treatment for the lots that are proposed to be smaller than one acre is provided by either a multiple user system (designed by a professional engineer) or by a public system; or~~

~~(ii) the water supply is provided by a cistern because it is not feasible to develop a water supply for the proposed subdivision that meets the water quality, quantity and dependability requirements in ARM 17.36.331 and 17.36.332, and the wastewater treatment systems for the proposed subdivision meet all of the requirements of this chapter.~~

~~(d) The reviewing authority may allow lot sizes smaller than one acre, including lots with less than 20,000 ft², if all of the conditions in any one of (1)(d)(i), (ii), or (iii) are met:~~

~~(i) the water supply and wastewater treatment are provided by public or municipal systems, and the well or other source for the water supply is not located on a lot that is proposed for lot size reduction;~~

~~(ii) the affected ground water beneath and surrounding the subdivision has a specific conductance equal to or greater than 7,000 microSiemens/cm at 25°C, and all existing and anticipated uses of the ground water are protected; or~~

~~(iii) the proposed subdivision is within a designated wastewater facility service area, which has been planned for by a local wastewater utility and approved by the department pursuant to Title 75, chapter 6, MCA, and the acreage of lots on which drainfields are located is at least one acre for up to 700 gallons per day of design wastewater flow; and~~

~~(A) the local wastewater utility certifies in writing that the collection systems serving the lots meet the utility's design standards and may be connected to the system when public wastewater mains are available. As-built plans for all collection systems must be submitted to the reviewing authority and to the local wastewater utility; or~~

~~(B) a dry-laid wastewater main is provided connecting the lots to a planned municipal wastewater main, with appropriate easements, and the local wastewater utility issues written approval of the design and installation of the main, and certifies that the dry-laid wastewater main, service lines, and related appurtenances may be connected to the municipal system when public wastewater mains are available. As-built plans for all dry-laid systems must be submitted to the reviewing authority and to the local wastewater utility.~~

~~(e) The reviewing authority may require lot sizes larger than those allowable under (1)(a) or may limit the wastewater flow for a lot if:~~

~~(i) wastewater flow exceeds 700 gallons per day per acre;~~

~~(ii) wastewater flow exceeds residential strength;~~

~~(iii) lots are used for a combination of residential and nonresidential uses; or~~

~~(iv) if otherwise necessary to protect water quality.~~

(2) Subject to (4), each proposed new subdivision lot, area proposed for condominiums, or area proposed for permanent multiple spaces for recreational camping vehicles or mobile homes, must be of sufficient size to satisfy all of the following criteria:

(a) facilities on each lot must comply with the setback requirements in ARM 17.36.323, except that setbacks for existing sewage systems may be waived pursuant to ARM 17.36.327(3);

(b) drainfield mixing zones must be located wholly within the boundaries of the proposed subdivision, pursuant to ARM 17.36.322(5);

(c) well isolation zones must be located wholly within the boundaries of the proposed subdivision, pursuant to ARM 17.36.330(4); and

(d) each lot must have adequate space for the sewage treatment system, drainfield replacement area, water supply, and all permanent structures including, but not limited to, driveways, houses, garages, ditches, service lines, easements, and utilities. Easements may be used to satisfy this requirement.

(3) For lots created before July 1, 1973, and for which sanitary restrictions are proposed to be lifted, the requirements of (2)(a) and (d) apply, subject to the provisions of ARM 17.36.106(3).

(4) The reviewing authority may require lot sizes larger than those allowable under (2) if necessary to protect human health or water quality.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: ARM 17.36.340 sets out the minimum requirements for lot or parcel size. The current rule establishes, for parcels with on-site sewage systems, a minimum size of one acre for each residential or commercial unit. The rule also sets out a number of exceptions to the one-acre requirement. The proposed amendments to the rule would eliminate the one-acre minimum requirement and the associated exemptions, and would replace them with four criteria.

The proposed amendments are necessary to simplify the lot size rule and to make it better serve the purposes of the rule. The current one-acre minimum and the numerous exceptions are difficult to administer. The list of exceptions has grown over time as new cases are found in which the one-acre requirement is not

necessary. The two main purposes of requiring a minimum subdivision lot size are: (1) to protect human health and water quality by creating sufficient separation between wells and contamination sources; and (2) to allow sufficient development space on subdivision parcels to allow installation of water and sewer facilities, together with other subdivision improvements such as houses, garages, and driveways. The one-acre minimum size is not well suited to achieve these purposes. The health and water quality purposes of the rule are better addressed by the setback rules in ARM 17.36.323, which set out detailed separation requirements between wells and contamination sources such as drainfields, mixing zones, surface water, and storm water facilities. The proposed amendments include a reference to a setback waiver for existing sewage systems. The water quality analysis performed for mixing zones provides an additional method for demonstrating that subdivision wells will not be impacted by subsurface sewage treatment systems. The proposed amendments address the need for adequate development space on a lot by expressly requiring it. The lot layout document required by ARM 17.36.104 will provide a tool for assessing compliance with this requirement.

The proposed amendment of (1) deletes the provisions addressing mobile homes, trailer courts, campgrounds, multiple family dwellings, and commercial or industrial development. The provisions for condominiums, mobile home parks, and recreational camping vehicle parks are moved to new (2), which clarifies that the parcel size requirements apply to the entire "area," whether comprised of one or multiple parcels, on which the condominium complex or park is located. This follows the statutory definition of "subdivision" in 76-4-102(16), MCA, and codifies an existing department interpretation of the lot size rule. The amendments are necessary to provide guidance to applicants about the meaning of the rule in these situations. Multiple family dwellings and commercial or industrial development are subject to the provisions of (2), as amended. The reference to campgrounds in this rule is deleted because, unless a campground is a recreational camping vehicle park, it is not subject to the Sanitation in Subdivisions Act.

Proposed new (3) provides that lots that were created prior to July 1, 1973, and for which sanitary restrictions are proposed to be lifted are subject to the requirements in (2) to comply with setbacks and to allow adequate development space. The setback rule, ARM 17.36.323, allows waivers in some situations and ARM 17.36.106(3) provides that pre-1973 lots are not subject to current rules, if the current rules would preclude the use for which the platted lot was intended. The proposed new section is necessary to clarify how the lot size requirements apply to pre-1973 lots.

Proposed new (4) allows the reviewing authority to require larger parcels than required in (2), if necessary to protect human health or water quality. This amendment is necessary to provide flexibility to address special situations where the setback requirements may not be adequate to protect human health or water quality. For example, a lot may need to be larger to provide adequate space for storm water treatment before discharging to surface water.

17.36.605 EXCLUSIONS (1) remains the same.

(2) The reviewing authority may exclude the following parcels created by divisions of land from review under Title 76, chapter 4, part 1, MCA, unless the

exclusion is used to evade the provisions of that part:

(a) a parcel that has no facilities for water supply, wastewater disposal, storm drainage, or solid waste disposal, if no ~~new~~ facilities will be constructed on the parcel;

(b) through (b)(ii) remain the same.

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

(i) no new facilities, other than those existing at the time of the boundary line adjustment or those that were previously approved as replacements for the existing facilities, will be constructed on the parcel any of the parcels affected by the boundary line adjustment;

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

~~(iii)~~ (ii) existing facilities on the parcels complied with state and local laws and regulations, including permit requirements, which were applicable at the time of installation; and

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

(A) existing septic tanks have been pumped within the previous three years; and

(B) ~~the parcel includes~~ parcels include acreage or features sufficient to accommodate a replacement drainfield;

(C) existing wells are adequate for the proposed uses; and

(D) adequate storm drainage and solid waste disposal are provided.

(3) remains the same.

AUTH: 76-4-104, MCA

IMP: 76-4-125, MCA

REASON: The proposed amendment to (2)(a) prohibits the construction of all facilities on the parcel, not just "new" facilities. The term "new" is misleading to the extent it may suggest that there are some other facilities that could be constructed.

The proposed amendment to (2)(c) clarifies that the exemption in this section applies only to parcels affected by boundary line adjustments (BLAs), not to parcels created through a new division of land. Existing (2)(c)(ii) was added earlier to this rule with the intent to limit the exclusion to BLAs, but it is not clearly stated. The proposed amendments delete (2)(c)(ii) and replace it with an express limitation to BLAs. The proposed amendments clarify that the facilities that were exempt from Sanitation in Subdivisions Act review must be in existence at the time of the BLA. This is the intended meaning of the current language "parcel that has facilities," but the amendment is needed for clarification. The amendments also prohibit the construction of any facilities, not just "new" facilities, other than the existing facilities or facilities previously approved as replacements for the existing facilities. The term "new" is misleading to the extent it may suggest that some facilities other than the existing or replacement facilities could be constructed. These amendments are

necessary to clarify the application of the rule.

A BLA always affects at least two parcels. The proposed amendments to (2)(c)(i) and (ii) will make the exclusion for prior exempt parcels inapplicable if, on any parcel affected by a BLA, new facilities are proposed or existing facilities are out of compliance with applicable regulations. The current reference in (2)(c)(i) to "the parcel" is misleading because it suggests that the exclusion applies when any one parcel in a BLA meets the "no new facilities" criteria. A similar incorrect interpretation could be made that only one parcel in a BLA needs to meet the compliance criteria in (2)(c)(ii). The proposed amendments clarify that the criteria in (2)(c)(i) and (ii) apply to all parcels affected by a BLA. The proposed amendment to (2)(c)(iii) provides that the local health officer may require that adequate sanitation facilities and replacement areas exist on parcels affected by the BLA before approving use of the exclusion. The amendments are necessary to ensure that all proposed new subdivision facilities are reviewed under the Sanitation in Subdivisions Act, to ensure that existing systems on subdivision parcels comply with applicable regulations and to ensure that parcels have adequate sanitation facilities before they are exempted from review.

17.36.802 FEE SCHEDULES (1) An applicant for approval of a division of land into one or more parcels, condominiums, mobile home/trailer courts, recreational camping vehicle spaces, and tourist campgrounds shall pay the following fees:

	<u>UNIT</u>	<u>UNIT COST</u>
<u>TYPE OF LOTS</u>		
Subdivision lot	lot/parcel	\$ 125
Condominium/trailer court/recreational camping vehicle campground	unit/space	\$ 50
Resubmittal fee – previously approved lot, boundaries are not changed	lot/parcel	\$ 75
<u>TYPE OF WATER SYSTEM</u>		
Individual or shared water supply system (existing and proposed)	unit	\$ 85

Multiple user system (non-public) - new system	each	\$ 315 (plus \$105/hour for review in excess of four hours)
- new distribution system design - connection to distribution system	lineal foot lot/unit	\$ 0.50 \$ 70
Public water system New system per DEQ-1	component	per ARM 17.38.106 fee schedule
- new distribution system design - connection to distribution system	lineal foot lot/structure	\$ 0.50 \$ 70
<u>TYPE OF WASTEWATER DISPOSAL</u>		
Existing systems	unit	\$ 75
New gravity fed system	drainfield	\$ 95
New pressure-dosed, elevated sand mound, ET systems, intermittent sand filter, ETA systems, recirculating sand filter, recirculating trickling filter, aerobic treatment unit, nutrient removal, and whole house subsurface drip irrigation systems	design	\$ 190 (plus \$105/hour for review in excess of two hours)
New pressure-dosed, elevated sand mound, ET systems, intermittent sand filter, ETA systems, recirculating sand filter, recirculating trickling filter, aerobic treatment unit, nutrient removal, and whole house subsurface drip irrigation systems	drainfield	\$ 50
	<u>UNIT</u>	<u>UNIT COST</u>
Gray water reuse systems. This is a stand-alone fee and all gray water reuse systems will be reviewed at the unit cost	unit	\$ 95 (plus \$105/hour in excess of two hours)

	<u>UNIT</u>	<u>UNIT COST</u>
Multiple user wastewater system (non-public) - new collection system design - connection to collection system	lineal foot lot/unit	\$ 0.50 \$ 70
New public wastewater system per DEQ-2 - new collection system design - connection to collection system	component lineal foot lot/structure	per ARM 17.38.106 fee schedule \$ 0.50 \$ 70
<u>OTHER</u>		
Deviation from circular	request or per design	\$ 200 (plus \$105/hour for review in excess of two hours)
Waiver from rule	request	\$ 200 (plus \$105/hour for review in excess of two hours)
Reissuance of original approval statement	request	\$ 60
<u>Review of modified lot layout document</u>	<u>request</u>	<u>\$ 125</u>
Municipal facilities exemption checklist (former master plan exemption)	application	\$ 100

	<u>UNIT</u>	<u>UNIT COST</u>
Nonsignificance determinations/categorical exemption reviews - individual/shared systems - multiple-user non-public systems - public systems	drainfield lot/structure drainfield	\$ 60 \$ 30 per ARM 17.38.106 fee schedule

	<u>UNIT</u>	<u>UNIT COST</u>
Storm drainage plan review		
- plans exempt from Circular DEQ-8	lot	\$ 40
- Circular DEQ-8 review	design	\$ 180
	lot	\$ 40 (plus \$105/hour for review in excess of 30 minutes per lot)
Preparation of environmental assessments/environmental impact statements	----	actual cost

AUTH: 76-4-105, MCA
IMP: 76-4-105, 76-4-128, MCA

REASON: The proposed amendments to ARM 17.36.802 add a new fee for the review of modified lot layout documents. The fee is necessary for situations like that addressed in proposed New Rule I, which allows amendment of a certificate of subdivision approval by means of a revised lot layout document when the changes consist of the relocation of previously approved facilities. Based on the number of modified lot layouts processed by the department in the past, the department estimates that the new \$125 fee will affect approximately 50 applicants per year, resulting in a total annual revenue from the new fee of \$6,250.

17.36.804 DISPOSITION OF FEES (1) through (1)(g) remain the same.

(2) The department shall reimburse local governing bodies under department contract to review subdivisions as follows:

(a) for subdivisions with individual wastewater treatment systems, the department shall reimburse \$25 per lot plus 80% percent of the review fee under ARM 17.36.802 for the following actions performed by the local governing body:

- (i) each review of water, storm water, and wastewater systems and;
- (ii) nonsignificance determinations and categorical exemptions performed by the local governing body; and
- (iii) review of modified lot layout documents.

(3) and (4) remain the same.

AUTH: 76-4-105, MCA
IMP: 76-4-105, 76-4-128, MCA

REASON: The proposed amendments to ARM 17.36.804 add, to the provisions for reimbursement of local governing bodies, reimbursement for local

review of storm water plans and modified lot layout documents. Minor formatting changes are made for clarity. The amendments are necessary to allow for reimbursement of local costs in performing these actions. If not performed by local government, these actions would be done by the department.

4. The proposed new rules provide as follows:

NEW RULE I RE-REVIEW OF PREVIOUSLY APPROVED FACILITIES: PROCEDURES (1) This rule applies to "re-writes" of certificates of subdivision approval when no new subdivision is proposed. This rule identifies the procedures for re-reviewing facilities for water supply, storm water drainage, or sewage or solid waste disposal when the facilities have been previously approved under Title 76, chapter 4, MCA, and when:

(a) parcel boundaries are not changing, but changes are proposed to the facilities that would deviate from the conditions of the previous approval;

(b) parcel boundaries are not changing, but the previous approval has expired pursuant to [New Rule II]; or

(c) parcel boundaries are changed by an aggregation with other parcels.

(2) The owner of a parcel in (1) shall obtain approval from the reviewing authority as provided in this section.

(3) The owner shall submit an application to the reviewing authority on a form approved by the department. Copies of the form may be obtained from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901, <http://deq.mt.gov/wqinfo/Sub/SubReviewForms.mcp>x, or from the local reviewing authority.

(4) The application must describe any proposed new facilities, any changes to previously approved facilities, and any new parcel boundaries. The reviewing authority may require the applicant to submit additional information that the reviewing authority determines is necessary for the review.

(5) The reviewing authority shall review the application pursuant to all applicable requirements, including fees, set out in ARM Title 17, chapter 36, subchapters 1, 3, 6, and 8. The application is subject to the rules in effect at the time the application is submitted, except that, if a requirement in the applicable rules would preclude a previously approved use of the parcel, the department may waive the requirement that would preclude the use. Waivers are subject to ARM 17.36.601.

(6) Facilities previously approved under Title 76, chapter 4, MCA, are not subject to re-review, if they are not proposed to be changed and are not affected by a proposed change to another facility.

(7) Except as provided in (8), if the proposed amendments are approved, the reviewing authority shall issue a revised certificate of subdivision approval.

(8) Amendments that consist solely of the relocation of previously approved facilities may be made through approval of a revised lot layout document. The approved revised lot layout document must be filed with the county clerk and recorder and a copy must be provided to the department.

AUTH: 76-4-104, MCA

IMP: 76-4-125, MCA

REASON: Proposed New Rule I applies to "re-writes" of certificates of subdivision approval when no new subdivision is proposed. The new rule is necessary to codify existing department procedures in these situations in order to provide guidance to applicants and to allow the department the authority to approve modifications for lot layouts. In the current rules, this authority is given only to local governing bodies. The need for a process to allow the modifications is also present for subdivisions reviewed by the department.

Proposed New Rule I(3) sets out application and review procedures. The application must be on a department-approved form. All of the provisions in the Sanitation in Subdivisions Act and rules, including fee provisions, apply to the review of the application, depending on the type of change proposed. A waiver provision is provided if necessary to allow use of facilities that were approved under previous rules. Facilities that are not changing are not re-reviewed, unless a proposed change indirectly affects that facility, e.g., where proposed relocation of a well would require moving a drainfield site. After approval of the application, the reviewing authority must issue a revised COSA, except when the revisions consist solely of the relocation of facilities, in which case the approval document may be a revised lot layout document. This is the procedure currently employed by the department in these situations and this rule codifies the procedure and notifies the public of requirements and procedures.

NEW RULE II REQUIREMENTS FOR SYSTEMS DESIGNED BY PROFESSIONAL ENGINEERS (1) The requirements in this rule apply to systems for which plans and specifications must be submitted to the department by a professional engineer under ARM 17.36.310(2)(a), ARM 17.36.320(2), or ARM 17.36.333(1)(b)(i).

(2) The applicant shall submit documentation in the application indicating commitment to retain a professional engineer to provide certification that the system was built in conformance with the plans and specifications approved by the reviewing authority.

(3) A person may not commence or continue the operation of the system, or any portion of the system, until a professional engineer has certified by letter to the department that the system, or portion of the system constructed, altered, or extended to that date, was completed in substantial accordance with the plans and specifications approved by the department and that there are no deviations from the design standards of the applicable circulars, other than those previously approved by the department.

(4) Within 90 days after completion of construction of the system, a set of certified "as-built" drawings must be signed by a professional engineer and submitted to the department.

(5) If construction of the system is not completed within three years after the department has issued its written approval of the plans and specifications, the approval is void and plans and specifications must be resubmitted to the department with appropriate fees.

AUTH: 76-4-104, MCA

IMP: 76-4-125, MCA

REASON: Proposed New Rule II sets out requirements for storm drainage, water supply, and sewage systems for which plans and specifications must be submitted by a professional engineer under ARM 17.36.310(2)(a), 17.36.320(2), or 17.36.333(1)(b)(i). In those cases, proposed New Rule II(2) requires the applicant to document a commitment to retain a professional engineer to certify that the system was completed in accordance with approved plans. This provision requires the applicant to retain an engineer not only for design purposes, but also for construction inspection and final certification. Proposed New Rule II(3) prohibits use of a system, or portion of a system, prior to a letter from a professional engineer certifying to the department that construction was completed in substantial accordance with the approved plans and specifications and that there are no deviations from applicable design circulars other than those previously approved by the department. Proposed New Rule II(4) requires that a professional engineer submit to the department, within 90 days after completion, signed and certified "as-built" plans. Proposed New Rule II(5) provides that the department's approval of plans submitted by a professional engineer expires if the system is not constructed within three years. These requirements are already in place for water supply and sewer systems that meet the definition of "public" under the public water and sewer laws. See ARM 17.38.101. Applying these requirements to all engineer-designed systems in subdivisions is necessary to provide a mechanism to verify that the systems are constructed in accordance with the plans and specifications approved by the department and ensure that design plans for systems not yet built are updated to address changes in department regulations.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., May 22, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Paul Nicol, attorney for the Department of Environmental Quality, has been designated to preside over and conduct the hearing.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans;

wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by letter dated April 4, 2014.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and adoption of the above-referenced rules will significantly and directly impact small businesses.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL
QUALITY

<u>/s/ John F. North</u>	BY: <u>/s/ Tracy Stone-Manning</u>
JOHN F. NORTH	TRACY STONE-MANNING, Director
Rule Reviewer	

Certified to the Secretary of State, April 14, 2014.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING ON
17.36.320, 17.36.321, 17.36.322,)	PROPOSED AMENDMENT
17.36.323, 17.36.325, 17.36.912,)	
17.36.918, 17.38.101, and 17.38.106)	(SUBDIVISIONS/ON-SITE
pertaining to sewage systems,)	SUBSURFACE WASTEWATER
definitions, horizontal setbacks,)	TREATMENT)
floodplains, plans for public sewage)	(PUBLIC WATER AND SEWAGE
system, and fees)	SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On May 19, 2014, at 1:30 p.m., the Board of Environmental Review and the Department of Environmental Quality will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board and 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 Elois Johnson, Paralegal, no later than 5:00 p.m., May 5, 2014, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.36.320 SEWAGE SYSTEMS: DESIGN AND CONSTRUCTION (1) All components of ~~subsurface~~ sewage treatment systems must be designed and installed in accordance with ~~d~~Department Circular DEQ-4, Department Circular DEQ-2, or other applicable department circular and are subject to the following restrictions:

(a) systems designed in accordance with Department Circular DEQ-2 may not be used for individual, shared, or multiple-user systems, except as provided in Department Circular DEQ-4; and

(b) experimental systems are allowed only pursuant to a waiver granted in accordance with ARM 17.36.601.

(2) As indicated on Table 2 of this rule, public systems and multi- Multiple-user systems with design flows greater than or equal to 2500 gallons per day must be designed by a registered professional engineer and are subject to the requirements in [New Rule II, proposed in MAR Notice No. 17-358 published in this register].

(2) (3) A For subsurface systems, a minimum separation of at least four feet

of natural soil must exist between the infiltrative surface or the liner of a lined system and a limiting layer, except that at least six feet of natural soil must exist on a steep slope ~~(of greater than 15% percent to 25%)~~.

~~(3)~~ (4) The proposed subsurface sewage treatment area must include an area for 100% percent replacement of the system, except that the replacement area for elevated sand mounds may be allowed as provided in Department Circular DEQ-4. If a size reduction is approved for a system, the replacement area must have area sufficient for the system without the size reduction. Unless a waiver is approved by the department pursuant to ARM 17.36.601, the replacement area must meet the same requirements as the primary area. If the replacement area is not immediately adjacent to the primary area, or if ~~the department indicates to the applicant that it has reason to believe~~ there is evidence that site conditions for the replacement area may vary from those for the primary area, the applicant shall submit adequate evidence of the suitability of the replacement area.

TABLE 2
ALLOWABLE SYSTEMS, REQUIREMENTS

	YES - Systems that are allowed NO - Systems that are not allowed			
DEQ-4 System	Public: ≥ 5000 gpd (1) (7)	Public or Multiple- user: ≥ 2500 gpd and ≤ 5000 gpd (2) (7)	Public or Multiple- user: ≤ 2500 gpd (3)	Individual/ Shared: (6)
Standard Absorption Trench	NO	NO	YES	YES
At-Grade Systems	NO	NO	YES	YES
Gravelless	YES	YES	YES	YES
Deep Trench	NO	NO	NO	YES
Elevated Sand Mound	YES	YES	YES	YES
Evapotranspiration (ET) Systems	NO	NO	NO	NO (5)
ET-Absorption	NO	YES	YES	YES

Intermittent Sand Filters	YES	YES	YES	YES
Recirculating Sand Filters	YES	YES	YES	YES
Recirculating Trickling Filters	YES	YES	YES	YES

	YES – Systems that are allowed NO – Systems that are not allowed			
DEQ-4 System	Public: > 5000 gpd (1)	Public or Multiple- user: ≥ 2500 gpd and ≤ 5000 gpd (2)	Public or Multiple- user: < 2500 gpd (3)	Individual/ Shared: (6)
Chemical Nutrient Reduction; Aerobic Sewage Treatment Systems	NO (5)	NO (5)	NO (5)	NO (4)(5)
Pressure Distribution	YES	YES	YES	YES
Sand-lined Absorption Trenches	NO	YES	YES	YES
Experimental Systems	NO (5)	NO (5)	NO (5)	NO (5)

(1) Public systems with design flow greater than 5000 gallons per day (gpd).

(2) Public or multiple-user systems with design flow greater than or equal to 2500 gpd and less than or equal to 5000 gpd.

(3) Public or multiple-user systems with design flow less than 2500 gpd.

(4) Means of securing continuous operation and maintenance of these systems must be approved by the reviewing authority prior to DEQ approval.

(5) May be allowed by waiver, pursuant to ARM 17.36.601.

(6) Individual or shared commercial sewage systems that have a design flow greater than 700 gpd shall be considered multi-user.

(7) Must be designed by a professional engineer.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The department is proposing to eliminate Table 2 and replace it with a narrative format. Table 2 shows sewage systems that are allowed by DEQ-4, but the systems currently listed in Table 2 do not include all of the systems addressed in the most recent edition (2013) of the Circular. Table 2 also adds some restrictions and requirements for Department Circular DEQ-4 (DEQ-4) systems. The department is proposing to eliminate some of these additional restrictions. With the proposed elimination of some of the restrictions in Table 2, and because Table 2 otherwise simply lists systems allowed by DEQ-4, it has limited use. The restrictions and requirements that are retained are proposed to be set out in a narrative format that is easier to understand.

The department is proposing to eliminate the restrictions imposed by Table 2 on standard absorption trenches, at-grade systems, deep trenches, evapotranspiration (ET) systems, ET-absorption systems, and chemical nutrient reduction and aerobic sewage treatment systems. The restrictions are not necessary because, if the systems are designed in accordance with DEQ-4, they will provide adequate treatment of wastewater. The proposed amendments would retain the restriction in Table 2 that experimental systems may be allowed only through a waiver. The amendments also would retain the requirement that multiple-user systems with a design flow greater than or equal to 2500 gallons per day be designed by a professional engineer. The amendments require that multiple-user systems designed by a professional engineer comply with the requirements of New Rule II, proposed in MAR Notice No. 17-358 and published in this register.

ARM 17.36.320(1) requires that components of sewage systems be designed in accordance with DEQ-4. The proposed amendments would delete the term "subsurface." This is necessary because DEQ-4 is not limited to subsurface systems. DEQ-4 also addresses systems such as waste segregation and incinerator toilets. The proposed amendments also add a reference to Department Circular DEQ-2 (DEQ-2). This is necessary because DEQ-2 requirements may be applicable to some public sewage systems.

Proposed ARM 17.36.320(1)(a) prohibits use of DEQ-2 for individual, shared, and multiple-user systems, except as provided in DEQ-4. A similar restriction currently exists in ARM 17.36.321(2), and it is proposed to be restated here for clarity. Because DEQ-4 requires some components to be designed in accordance with DEQ-2, the amendments will allow use of DEQ-2 when required by DEQ-4.

Proposed ARM 17.36.320(1)(b) sets out the requirement, currently in Table 2, that experimental systems are allowed only pursuant to a waiver.

The proposed amendments create a new ARM 17.36.320(2) to state the existing requirement that a professional engineer design multiple-user systems with a design capacity equal to or greater than 2500 gallons per day. The amendments delete the reference in this sentence to public systems. The provisions requiring design by professional engineers of public sewage systems will now be consolidated in the rules for public water and sewer systems. See proposed amendments to ARM 17.38.101. The amendments delete the reference to a "registered" professional engineer. The term "registered" is not necessary because "professional engineer" is proposed to be defined, in proposed amendments to the department's Sanitation in Subdivisions Act rules, as a person licensed pursuant to Title 37, chapter 67, MCA. This definition already appears in the public water supply rules.

See ARM 17.38.101(3)(m). The proposed amendments provide a cross-reference to the requirements in New Rule II, proposed in MAR Notice No. 17-358 and published in this register, for engineer-designed multiple-user systems. New Rule II, proposed in MAR Notice No. 17-358 and published in this register, requires the applicant to commit to retaining a professional engineer to certify that construction was completed in accordance with the approved design and requires that an engineer certify, before the system is operated, that it was completed in accordance with approved plans. It also requires an engineer to submit to the department, within 90 days after completion, certified "as-built" plans, and requires that plans and specifications be re-submitted if construction is not completed within three years after approval.

The proposed amendments to renumbered ARM 17.36.320(3) clarify that this section is applicable only to subsurface systems. It is not necessary to apply the requirements of this section to systems not addressed in DEQ-4. The proposed amendment eliminates the 25 percent maximum. Under proposed ARM 17.36.322(2), slopes of up to 35 percent are allowed with a variance and there is no need to state a maximum in this rule. This amendment follows proposed amendments to ARM 17.36.322 that would allow pressure-dosed systems on slopes up to 35 percent through a waiver process. This amendment is necessary to clarify that, if a waiver is granted under ARM 17.36.322 to allow a pressure-dosed system on a slope greater than 25 percent, the six-foot soil requirement applies.

The proposed amendments to renumbered ARM 17.36.320(4) clarify that the reviewing authority has discretion whether to require replacement areas for elevated sand mounds, pursuant to DEQ-4. See DEQ-4 Section 6.7.2.5. The amendments also provide that a replacement area must provide space for a full-size system, even when the original approved system qualified for a size reduction. This is necessary to ensure adequate space in the event that the replacement system does not qualify for a size reduction. The amendments also make minor changes for clarification.

17.36.321 SEWAGE SYSTEMS: ALLOWABLE NEW AND REPLACEMENT SYSTEMS (1) ~~The allowable new sewage treatment systems, together with certain other requirements for such systems, are indicated in Table 2 of ARM 17.36.320. All systems must be designed and installed in accordance with dDepartment Circular DEQ-4, Department Circular DEQ-2, or other applicable department circular. The use of sewage systems for replacement systems shall be in accordance with department Circular DEQ-4.~~ Requirements applicable to review of existing sewage treatment systems are set out in ARM 17.36.327.

(2) Systems designed in accordance with ~~dDepartment Circular DEQ-2~~, may not be used for individual, shared, or multiple-user systems, except as provided in Department Circular DEQ-4.

(3) The following sewage systems may not be used for new systems:

(a) through (f) remain the same.

(g) holding tanks, except that:-

(i) ~~¶the department may grant a waiver, pursuant to ARM 17.36.601, to allow holding tanks for recreational vehicle dump stations in facilities owned and operated by a local, state, or federal unit of government, or in facilities licensed by the Department of Public Health and Human Services and inspected by the local health~~

department. Holding tanks must be designed and maintained in accordance with the requirements in ~~Department Circular DEQ-4~~ and all other requirements imposed by the department and local health department; and

(ii) the department may grant a waiver, pursuant to ARM 17.36.601 and with concurrence by the local health department, to allow holding tanks to replace a failed system when no other alternative that meets these rules is reasonably available.

(4) through (5) remain the same.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendments to ARM 17.36.321(1) delete the reference to Table 2 in ARM 17.36.320. This is necessary because the proposed amendments to ARM 17.36.320 would delete Table 2. The proposed amendments would also add a reference to DEQ-2. This is necessary because DEQ-2 requirements may be applicable to some sewage systems. The amendments would delete the sentence identifying requirements for replacement systems. The sentence is unnecessary because the preceding sentence identifies requirements for "all systems," which include replacement systems.

ARM 17.36.321(2) prohibits use of DEQ-2 for individual, shared, and multiple-user systems. The proposed amendment clarifies that DEQ-2 requirements may apply in some cases, as specified in DEQ-4.

ARM 17.36.321(3)(g)(i) allows the department to allow, through waiver, holding tanks for recreational vehicle dump stations in facilities owned and operated by a local, state, or federal unit of government, or in facilities licensed by the Department of Public Health and Human Services (DPHHS). The proposed amendment would also allow waivers for holding tanks in other types of government-owned or licensed facilities. It is not necessary to limit waivers under this section to recreational vehicle dump stations.

The proposed amendments add a new ARM 17.36.321(3)(g)(ii), which allows the department to allow, through waiver, holding tanks in any situation where a system has failed and no other alternative that meets the rules is reasonably available. The new provision is necessary to allow for continued use of a parcel when the existing sewage system has failed and cannot be replaced with any system other than a holding tank.

17.36.322 SEWAGE SYSTEMS: SITING (1) Subsurface Gravity-fed subsurface sewage treatment systems may not be used if natural slopes are greater than 15% percent; ~~however, the department may, by waiver granted pursuant to ARM 17.36.601, allow a~~ A pressure-dosed sewage treatment system with a design flow of 5000 gallons per day or less may be used on slopes ~~between~~ greater than 15% percent and up to 25% percent, if a registered professional engineer or a person qualified to evaluate and identify soil in accordance with ~~ASTM standard D5921-96e1 (Standard Practice for Subsurface Site Characterization of Test Pits for On-Site Septic Systems)~~ Department Circular DEQ-4 submits adequate evidence that there will be no visible outflow of liquid downslope from the subsurface sewage treatment system.

(2) The department may grant a waiver, pursuant to ARM 17.36.601 and after consultation with the local health department, to allow pressure-dosed subsurface sewage treatment systems on slopes greater than 25 percent and up to 35 percent if a professional engineer or a person qualified to evaluate and identify soil in accordance with Department Circular DEQ-4 submits adequate evidence that there will be no visible outflow of liquid downslope from the subsurface sewage treatment system.

~~(2)~~ (3) Subsurface sewage treatment systems may not be installed on unstable landforms, as defined in ARM ~~17.36.320~~ 17.36.101.

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

~~(5)~~ (6) For lots ~~one~~ two acres in size or less, the applicant shall physically identify the drainfield location by staking or other acceptable means of identification. For lots greater than ~~one~~ two acres in size, the department may require the applicant to physically identify the drainfield location.

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

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendments delete the reference to a "registered" professional engineer. See Reason for ARM 17.36.320. The proposed amendments to ARM 17.36.322(1) retain the 15 percent slope limitation for gravity-fed subsurface systems, and allow, without a waiver, pressure-dosed systems on slopes greater than 15 percent and up to 25 percent if a qualified person performs a soil evaluation. Gravity-fed systems are not suitable on slopes greater than 15 percent due to the tendency of these systems to load effluent over small areas, which creates the potential for soil sloughing or effluent outfall. However, pressure-dosed systems can be used on those slopes, and the waiver process is not needed to ensure that the pressure-dosed systems are properly designed. For slopes greater than 15 percent and up to 25 percent, the amendments require that soil evaluations be conducted in accordance with DEQ-4 instead of ASTM standard D5921-96el. The reference to the ASTM standard is not necessary because the procedures in the standard are substantially addressed in DEQ-4.

The proposed new ARM 17.36.322(2) allows, through a department waiver, use of pressure-dosed systems on slopes greater than 25 percent and up to 35 percent, if a qualified person performs a soil evaluation. The department has found that in some situations pressure-dosed systems can be installed on these slopes without adverse consequences. The use of the waiver process will allow for consideration of the special circumstances in each case.

The proposed amendment to renumbered ARM 17.36.322(3) is necessary to correct an erroneous cross reference.

The proposed amendment to renumbered ARM 17.36.322(6) expands, from one to two acres, the size of lots in which approved drainfield locations must be staked or otherwise identified. This amendment is necessary to conform to revisions to DEQ-4, 2013 edition (Section 2.1.4.). Physical identification of approved drainfield sites is necessary to prevent other construction improvements from interfering with the drainfield site. Identification may be by physical staking, or by a

method such as electronic identification using GPS coordinates. The increase in lot size from one to two acres is necessary because the potential for interference is not limited to one-acre lots. The amendments also give the department discretion to require drainfield site identification on lots larger than two acres. This is necessary to allow the reviewing authority to prevent interference with an approved drainfield site where a significant amount of ground disturbance is proposed.

17.36.323 SEWAGE SYSTEMS: HORIZONTAL SETBACKS; WAIVERS

(1) Minimum horizontal setback distances, (in feet), shown in Table 3 2 of this rule must be maintained, except as provided in the table footnotes or as allowed through a deviation granted under ARM Title 17, chapter 38, subchapter 1. The setbacks in this rule are not applicable to gray water irrigation systems that meet the setbacks and other requirements of ARM 17.36.319.

~~(2) A waiver of the setback distance for a cistern may be granted by the department, pursuant to ARM 17.36.601, if the applicant demonstrates that the elevation of the cistern is higher than the elevation of the septic tank, other components, or drainfield/sand mound.~~

~~(3) A waiver of the setback distance between drainfields/sand mounds and surface waters, springs, and floodplains may be granted by the department, pursuant to ARM 17.36.601, only if:~~

~~(a) the applicant demonstrates that ground water flow at the drainfield site cannot flow into the surface water or spring; or~~

~~(b) the surface water or spring seasonally high water level is a minimum of 100 feet horizontal distance from the drainfield and the bottom of the drainfield will be at least two feet above floodplain elevation.~~

~~(4) The department may require more than 100 feet of separation from the floodplain or from surface water or springs if it determines that site conditions or water quality nondegradation requirements indicate a need for the greater distance.~~

TABLE 3 2
SETBACK DISTANCES
(in feet)

<u>From</u>	<u>To</u> <u>Drinking</u> <u>Water Supply</u> <u>Wells</u>	<u>To</u> <u>Sealed Components</u> <u>(1) and Other</u> <u>Components (2)</u>	<u>To</u> <u>Drainfields/Sand</u> <u>Mounds Soil</u> <u>Absorption</u> <u>Systems</u>
Public or multiple-user <u>drinking water wells/springs</u>	-	100 (3)	100
Individual and shared <u>drinking water wells</u>	-	50 (3)	100
Other wells (4)	-	50 (3)	100 (3)

Suction lines	-	50	100
Cisterns	-	25	50
Roadcuts, escarpment	-	10 (3) (5)	25
Slopes > 25% <u>35 percent</u> (4) (6)	-	10 (3) (5)	25
Property boundaries	10 (7)	10 (7)	10 (7)
Subsurface drains	-	10	10
Water Lines <u>main s</u>	-	10 (8)	10
Drainfields/ <u>Sand Mounds Soil absorption systems</u>	100	10	-
Foundation walls	-	10	10
Surface water <u>(9)</u> , springs	100 (5) (3) (10) (11)	50 (3) (10)	100 (3) (10) (12)
Floodplains	10 (10)	- <u>Sealed components - no setbacks</u> (1) <u>Other components -</u> 100 (2) (3) (10)	100 (10) (13)
Mixing zones	100 (3)	-	-
Storm water <u>ponds and ditches</u>	25 (14)	10	25

(1) Sealed components include ~~sewer lines, sewer mains, septic tanks, grease traps, dosing tanks, and pumping chambers~~ holding tanks, sealed pit privies, and the components addressed in Department Circular DEQ-4, Chapters 4 and 5. Sealed components must meet the requirements of ARM 17.36.322(4).

(2) Other components include ~~intermittent and recirculating sand filters, package plants, and evapotranspiration systems~~ the components addressed in Department Circular DEQ-4, chapter 7.

(3) A waiver of this requirement may be granted by the department pursuant to ARM 17.36.601.

(4) Other wells include, but are not limited to, irrigation and stock watering, but do not include observation wells as addressed in Department Circular DEQ-4.

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

(4) ~~(6)~~ Down-gradient of the sealed component, other component, or drainfield/sand mound soil absorption system.

(5) ~~A waiver of this requirement may be granted by the department pursuant to ARM 17.36.601.~~

(7) Easements may be used to satisfy the setback to property boundaries.

(8) Unless a waiver is granted by the department pursuant to ARM 17.36.601, sewer mains that cross water mains must be laid with a minimum vertical separation distance of 18 inches between the mains.

(9) For purposes of this rule, "surface water" does not include intermittent storm water.

(10) The department may require more separation from the floodplain or from surface water or springs if it determines that site conditions or water quality requirements indicate a need for the greater distance.

(11) Pursuant to ARM 17.36.331, the reviewing authority may require greater than a 100-foot horizontal separation between a well and surface water if there is a potential that the well may be influenced by contaminants in the surface water.

(12) A waiver may be granted by the department, pursuant to ARM 17.36.601, if the applicant demonstrates that ground water flow at the drainfield site cannot flow into the surface water or spring. The setback between drainfields or soil absorption systems to irrigation ditches does not apply if the ditch is lined with a full culvert.

(13) A waiver may be granted by the department, pursuant to ARM 17.36.601, if the applicant demonstrates that the surface water or spring seasonally high water level is at least a 100-foot horizontal distance from the drainfield and the bottom of the drainfield will be at least two feet above the maximum 100-year flood elevation.

(14) The setback is 100 feet for public wells, unless a deviation is granted under ARM Title 17, chapter 38, subchapter 1.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendment to the title of the rule deletes "Sewage Systems." This is necessary because the setbacks in Table 2 apply to other features besides sewage systems. The proposed amendment to the title also deletes the term "horizontal." This is necessary because proposed new footnote (8) to Table 2 establishes vertical setbacks between water and sewer mains.

The proposed amendments move ARM 17.36.323(2) through (4) into the Table 2 footnotes. The current format is confusing in that some allowable waivers are shown on Table 2 and others are not. These amendments will ensure that all allowable waivers are indicated on the table and described in the table footnotes. The proposed amendment to ARM 17.36.323(1) indicates that all waivers to the setbacks in Table 2 are shown in the footnotes. The proposed amendments to ARM 17.36.323(1) also allow a waiver to a setback in the table if the department has allowed a lesser distance through the deviation process under the public water and sewer (PWS) rules in ARM Title 17, chapter 38, subchapter 1 and related department circulars. This "reciprocal" waiver process is necessary to prevent a conflict between these rules and a deviation for a proposed subdivision facility that is granted under the PWS rules.

At the top of Table 2, column 4, the proposed amendments replace the term "sand mounds" with "soil absorption systems." This is necessary to clarify that the setback table applies to other systems besides sand mounds. The proposed amendments also replace "water supply wells" with "drinking water wells." This is necessary to clarify that the referenced setbacks apply only to water wells proposed to be used for human drinking water supply.

Existing footnotes (1) and (2) of Table 2 identify sealed and "other" components that are subject to the table. The proposed amendments to footnotes (1) and (2) delete the lists of components in the footnotes and replace them with a reference to DEQ-4, Chapters 4, 5, and 7. The components currently listed in the footnotes are addressed in DEQ-4, but DEQ-4 includes other components as well. It is not practical to list all of the components in the footnote. To provide a more complete identification of components that are subject to Table 2, it is necessary to identify them by reference.

In the first row of Table 2, the proposed amendments allow a waiver of the setback between public or multiple-user wells or springs and sealed or other components of sewage systems. A 100-foot setback is not always necessary when the sewage system component is designed to prevent contamination of the water supply. The current table allows waivers under footnote (5). The proposed amendments renumber the waiver footnote as footnote (3) throughout Table 2.

The proposed amendments insert a new second row in Table 2 for individual and shared water supply wells. The current table addresses these wells under "other wells." The new category is proposed in order to distinguish between drinking water wells and non-drinking water wells. Under the proposed amendment, setbacks to non-drinking water wells will be addressed under "other wells." The setbacks are the same for drinking water wells and other wells, except that a waiver is allowed for the setback between other wells and drainfields/soil absorption systems. Because other wells no longer include wells for drinking water, it is appropriate to adjust this setback in some cases through waiver. The proposed amendments would also allow a waiver of the setback between individual, shared, and other wells and sealed and "other" components of sewage systems. A 100-foot setback is not always necessary when the sewage system component is designed to prevent contamination of the water supply or other well. Proposed footnote (4) provides that the setbacks for other wells do not apply to monitoring wells. This is necessary to allow the use of monitoring wells in subdivisions. Compared with wells for irrigation or stockwater, monitoring wells do not present a significant risk of surfacing sewage, and in some cases monitoring wells must be installed close to a sewage source to determine potential impacts to water quality.

The proposed amendments to the setbacks for roadcuts, escarpments, and slopes greater than 25 percent renumber the existing footnote from (3) to (5). The amendments increase, from 25 percent to 35 percent, the slope to which the slope setback applies. This is necessary to be consistent with the proposed amendments to ARM 17.36.322, which allow, through waiver, pressure-dosed sewage treatment systems on slopes between 25 percent and 35 percent. The amendment also renumbers, from (4) to (6), the footnote that clarifies that the slope setback applies down-gradient of the sealed component, other component, or drainfield/soil absorption system.

The proposed amendments add a new footnote (7) to the 10-foot setback for property boundaries to provide that easements may be obtained to satisfy the setback. The purpose of the setback is to allow owners adequate access to their facilities for purposes of repairs and maintenance. In some cases, usually involving a change to a previously approved facility, the 10-foot buffer from the property boundary may be unavailable. In those cases, an easement from the adjoining

landowner will provide adequate assurance that access is available.

The proposed amendments modify the current 10-foot setback for "water lines" so that it would apply only to "water mains." Ten feet of horizontal separation is not needed between sewage system components and water service lines. This amendment will also provide consistency with a comparable setback in the Uniform Plumbing Code. The proposed amendments add a new footnote (8) to the setback that requires an 18-inch vertical separation between water and sewer mains, unless the department grants a waiver. The 18-inch vertical separation requirement is currently found in Department Circulars DEQ-1 (DEQ-1) and DEQ-2 (DEQ-2), and is included in footnote (8) to ensure that subdivision applicants are aware of it. The waiver process will provide a method for considering special circumstances that may affect the need for the 18-inch vertical setback.

The proposed amendments add several new footnotes to the setbacks for surface water and springs. Footnote (9) provides that this setback is not applicable to intermittent storm water. Footnote (9) is added because the amendments add, in the last row of Table 2, a new setback for storm water ponds and ditches. The proposed amendments add footnote (3), which will allow waivers from the setbacks from surface water and springs. Special circumstances can affect whether these setbacks are necessary. The waiver process will provide a method for considering these circumstances on a case-by-case basis. Footnote (10) allows the department to require more separation from surface water or springs, based on site conditions or water quality needs. This footnote incorporates the provisions that are currently in (4) of the rule. Footnote (11) provides a cross-reference to ARM 17.36.331, which allows the reviewing authority to require a greater than 100-foot separation between a well and surface water if there is a potential that the well may be influenced by contaminants. Footnote (11) is necessary to indicate that the setback shown in Table 2 can be modified in those circumstances. Footnote (12) provides that the department may waive the drainfield setback if the applicant demonstrates that ground water flow at the drainfield site cannot flow into the surface water or springs. This footnote incorporates the provisions that are currently in (3)(b). Footnote (12) also states that the setback between drainfields or soil absorption systems and irrigation ditches does not apply if the ditch is lined with a full culvert. This provision reflects an existing department interpretation of former (3)(a). Including it in footnote (12) will provide guidance to applicants about this setback requirement.

The proposed amendments add several footnotes to the floodplain setbacks. The proposed amendments add footnote (3), which allows waivers, to the setback between the floodplain and wells. This is necessary to allow, through the waiver process, consideration of special construction or siting circumstances that minimize the potential for commingling between flood waters and a water supply. Footnote (10) provides that the reviewing authority may require more separation from the floodplain, based on site conditions or water quality needs. This footnote incorporates the provisions that are currently in (4) of the rule. Proposed footnote (13) provides that the department may waive the setback between floodplains and drainfields/soil absorption systems if the applicant demonstrates that the surface water or spring seasonally high water level is at least 100 feet horizontal distance from the drainfield and that the bottom of the drainfield will be at least two feet above the maximum flood elevation. This footnote incorporates the provisions that are

currently in (3)(b) of the rule. The proposed amendments also add footnote (3), which allows waivers, to the setback between the flood plain and "other" sewage components. Under the proposed amendments to footnote (2), "other" sewage components are the advanced treatment systems addressed in chapter 7 of DEQ-4. Some of these systems are sealed units that would not create a contamination risk during a flood event. The waiver process will provide a method for considering these circumstances on a case-by-case basis.

The proposed amendments insert a new row in Table 2 establishing a 100-foot setback between mixing zones and water supply wells. This is necessary to ensure that drinking water wells are isolated from potential sources of contamination. A waiver provision is provided to allow for department consideration of unique circumstances.

The proposed amendments insert a new row in Table 2 establishing setbacks from storm water ponds and ditches. The proposed setbacks are less than those for non-storm surface water and springs. Because storm water facilities have intermittent flows, they are less likely to impact wells or be impacted by sewage disposal facilities. Consequently, it is not necessary to apply the larger setbacks that apply to more permanent surface water sources. Proposed footnote (14) clarifies that the setback remains 100 feet between storm water facilities and public wells. This is necessary to be consistent with the requirements for public wells set out in DEQ-1 and Department Circular DEQ-3 (DEQ-3). Section 3.2.3.1 of DEQ-1 and DEQ-3 requires that public wells be located at least 100 feet from sewer lines, septic tanks, holding tanks, and any structure used to convey or retain industrial, storm, or sanitary waste.

17.36.325 SEWAGE SYSTEMS: SITE EVALUATION (1) remains the same.

(2) If the applicant or the department has reason to believe that ground water will be within seven feet of the surface at any time of the year within the boundaries of the treatment system, ~~the applicant shall install ground water level observation pipes to a depth of at least eight feet to determine the seasonally high ground water level. The applicant shall monitor the observation pipes through the seasonally high ground water period~~ ground water monitoring must be conducted in accordance with Department Circular DEQ-4.

(3) The applicant shall provide descriptions of the soils within 25 feet of the boundaries of each proposed drainfield. ~~Soil descriptions must address the characteristics used in the U.S. Department of Agriculture's National Soil Survey Handbook (USDA, NRCS, September 1999), and the Soil Survey Manual (USDA, October 1993). These characteristics include, but are not limited to, soil texture, soil structure, soil consistence, and indicators of redoximorphic features. Soil descriptions for the proposed subdivision must meet the following requirements:~~

(a) Soil descriptions must be done in accordance with Department Circular DEQ-4. The characteristics that must be addressed include, but are not limited to, soil texture, soil structure, soil consistence, and indicators of redoximorphic features.

(b) Soil descriptions for the proposed subdivision must be based on data obtained from test holes. Test holes must be at least eight feet in depth dug in accordance with Department Circular DEQ-4. The number of test holes must be as provided in (c), unless a waiver is granted by the department pursuant to ARM

17.36.601. Before a waiver is granted, the applicant shall complete test holes for 25 percent of the proposed drainfield locations in the proposed subdivision, shall demonstrate that the soils are consistent throughout the area requested for a waiver, and shall obtain the approval of the local reviewing authority. The department may require additional test holes than are required in (c) if the department determines that there is significant variability of the soils in the proposed drainfield areas. Each test hole must be keyed by a number on a copy of the lot layout or map with the information provided in the application.

~~(b) (c) At least one test hole must be dug for each individual drainfield and for each shared (two-user) drainfield, unless a waiver is approved by the department pursuant to ARM 17.36.601. Before a waiver is requested and granted, the applicant must complete test holes for 25% of the proposed drainfield locations in the subdivision, demonstrate that the soils are consistent throughout the area requested for a waiver, and must obtain the approval of the local reviewing authority for reduction in number of test holes. At least three test holes must be dug for each multiple-user and public drainfield, unless a waiver is approved by the department pursuant to ARM 17.36.601. At least one test hole must be dug in for each zone of a pressure-dosed drainfield, unless a waiver is approved by the department pursuant to ARM 17.36.601. The department shall require additional test holes if it determines that there is significant variability of the soils in the proposed drainfield area;.~~

~~(c) Test holes must be located within 25 feet of the boundaries of the proposed drainfield. The locations must be established by a person qualified to evaluate and identify soil in accordance with ASTM standard D5921-96e1 (Standard Practice for Subsurface Site Characterization of Test Pits for On-Site Septic Systems);~~

~~(d) If the applicant or the department has reason to believe that a limiting layer is within seven feet of the ground surface at the site of a proposed subsurface sewage treatment systems, the department may require additional test pits holes and soil descriptions sufficient to describe the suitability of the soil must be provided; and.~~

~~(e) Each test hole must be keyed by a number on a copy of the lot layout or map with the information provided in the report.~~

(4) Sewage systems that are subject to the design requirements of Department Circular DEQ-2 must meet the siting requirements of that circular.

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: The proposed amendment to ARM 17.36.325(2) deletes the existing description of required ground water monitoring procedures and replaces it with a reference to DEQ-4. DEQ-4 contains a more complete statement of procedures and the amendment is necessary to inform subdivision applicants of all applicable ground water monitoring procedures.

The proposed amendments to ARM 17.36.325(3) reorganize the section to consolidate the waiver provisions into a single subsection. This is necessary to eliminate repetition and to clearly indicate which requirements are subject to waiver. The proposed amendments add a reference to DEQ-4 to renumbered ARM

17.36.325(3)(b). DEQ-4 contains a more complete statement of test hole requirements, and the amendment is necessary to inform subdivision applicants of all applicable procedures. The amendment in new (c) is necessary to allow test holes to be dug near, but not in, the zone of disruption by the test hole could interfere with the function of the system. The amendment is also necessary to be consistent with procedures in DEQ-4, 2013 edition. The proposed amendments delete existing ARM 17.36.325(3)(c) because it unnecessarily duplicates other provisions in the rule. The amendment to (d) is proposed because additional holes and descriptions may not always be necessary in this situation. Subsection (e) is eliminated because this requirement will now be found in the new language in (b).

The proposed amendments add a reference to the siting requirements of DEQ-2. This is necessary to identify applicable siting requirements for sewage systems that are subject to DEQ-2.

17.36.912 DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) through (4) remain the same.

(5) "Commercial unit" means the area under one roof that is occupied by a business or other nonresidential use. A building housing two businesses is considered two commercial units.

(5) and (6) remain the same, but are renumbered (6) and (7).

~~(7) "Dwelling" or "residence" means any structure, building or portion thereof, which is intended or designed for human occupancy and supplied with water by a piped water system.~~

(8) and (9) remain the same.

~~(10) "Floodplain" means the area adjoining the watercourse or drainway that would be covered by the floodwater of a flood of 100-year frequency except for sheet flood areas that receive less than one foot of water per occurrence and are considered zone b areas by the federal Emergency Management Agency~~ a flood that is expected to recur on the average of once every 100 years or by a flood that has a one percent chance of occurring in any given year. The floodplain consists of the floodway and the flood fringe, as defined in ARM Title 36, chapter 15.

(11) through (13) remain the same.

(14) "Impervious layer" means any layer of material in the soil profile that has a percolation rate slower than ~~420~~ 240 minutes per inch.

(15) "Individual wastewater system" means a wastewater system that serves one living unit or commercial ~~structure~~ unit. ~~The total number of people served may not exceed 24~~ term does not include a public sewage system as defined in 75-6-102, MCA.

(16) remains the same.

(17) "Living unit" means the area under one roof ~~occupied by a family that can be used for one residential unit and which has facilities for sleeping, cooking, and sanitation.~~ For example, a duplex is considered two living units.

(18) "Multiple-user wastewater system" means a ~~non-public~~ wastewater system that serves or is intended to serve ~~three through 14 living units or three through 14 commercial structures~~ more than two living units or commercial units or a combination, but which is not a public sewage system as defined in 75-6-102,

MCA. ~~The total number of people served may not exceed 24. In estimating the population that will be served by a proposed residential system, the reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data by 2.5.~~

(19) remains the same.

~~(20) "Package plants" means wastewater treatment systems that are sealed within a watertight container and contain components for the secondary and tertiary treatment of wastewater.~~

~~(24)~~ (20) "Percolation test" means a standardized test used to assess the infiltration rate of soils, performed in accordance with Appendix A in Department Circular DEQ-4.

~~(22)~~ (21) "Piped water system supply" means a plumbing system that conveys water into a structure from any source including, but not limited to, wells, cisterns, springs, or surface water.

(23) through (28) remain the same, but are renumbered (22) through (27).

~~(29)~~ (28) "Septic tank" means a ~~storage~~ wastewater settling tank in which settled sludge is in immediate contact with the wastewater flowing through the tank while the organic solids are decomposed by anaerobic action.

~~(30)~~ (29) "Shared wastewater system" means a wastewater system that serves or is intended to serve two living units or commercial structures ~~units or a combination of both~~. ~~The total people served may not exceed 24 term does not include a public sewage system as defined in 75-6-102, MCA. In estimating the population served, the reviewing authority shall multiply the number of living units times the county average of persons per living unit based on the most recent census data.~~

(31) and (32) remain the same, but are renumbered (30) and (31).

~~(33)~~ (32) "Soil profile" means a description of the soil strata to a depth of eight feet using the United States Department of Agriculture (USDA) soil classification system method in Appendix B, Department Circular DEQ-4.

(34) and (35) remain the same, but are renumbered (33) and (34).

~~(36)~~ (35) "Wastewater" means water-carried ~~waste that is discharged from a dwelling, building, or other facility, including~~ wastes including, but not limited to:

(a) through (d) remain the same.

~~(37)~~ (36) "Wastewater treatment system" or "wastewater disposal system" means a system that receives wastewater for purposes of treatment, storage, or disposal. The term includes, but is not limited to, ~~pit privies and experimental systems~~ all disposal methods described in Department Circular DEQ-4.

AUTH: 75-5-201, MCA

IMP: 75-5-305, MCA

REASON: The term "commercial unit" is defined in new ARM 17.36.912(5). The term is used in the definitions of individual, shared, and multiple-user wastewater systems. The proposed definition of "commercial unit" is the same as the definition in these rules and DEQ-4, 2013 edition. The definition is necessary to clarify how shared and multiple-user systems are defined.

The proposed amendments delete the definition of "dwelling." The term

"dwelling" is currently used only in the definition of "wastewater" to refer to wastewater discharged from a dwelling. The proposed amendments would modify the definition of "wastewater" to delete the reference to discharge from a dwelling. Consequently, the definition of "dwelling" is no longer necessary.

The proposed amendments to the definition of "floodplain" in ARM 17.36.912(10) eliminate the exception for areas that receive less than one foot of water per occurrence that are considered "zone b" areas by the Federal Emergency Management Agency (FEMA). The defined term "floodplain" is used in rules that restrict the construction of drainfields in and near floodplains. The exception for FEMA "zone b" in the current definition could allow construction of drainfields in areas that are inundated by floodwaters less than one foot deep during the 100-year flood. Because any inundation of drainfields by flood waters during a 100-year flood could interfere with proper drainfield operation, it is necessary to eliminate the exception, in the definition of "floodplain," for FEMA "zone b" areas.

The proposed amendments to the definition of "impervious layer" in ARM 17.36.912(14) change, from 120 to 240 minutes per inch, the percolation rate at which material is considered impervious. The amendment conforms this definition to that in DEQ-4, 2013 edition, and is necessary because adequate wastewater treatment can be achieved in soils with slower percolation rates.

The proposed amendments to the definition of "individual wastewater system" in ARM 17.36.912(15) replace the term "commercial structure" with "commercial unit." This is necessary in order to use the term "commercial unit" as defined in these rules and in DEQ-4, 2013 edition. The amendments also delete the limitation to 24 people served, and replace it with a reference to the statutory definition of public water supply and public sewage systems. This amendment is necessary because the 24-person limit does not accurately identify the threshold between a non-public and a public system contained in 75-6-102, MCA.

The proposed amendment to the definition of "living unit" in ARM 17.36.912(17) deletes the reference to "family" and replaces it with "residential." This is necessary because not all residential uses involve use by a family. The amendments also identify the basic features of a living unit, which are that it has facilities for sleeping, cooking, and sanitation. The amendments conform this definition to that in the Sanitation in Subdivisions Act rules and DEQ-4 and are necessary to identify which structures constitute living units for the purposes of these rules.

The proposed amendments to the definition of "multiple-user wastewater system" in ARM 17.36.912(18) replace the term "commercial structure" with "commercial unit." This is necessary in order to use the term "commercial unit" as defined in these rules and in DEQ-4, 2013 edition. The proposed amendments provide that multiple-user systems can consist of two or more living units, commercial units, or a combination of residential and commercial units. This is necessary to provide guidance about the meaning of the rules. The amendments also delete the limitation to 24 people served and replace it with a reference to the statutory definition of public water supply and public sewage systems. This amendment is necessary because the 24-person limit does not accurately identify the threshold between a non-public and a public system. The amendments also modify the formula for determining when proposed residential water and sewer

systems will be subject to the requirements for public systems. The current rule multiplies the number of proposed living units times the county average of persons per living unit, based on the most recent census data. The amendments standardize the persons per living unit to 2.5. This is necessary to ensure that the requirements for public systems are applied consistently across the state to developments of a certain size.

The proposed amendments delete the definition of "package plants" in ARM 17.36.912(20). The term is used in a list of sewage system components in footnote (2) of the setback table in ARM 17.36.918. Because the proposed amendments delete the term from the footnote to the setback table, this definition is no longer necessary.

The proposed amendment to the definition of "percolation test" in ARM 17.36.912(21) references the procedures for performing percolation tests set out in DEQ-4 Appendix A. This amendment conforms to the definition in DEQ-4 and is necessary to clarify that tests must be done in accordance with Appendix A to meet the requirements of these rules.

The proposed amendments modify the definition of "piped water system" in ARM 17.36.912(22). This is necessary because the term "piped water system" is used only in the definition of "dwelling," which the proposed amendments would replace with the term "living unit." The modification replaces the term with "piped water supply," which is used in ARM 17.36.916(6).

The proposed amendments to the definition of "septic tank" in ARM 17.36.912(29) make minor changes for clarification and are necessary to conform to the definition in DEQ-4, 2013 edition.

The proposed amendments to the definition of "shared wastewater system" in ARM 17.36.912(30) replace the term "commercial structure" with "commercial unit." This is necessary in order to use the term "commercial unit" defined in these rules and in DEQ-4, 2013 edition. The amendments also clarify that shared user systems can consist of two or more living units, commercial units, or a combination of residential and commercial units. This is necessary to provide guidance about the meaning of the rules. The amendments also delete the limitation to 24 people served, and replace it with a reference to the statutory definition of public water supply and public sewage systems. This amendment is necessary because the 24-person limit does not accurately identify the threshold between a non-public and a public system. The amendment conforms to the definition of "shared wastewater system" in DEQ-4, 2013 edition. The amendments also delete the reference to the formula for determining when a shared system is subject to the design standards for public systems. The reference is not necessary because shared systems can be public based on the definitions in 75-6-102, MCA, but will not reach the public threshold based on the county average of persons per living unit.

The proposed amendment to the definition of "soil profile" in ARM 17.36.912(33) adds a reference to the soil classification method set out in Appendix B of DEQ-4. The amendment is necessary to provide guidance to permit applicants about where the required procedures can be found.

The proposed amendments to the definition of "wastewater" in ARM 17.36.912(36) delete the reference to wastewater that is discharged from a dwelling, building, or other facility. The amendment is necessary to include systems that do

not discharge from a building, such as waste segregation systems and incinerator toilets. The proposed amendments also conform this definition to that in DEQ-4, 2013 edition.

The proposed amendments to the definition of "wastewater treatment system" in ARM 17.36.912(37) replace the reference to pit privies and experimental systems with a reference to all disposal methods described in DEQ-4. Pit privies and experimental systems are addressed in DEQ-4, together with a number of other types of systems. The amendment is necessary to provide a more complete reference to the types of wastewater treatment systems.

17.36.918 HORIZONTAL SETBACKS, FLOODPLAINS (1) Minimum horizontal setback distances (in feet) are as follows:

TABLE 1
SETBACK DISTANCES
(in feet)

<u>From</u>	<u>To</u> Sealed components (1) and other components (2)	<u>To</u> Absorption systems (3)
Public or multiple- user <u>drinking water</u> wells/springs	100	100
<u>Individual and shared</u> <u>drinking water supply</u>	<u>50</u>	<u>100</u>
Other wells <u>(4)</u>	50	100
Suction lines	50	100
Cisterns	25	50
Roadcuts, escarpments	10 (4) <u>(5)</u>	25
Slopes > 25% <u>35</u> <u>percent</u> (5) <u>(6)</u>	10 (4) <u>(5)</u>	25
Property boundaries <u>(7)</u>	10	10
Subsurface drains	10	10
Water lines <u>mains</u> <u>(8)</u>	10	10
Drainfields/sand mounds (3)	10	-
Foundation walls	10	10
Surface water, Springs	50	100
Floodplains	--Sealed components - no <u>setbacks</u> (1) <u>Other components - 100</u> (2)	100

(1) Sealed components include ~~sewer lines, sewer mains, septic tanks, grease traps, dosing tanks, pumping chambers, holding tanks, and sealed pit privies, and~~

the components addressed in Department Circular DEQ-4, Chapters 4 and 5. Holding tanks and sealed pit privies must be located at least 40 ~~ten~~ feet outside the floodplain or any openings must be at least two feet above the floodplain elevation.

(2) Other components include ~~intermittent and recirculating sand filters, package plants, and evapotranspiration systems~~ the components addressed in Department Circular DEQ-4, Chapter 7.

(3) Absorption systems include ~~absorption trenches, absorption beds, sand mounds, and other drainfield type systems that are not lined or sealed. This term also includes seepage pits and unsealed pit privies~~ the systems addressed in Department Circular DEQ-4, Chapter 6.

(4) Other wells include, but are not limited to, irrigation and stock watering, but do not include observation wells as addressed in Department Circular DEQ-4.

Footnotes (4) and (5) remain the same, but are renumbered (5) and (6).

(7) Easements may be used to satisfy the setback to property boundaries.

(8) Sewer mains that cross water mains must be laid with a minimum vertical separation distance of 18 inches between the mains.

(2) The reviewing authority may require greater horizontal separation distances than those specified in Table 1, if it determines that site conditions or water quality ~~nondegradation~~ requirements indicate a need for the greater distance.

(3) through (5) remain the same.

AUTH: 75-5-201, MCA
IMP: 75-5-305, MCA

REASON: Existing footnotes (1), (2), and (3) of Table 1 identify sealed components, "other" components, and absorption systems that are subject to Table 1. The proposed amendments to footnotes (1), (2), and (3) delete the lists of components and systems in the footnotes and replace them with a reference to DEQ-4, Chapters 4, 5, 6, and 7. The components and systems currently listed in the footnotes are addressed in DEQ-4, but DEQ-4 includes other components and systems as well. It is not practical to list all of the components and systems in the footnote. To provide a more complete identification of components and systems that are subject to Table 1, it is necessary to identify them by reference.

The proposed amendments clarify that the setback row referring to "Public or multiple-user wells/springs" applies to "drinking water" supplies. This is necessary to clarify that the referenced setbacks apply only to water wells proposed to be used for a human drinking water supply.

Proposed new footnote (4) clarifies that the setbacks for other wells do not apply to monitoring wells. Compared with wells for irrigation or stockwater, monitoring wells do not present a significant risk of surfacing sewage, and in some cases monitoring wells must be installed close to a sewage source to determine potential impacts to water quality.

A new setback row is proposed for "Individual and shared water supply wells." Because new footnote (4) designates "other wells" as non-drinking water wells, the new row is necessary to provide a setback for individual and shared drinking water wells.

The proposed amendments to the setbacks for roadcuts, escarpments, and slopes renumber the existing footnotes from (4) to (5). The amendments increase, from 25 percent to 35 percent, the slope to which the slope setback applies. This is necessary to be consistent with the proposed amendments to ARM 17.36.322, which allow, through a Department of Environmental Quality waiver, pressure-dosed sewage treatment systems on slopes between 25 percent and 35 percent. The amendments also renumber, from (5) to (6), the existing footnote that states that the slope setback applies down-gradient of the sealed component, other component, or drainfield/soil absorption system.

The proposed amendments add a new footnote (7) to the ten-foot setback for property boundaries, to clarify that easements may be obtained to satisfy the setback. The purpose of the setback is to allow owners adequate access to their facilities for purposes of repairs and maintenance. In some cases the ten-foot buffer from the property boundary may be unavailable. In those cases, an easement from the adjoining landowner will provide adequate assurance that access is available.

The proposed amendments modify the current ten-foot setback for "water lines" so that it would apply only to "water mains." Ten feet of horizontal separation is not needed between sewage system components and water service lines. This amendment will also provide consistency with a comparable setback in the Sanitation in Subdivisions Act rules and the Uniform Plumbing Code.

The proposed amendments add a new footnote (8) to the setback, for water mains, that requires an 18-inch vertical separation between water and sewer mains. The 18-inch vertical separation requirement is currently found in DEQ-1 and the requirement is included in footnote (8) to ensure that permit applicants are aware of it.

17.38.101 PLANS FOR PUBLIC WATER SUPPLY OR PUBLIC SEWAGE SYSTEM (1) through (3)(n)(ii) remain the same.

(4) A person may not commence or continue the construction, alteration, extension, or operation of a public water supply system or public sewage system until the applicant has submitted a design report along with the necessary plans and specifications for the system to the department or a delegated division of local government for its review and has received written approval. Three sets of plans and specifications are needed for final approval. Approval by the department or a delegated division of local government is contingent upon construction and operation of the public water supply or public sewage system consistent with the approved design report, plans, and specifications. Failure to construct or operate the system according to the approved plans and specifications or the department's conditions of approval is an alteration for purposes of this rule. Design reports, plans, and specifications must meet the following criteria:

(a) through (c) remain the same.

(d) the board adopts and incorporates by reference ARM 17.36.320 through 17.36.325 ~~and 17.36.327~~. The design report, plans, and specifications for public subsurface sewage treatment systems must be prepared in accordance with ARM 17.36.320 through 17.36.325 ~~and 17.36.327~~, and in accordance with the format and criteria set forth in Department Circular DEQ-4, "Montana Standards for Subsurface Wastewater Treatment Systems;" For public subsurface sewage treatment systems

with a design flow greater than or equal to 2500 gallons per day, the design report, plans, and specifications must be prepared by a professional engineer.

(e) through (20) remain the same.

AUTH: 75-6-103, MCA

IMP: 75-6-103, 75-6-112, 75-6-121, MCA

REASON: ARM 17.38.101 sets out requirements for plans for public water supply and public sewage systems. The rule is promulgated under the board's authority under the public water and sewer (PWS) statutes in Title 75, chapter 6, part 1, MCA. ARM 17.38.101(4)(d) incorporates by reference sewage system rules that are promulgated by the Department of Environmental Quality (department) under the Sanitation in Subdivisions Act, Title 76, chapter 4, MCA. In this joint department/board rule notice, the department is proposing amendments to some of the Sanitation in Subdivisions Act rules incorporated by reference in ARM 17.38.101(4)(d). See department's proposed amendments to ARM 17.36.320 through 17.36.323 and ARM 17.36.325 above. If, after public comment, the department amends those Sanitation in Subdivisions Act rules, the board is proposing to incorporate the department's amendments in ARM 17.38.101. The incorporation of the Sanitation in Subdivisions Act rules within the PWS rules is necessary to maintain consistency between board PWS requirements for subsurface sewage systems and department requirements for subsurface sewage systems in proposed subdivisions.

The board is proposing to amend ARM 17.38.101(4)(d) to delete the incorporation by reference of ARM 17.36.327, which sets out provisions applicable to existing sewage systems in proposed subdivisions. The requirements in ARM 17.36.327 are less stringent than the requirements in the rules pertaining to public sewage systems. Because of the volume of sewage with which to deal, it is not appropriate for ARM 17.36.327 to apply to public sewage systems.

The proposed amendments to ARM 17.38.101(4)(d) also add a requirement that professional engineers design public subsurface sewage treatment systems with design flows greater than, or equal to, 2500 gallons per day. This requirement is currently codified in Sanitation in Subdivisions Act rules at ARM 17.36.320, but the proposed amendments will delete the requirement from ARM 17.36.320 and add it to ARM 17.38.101(4)(d). These amendments are necessary to consolidate, in the PWS rules, the requirements for design of public sewage systems by professional engineers.

17.38.106 FEES (1) remains the same.

(2) Department review will not be initiated until fees calculated under (2)(a) through ~~(e)~~ (f) and (5) have been received by the department. If applicable, the final approval will not be issued until the calculated fees under (3) and (4) have been paid in full. The total fee for the review of a set of plans and specifications is the sum of the fees for the applicable parts or subparts listed in these ~~citations~~ subsections:

(a) The fee schedule for designs requiring review for compliance with Department Circular DEQ-1 is set forth in Schedule I, as follows:

SCHEDULE I

Policies	
ultra violet disinfection	\$ 700
point-of-use/point-of-entry treatment	\$ 700
Section 1.0 Engineering Report	\$ 280
Section 3.1 Surface water	
quality and quantity	\$ 700
structures	\$ 700
Section 3.2 Ground water	\$ 840
Section 4.1 Microscreening.....	\$ 280
Section 4.4 <u>2</u> Clarification	
standard clarification	\$ 700
solid contact units.....	\$ 1,400
Section 4.2 <u>3</u> Filtration	
rapid rate	\$ 1,750
pressure filtration.....	\$ 1,400
diatomaceous earth.....	\$ 1,400
slow sand	\$ 1,400
direct filtration.....	\$ 1,400
biologically active filtration.....	\$ 1,400
membrane filtration	\$ 1,400
micro and ultra filtration	\$ 1,400
bag and cartridge filtration.....	\$ 420
Section 4.3 <u>4</u> Disinfection	\$ 700
Section 4.4 <u>5</u> Softening	\$ 700
Section 4.6 Ion Exchange	\$ 700
Section 4.5 <u>7</u> Aeration	
natural draft	\$ 280
forced draft.....	\$ 280
spray/pressure	\$ 280
packed tower.....	\$ 700
Section 4.6 <u>8</u> Iron and manganese	\$ 700
Section 4.7 <u>9</u> Fluoridation	\$ 700
Section 4.8 <u>10</u> Stabilization.....	\$ 420
Section 4.9 <u>11</u> Taste and odor control	\$ 560
Section 4.10 Microscreening.....	\$ 280
Section 4.11 Ion exchange	\$ 700
Section 4.12 Adsorptive media	\$ 700
Chapter 5 Chemical application	\$ 980
Chapter 6 Pumping facilities	\$ 980
Section 7.1 Plant storage.....	\$ 980
Section 7.2 Hydropneumatic tanks	\$ 420
Section 7.3 Distribution storage	\$ 980
Section 7.4 Cisterns.....	\$ 420
Chapter 8 Distribution system	
per lot fee	\$ 70
non-standard specifications	\$ 420

transmission distribution (per lineal foot)	\$ 0.25
rural distribution system (per lineal foot)	\$ 0.03
sliplining existing mains (per lineal foot)	\$ 0.15
Chapter 9 Waste disposal	\$ 700
Appendix A	
new systems	\$ 280
modifications	\$ 140

(b) through (c) and Schedule III remain the same.

(d) The fee schedule for designs requiring review for compliance with Department Circular DEQ-4 is set forth in Schedule IV, as follows:

SCHEDULE IV

Chapter 4 Pressure Dosing	\$ 280
Chapter 7 5 Septic Tanks	\$ 280
Chapters 8, 10, 11, 12, 13 <u>6</u> Soil Absorption Trenches <u>Systems</u>	\$ 280
Chapter 9 Dosing System	\$ 280
Chapter 14 Elevated Sand Mounds	\$ 280
Chapter 6 , Subchapter 6.8 <u>ETA and ET Systems</u>	\$ 700
Chapters 15, 16, 17 , Subchapters <u>7.1, 7.2, and 7.3</u> Filters	\$ 280
Chapters 17, 18 <u>ETA and ET Systems</u>	\$ 700
Chapter 20 <u>7</u> , Subchapter <u>7.4</u> Aerobic Treatment	\$ 700
Chapter 24 <u>7</u> , Subchapter <u>7.5</u> Chemical Nutrient-Reduction Systems ..	\$ 700
Chapter 7 , Subchapter <u>7.6</u> Alternate Advanced Treatment Systems	\$ 700
Chapter 24, 25, 26, 27 <u>8</u> Holding Tanks, Pit Privy, Seepage Pits, <u>Waste Segregation, Experimental Systems</u>	\$ 280
Appendix D	\$ 280
Non-degradation Review	\$ 420

(e) ~~The fee schedule for the review of plans and specifications not covered by a specific department design standard, but within one of the following categories, The fee schedule for designs requiring review for compliance with Department Circular DEQ-10 is set forth in Schedule V as follows:~~

SCHEDULE V

Spring box and collection lateral	\$ 350
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(f) The fee schedule for designs requiring review for compliance with Department Circular DEQ-16 is set forth in Schedule VI, as follows:

SCHEDULE VI

<u>Cisterns</u>	<u>\$ 420</u>
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(3) through (7) remain the same.

AUTH: 75-6-108, MCA

IMP: 75-6-108, MCA

REASON: The proposed amendment to ARM 17.38.106(2) clarifies rule language. The proposed amendment is necessary to use correct language in the rule description. The proposed amendment is house-keeping in nature and has no direct effect on the regulation.

The proposed amendments to ARM 17.38.106(2)(a) modify the review fee categories under that schedule. The proposed amendments are necessary to correspond to the proposed 2014 edition of Department Circular DEQ-1 (DEQ-1). The proposed amendments do not modify any review fee. They merely correct the line item titles to reflect the new chapter numbering and naming. The cumulative amount for impacted persons is zero because there is no proposed increase, decrease, or new amount. No persons are affected fiscally by this rule amendment because the fees remain the same for every type of application.

The proposed amendments to ARM 17.38.106(2)(d) modify the review fee categories under that table. The proposed amendments are necessary to correspond to the 2013 edition of Department Circular DEQ-4 (DEQ-4). The Schedule IV table was not updated when DEQ-4 was updated in 2013; therefore, fee item headings described in the Schedule IV table are no longer accurate. The proposed amendments do not increase any fee. They correct the line item titles to reflect the new chapter numbering and naming. The cumulative amount for impacted persons is zero because there is no proposed increase, decrease, or new amount. No persons are affected fiscally by this rule amendment because the fees remain the same for every type of application.

The proposed amendment to ARM 17.38.106(2)(e) would modify the review fee language for Schedule V. The proposed amendment is necessary to incorporate new Department Circular DEQ-10 (DEQ-10) into the line item description. The review fee is not changed. Prior to adoption of DEQ-10, the department charged a review fee for review of plans and specifications not covered by a specific design standard, which covered spring boxes and collection laterals, of \$350. The review fee for spring boxes and collection laterals under new DEQ-10 will remain at \$350.

The proposed addition of ARM 17.38.106(2)(f) would create a new review fee Schedule VI. The proposed amendment is necessary to incorporate new Department Circular DEQ-16 (DEQ-16) into the fee schedule. The review fee is not changed. Prior to adoption of DEQ-16, the department charged a review fee of \$420 for the review of cistern plans and specifications under Department Circular DEQ-1. The review fee for cisterns under new DEQ-10 will remain at \$420.

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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., May 22, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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

6. The board and department maintain a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov; or may be made by completing a request form at any rules hearing held by the board or department.

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

8. With regard to the requirements of 2-4-111, MCA, the board and department have determined that the amendment of the above-referenced rules will significantly and directly impact small businesses.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North

JOHN F. NORTH
Rule Reviewer

BY: /s/ Robin Shropshire

ROBIN SHROPSHIRE
Chairman

DEPARTMENT OF ENVIRONMENTAL
QUALITY

BY: /s/ Tracy Stone-Manning

TRACY STONE-MANNING, Director

Certified to the Secretary of State, April 14, 2014.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING
Rules I through III pertaining to school) ON PROPOSED ADOPTION
crossing guards)

TO: All Concerned Persons

1. On May 14, 2014, at 10:00 a.m., the Montana Department of Justice will hold a public hearing in the auditorium of the Scott Hart Building, 302 North Roberts, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 7, 2014, to advise us of the nature of the accommodation that you need. Please contact Jaime Burkhalter, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail jburkhalter@mt.gov.

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

NEW RULE I TRAINING FOR ADULT SCHOOL CROSSING GUARDS

(1) An adult school crossing guard may be a school district employee or an adult volunteer member of the community. Training for adult school crossing guards may be provided by the school district or local law enforcement and should include:

- (a) safety issues for crossing guards and limitations of children as pedestrians;
- (b) review of basic traffic laws, school zone signs, and pavement markings;
- (c) methods of identifying traffic gaps and signaling drivers;
- (d) street-crossing procedures and ways to impart them to children; and
- (e) other information on traffic safety, injury prevention, and personal responsibility that the school district considers important for pedestrian safety and safe crossing operation.

AUTH: 20-1-214, MCA
IMP: 20-1-214, MCA

NEW RULE II SAFETY EQUIPMENT FOR ADULT CROSSING GUARDS

(1) Adults performing school crossing supervision shall wear high-visibility, retro reflective Class 2 safety apparel and use a STOP paddle in accordance with the sign manual adopted by the Department of Transportation.

AUTH: 20-1-214, MCA

IMP: 20-1-214, MCA

NEW RULE III OPERATING PROCEDURES FOR ADULT CROSSING GUARDS (1) Adult crossing guards shall not direct traffic or act in a manner similar to that used by a law enforcement officer at the scene of a crash or within an area of high-volume traffic. School crossing guards shall control only pedestrian traffic.

(2) Adult crossing guards shall direct and assist school-age children by identifying and utilizing gaps in traffic to help pedestrians safely cross a street. The school crossing guard shall identify and take advantage of a sufficient gap in the traffic flow. When safe, the school crossing guard shall stand in the roadway with a STOP paddle to alert motorists that pedestrians are in the process of using or waiting to use the crosswalk and that all vehicle traffic must stop and yield to pedestrians.

AUTH: 20-1-214, MCA

IMP: 20-1-214, MCA

REASON: 20-1-214, MCA, directs the Department of Justice to prescribe rules for school crossing guards. These rules are reasonably necessary to provide consistency for school crossing guard programs regarding the identification, training requirements, and operation of school crossing guards. With regard to protecting school-age children, a school crossing guard program can improve pedestrian, bicyclist, motor vehicle, and school bus safety. The effective involvement of schools, families, communities, and government agencies can increase traffic safety in school zones for all road users. In accordance with 20-1-214, MCA, the department has coordinated with the Department of Transportation and the Office of Public Instruction in adopting these rules.

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: Peter Funk, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail pfunk@mt.gov, and must be received no later than 5:00 p.m., on May 22, 2014.

5. Peter Funk, Department of Justice, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the department's web site at <https://doj.mt.gov/agooffice/administrative-rules>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that 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 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, apply and have been fulfilled.

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

/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 April 14, 2014.

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

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.29.1401A definitions,)	PROPOSED AMENDMENT
24.29.1433 facility service rules and)	
rates, 24.29.1534 professional fee)	
schedule for services provided,)	
24.29.1538 conversion factors for)	
services provided, and 24.29.1591)	
utilization and treatment guidelines)	

TO: All Concerned Persons

1. On May 19, 2014, at 1:00 p.m., the Department of Labor and Industry (department) will hold a public hearing in the Sanders Auditorium of the Department of Public Health and Human Services (DPHHS) Building, 111 North Sanders Street, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on May 9, 2014, to advise us of the nature of the accommodation that you need. Please contact the Department of Labor and Industry, Attn: Maralyn Lytle, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6604; fax (406) 444-4140; Montana TTD (406) 444-5549; or e-mail mlytle@mt.gov.

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

24.29.1401A DEFINITIONS As used in subchapters 14 and 15, the following definitions apply:

(1) through (5) remain the same.

(6) "CCR," formerly known as "RCC," means the cost-to-charge ratio computed by using the hospital's Medicare cost report and charges.

(6) through (33) remain the same, but are renumbered (7) through (34).

~~(34) "Ratio of cost to charges (RCC)" means the computed ratio using charges and the hospital's Medicare cost report.~~

(35) and (36) remain the same.

(37) "Resource-Based Relative Value Scale" or "RBRVS" means the publication titled "Essential RBRVS," published by ~~Ingenix~~ OptumInsight, Inc.

(38) through (42) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-116, 39-71-704, MCA

REASON: The department determines that the replacement of the acronym "RCC" with the acronym "CCR," which is the terminology used by the Centers for Medicare and Medicaid (CMS), will prevent confusion for insurers.

24.29.1433 FACILITY SERVICE RULES AND RATES FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2013

(1) The department adopts the fee schedules provided by this rule to determine the reimbursement amounts for medical services provided by a facility when a person is discharged on or after July 1, 2013. An insurer is obligated to pay the fee provided by the fee schedules for a service, even if the billed charge is less, unless the facility and insurer have a managed care organization (MCO) or preferred provider organization (PPO) arrangement that provides for a different payment amount. The fee schedules are available online at the Employment Relations Division web site and are updated as soon as is reasonably feasible relative to the effective dates of the medical codes as described below. The fee schedules are comprised of the following elements, which apply, unless a special code or description is otherwise provided by rule:

(a) The Montana Hospital Inpatient Services MS-DRG Reimbursement Fee Schedule, based on:

(i) CMS version 30 for dates of discharge from July 1, 2013 to September 30, 2013;

(ii) CMS version 31 for dates of discharge from October 1, 2013, through September 30, 2014; and

(iii) Pursuant to 39-71-704, MCA, the MS-DRG in effect on October 1 of each year are to be applied to a medical service for billing and reimbursement purposes;

(b) through (f) remain the same.

(g) The Montana unique code, MT003, described in (11)(e) and (12)(f); and

(h) The base rates and conversion formulas established by the department; and:

(i) The ~~publication, "Montana Workers' Compensation Facility Fee Schedule Instruction Set for Services Provided on or after July 1, 2013," incorporated by reference.~~ for services provided from July 1, 2013 through June 30, 2014; and

(ii) The "Montana Workers' Compensation Facility Fee Schedule Instruction Set Effective July 1, 2014."

(2) remains the same.

(3) Critical access hospitals (CAH) are reimbursed at 100 percent of that facility's usual and customary charges. CAH is a designation for a facility only. The reimbursement rate for CAH set by this rule ~~does not include or apply to professional services provided at a CAH. Such professional services must be reimbursed pursuant to ARM 24.29.1534, whether the professional is a CAH employee or is independent~~ applies to facility charges.

(i) Regarding professional services provided at a CAH, PT, OT, and ST services provided on an outpatient basis must be billed on a UB04 and reimbursed 100 percent of usual and customary. PT, OT, and ST outpatient services may not be billed on the CMS 1500.

(ii) All other professional services provided at a CAH must be billed on a CMS 1500 and reimbursed according to the professional fee schedule pursuant to ARM 24.29.1534.

(4) through (8) remain the same.

(9) Medical provider services furnished in a an acute care hospital, ~~CAH~~, ASC, or other facility setting, whether those professional services are furnished as an employee ~~of the facility~~ or as an independent professional, must be billed separately using the CMS 1500 and must be reimbursed using the professional fee schedule pursuant to ARM 24.29.1534, except as provided in (a). ~~Those reimbursements are excluded from any calculation of outlier payments.~~

(a) PT, OT, and ST services provided on an outpatient basis must be billed on a UB04 and reimbursed according to the facility fee schedule. These reimbursements are excluded from any calculation of outlier payments. PT, OT, and ST outpatient services may not be billed on the CMS 1500.

(10) remains the same.

(11) The following applies to inpatient services provided at an acute care hospital:

(a) The department may establish the base rate annually.

(i) Effective July 1, 2013 through June 30, 2014, the base rate is \$7,944.; and

(ii) Effective July 1, 2014, the base rate is \$7,984.

(b) Payments for inpatient acute care hospital services must be calculated using the base rate multiplied by the Montana MS-DRG weight. For example, if the MS-DRG weight is 0.5, the amount payable is ~~\$3,972~~ \$3,992, which is the base rate of ~~\$7,944~~ \$7,984 multiplied by 0.5.

(c) through (g) remain the same.

(12) The following applies to outpatient services provided at an acute care hospital or an ASC:

(a) The annual department ~~set~~ may establish the base rate for outpatient service at acute care hospitals annually. is:

~~(i) The base rate for hospital outpatient services is \$107 from July 1, 2013 through June 30, 2014; and-~~

(ii) \$109 on or after July 1, 2014.

~~(b) The annual department set may establish the base rate for ASCs, which is 75 percent of the hospital outpatient base rate, is: annually.~~

~~(i) The base rate for ASCs is \$80 from July 1, 2013 through June, 30, 2014, which is 75 percent of the hospital outpatient base rate.; and~~

(ii) \$82 on or after July 1, 2014, which is 75 percent of the hospital outpatient base rate.

(c) through (g) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: By this proposed rule, the department updates the facility fee schedule and incorporates the 2014 Facility Fee Instruction Set by reference. Workers' compensation insurers are required to use the most current version of forms from the Centers for Medicare and Medicaid (CMS). The proposed rule amendment clarifies that payments for PT, OT, and ST services, when provided on an outpatient basis by a critical access or acute care hospital, must be billed on the UB04 form. The department determines it is necessary to update the hospital inpatient and

outpatient base rates to align with the average market basket analysis completed by Medicare to increase the base rate for 2014.

24.29.1534 PROFESSIONAL FEE SCHEDULE FOR SERVICES PROVIDED ON OR AFTER JULY 1, 2013 (1) through (1)(c) remain the same.

(d) the instruction set for the fee schedule as adopted in this subsection called the "Montana Workers' Compensation Professional Fee Schedule Instruction Set for Services Provided on or after July 1, 2013". All the definitions, guidelines, RVUs, procedure codes, modifiers, and other explanations provided in the instructions set affecting the determination of individual fees apply. A copy of the instruction set may also be obtained at no charge from the Montana Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59604-8011;

(i) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set for 2013" applies to services provided from July 1, 2013 through June 30, 2014; and

(ii) The "Montana Workers' Compensation Professional Fee Schedule Instruction Set Effective July 1, 2014" applies to services on or after July 1, 2014.

(e) through (4) remain the same.

(5) Professionals, including those who furnish services in a hospital, CAH, ASC, or other facility setting must bill insurers using the CMS 1500, with the exception of PT, OT, and ST services provided on an outpatient basis and billed on a UB04.

(6) through (10) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: By this proposed rule, the department updates the fee schedule for professional services, updates the 2014 Professional Fee Schedule Instruction Set adopted by reference, incorporates clarifications made by the department within the last year, and clarifies billing for OT, PT, and ST.

24.29.1538 CONVERSION FACTORS FOR SERVICES PROVIDED ON OR AFTER JANUARY 1, 2008--METHODOLOGY (1) remains the same.

(2) The conversion factors are established ~~annually~~ by the department pursuant to 39-71-704, MCA. ~~If the department determines that a conversion factor does not need to change from the previous year due to its analysis of the average in (5), the most current factor listed below applies. The conversion factor for goods and services, other than anesthesia services, is are:~~

(a) ~~provided \$63.45 from January 1, 2008, to through December 31, 2008, is \$63.45;~~

(b) ~~provided \$65.28 from July January 1, 2009, to through June 30, 2013, is \$65.28; and~~

(c) ~~provided \$60.52 from on or after July 1, 2013 to through June 30, 2014, is \$60.52; and~~

(d) \$59.72 on or after July 1, 2014.

(3) The conversion factors are established annually by the department pursuant to 39-71-704, MCA. ~~If the department determines that a conversion factor does not need to change from the previous year due to its analysis of the average in (5), the most current factor listed below applies. The conversion factor for anesthesia services are:~~

(a) ~~provided \$57.20 from January 1, 2008, through December 31, 2008, is \$57.20;~~

(b) ~~provided \$61.98 from January 31, 2009, to through December 31, 2009, is \$61.98;~~

(c) ~~provided \$60.97 from January 1, 2010, to through June 30, 2013, is \$60.97; and~~

(d) ~~provided on or after \$61.40 from July 1, 2013 to through June 30, 2014, is \$61.40; and~~

(e) \$62.98 on or after July 1, 2014.

(4) and (5) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

REASON: The department is authorized by law to update the conversion factors for general medicine and anesthesiology each year. The conversion factors are based on up to 110 percent of the average conversion factors of the top five insurers or third-party administrators, which provide group health coverage in Montana. The 2014 conversion rates represent a 1.3 percent reduction for general medicine and a 2.6 percent increase for anesthesiology. The proposed rule amendment is also necessary to correct some erroneous dates delineating the application of conversion factors during prior years.

24.29.1591 UTILIZATION AND TREATMENT GUIDELINES (1) The department adopts the utilization and treatment guidelines provided by this rule to set forth the level and type of care for primary and secondary medical services. As provided by 39-71-704, MCA, there is a rebuttable presumption that the Montana Guidelines establish compensable medical treatment for primary and secondary medical services for the injured worker. ~~The utilization and treatment guidelines are titled the "Montana Utilization and Treatment Guidelines, 1st edition, 2011" (the Montana Guidelines or guidelines), are found on-line via the internet at <http://www.mtguidelines.com>, and are incorporated herein by reference. The Montana Guidelines adopted by reference in (1) may be obtained from the Montana Department of Labor and Industry. The applicable utilization and treatment guidelines are available electronically at the web site: <http://www.mtguidelines.com>; or a printed copy may be obtained for the cost of reproduction from the Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, MT 59601-8011. The Montana Guidelines incorporated by reference apply as follows:~~

(a) ~~an electronic copy is available at the web site:~~

<http://www.mtguidelines.com>; or for medical services provided from July 1, 2011 through June 30, 2014: "Montana Utilization and Treatment Guidelines, 1st edition, 2011"; and

(b) ~~a printed copy may be obtained for the cost of reproduction from the Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-7732; fax (406) 444-7710; TDD (406) 444-5549.~~ for medical services provided on or after July 1, 2014: "Montana Utilization and Treatment Guidelines, 2nd edition, 2014."

(2) through (4) remain the same.

(5) The provisions of this rule ~~and the Montana Guidelines incorporated by reference in (1)~~ apply to medical services provided on or after July 1, 2011.

AUTH: 39-71-203, 39-71-704, MCA

IMP: 39-71-704, MCA

REASON: The department is authorized by law to review and update the Utilization and Treatment Guidelines annually. The department has followed the lead established by the Colorado Medical Treatment Guidelines, which now include updated guidelines for chronic pain, complex regional pain syndrome and traumatic brain injury. By the proposed rule amendment, the Montana Utilization and Treatment Guidelines are updated in these three areas. In addition, the nonfunctional search features for the Montana guidelines by ICD Code-9 and CPT codes are removed, and the only search capability will be by text. The proposed amendment incorporates the updated 2014 Montana guidelines by reference for services provided on or after July 1, 2014.

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: Maralyn Lytle, Employment Relations Division, P.O. Box 8011, Helena, MT 59604-8011; telephone (406) 444-6604; fax (406) 444-4140; Montana TTD at (406) 444-5549; or e-mail mlytle@mt.gov and must be received no later than 5:00 p.m., June 6, 2014.

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

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

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

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not have a significant adverse impact on small businesses. The department has prepared a small business impact statement, which is available for review upon request.

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

/s/ JUDY BOVINGTON

Judy Bovington
Alternate Rule Reviewer

/s/ PAM BUCY

Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 14, 2014.

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

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.219.501 application)	PROPOSED AMENDMENT AND
procedures, 24.219.512 and)	ADOPTION
24.219.612 licensure of out-of-state)	
applicants, 24.219.2401 complaint)	
procedure, and the adoption of NEW)	
RULE I military training or experience)	

TO: All Concerned Persons

1. On May 15, 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 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 Social Work Examiners and Professional Counselors (board) no later than 5:00 p.m., on May 9, 2014, to advise us of the nature of the accommodation that you need. Please contact Cyndi Breen, Board of Social Work Examiners and Professional Counselors, 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; dlibsdswhpc@mt.gov (board's e-mail).

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

24.219.501 APPLICATION PROCEDURES (1) through (2)(c)(i) remain the same.

(ii) names of applicant, and supervisor (include type of license and number) and signature of both;

(iii) through (vi) remain the same.

(3) The applicant shall be notified in writing, of the results of the evaluation of the application for examination.

(4) through (8) remain the same.

(9) The Association of Social Work Boards' (ASWB) generalist examination is not an approved examination for the purpose of obtaining licensure as a clinical social worker.

AUTH: 37-1-131, 37-1-319, 37-22-201, MCA

IMP: 37-1-131, 37-1-306, 37-22-301, MCA

REASON: The board determined it is necessary to amend this rule to exclude the generalist examination as a possible test for licensing clinical social workers. The Association of Social Work Boards (ASWB) notified the board that effective January 1, 2012, the association is no longer supporting the exam for determining competence for clinical licensure. The board is making additional grammatical amendments to comply with ARM formatting requirements.

24.219.512 LICENSURE OF OUT-OF-STATE APPLICANTS (1) A license to practice as a social worker in ~~the state of~~ Montana may be issued to the holder of an out-of-state social worker license at the discretion of the board, provided the applicant completes and files with the board an application for licensure and the required application fee. The candidate must meet the following requirements:

(a) The candidate holds a valid and unrestricted license to practice as a social worker in another state or jurisdiction, which was issued under standards equivalent to or greater than current standards in this state. Official written verification of such licensure status must be received by the board directly from the other state(s) or jurisdiction(s);

(b) The candidate holds a Masters Degree in Social Work (MSW) or an equivalent Council on Social Work Education (CSWE)-approved degree, and shall supply a copy of the certified transcript sent directly from a college, university, or institution accredited by the CSWE;

(c) The candidate shall supply proof of successful completion of the American Association of State Social Work Boards' (AASSWB) (ASWB) advanced or clinical examination or another board-approved licensing examination. The ASWB generalist examination is not an approved examination for purposes of obtaining licensure as a clinical social worker. Candidate scores on the examination must be forwarded directly to the board.

(d)(i) The candidate shall submit proof ~~the candidate has previously completed~~ of completion of 3000 hours of supervised social work experience as defined in 37-22-301, MCA. The candidate may verify the experience hours by affidavit, and need not supply a supervisor's signature upon reasonable explanation of why the supervisor's signature is unavailable to the candidate; ~~or.~~

(ii) (e) The candidate shall submit proof ~~the candidate has been in~~ of continuous practice as a social worker in another jurisdiction for the two years immediately preceding the date of application in Montana.

(f) The candidate shall submit three reference letters as provided in 37-22-301, MCA.

(g) The candidate shall answer questions about the applicant's character and fitness to practice on a form prescribed by the board, and the candidate shall provide all information required by the board in response to these questions.

(2) All candidates must submit the fingerprint and background check required by the board.

(3) The board may verify qualifications for licensure by reference to information supplied in a candidate's official record with the national registry of the ASWB. The candidate must request that this information be provided to the board in

the manner required by the ASWB and the board. The candidate shall be solely responsible for paying any fee associated with this service.

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-1-304, 37-22-301, MCA

REASON: The board is amending (1)(c) to reflect the current name and appropriate acronym of the Association of Social Work Boards (ASWB). The board is also amending this section to exclude the generalist examination as a possible test for licensing clinical social workers, because effective January 1, 2012, ASWB is no longer supporting the exam to determine competence for clinical licensure. The board is adding (1)(f) and (g) to require references and the character and fitness questionnaire for out-of-state social worker applicants and help ensure that these individuals are committed to practicing ethically and professionally at the time of licensure in Montana, and to comply with the requirements of 37-22-301(2), MCA.

The board determined it is reasonably necessary to add (2) to clarify that out-of-state applicants must also pass the fingerprint and background check requirement mandated by 37-22-301(5), MCA. The board is adding (3) to allow verification of candidate qualifications through the candidate's official record at the national registry of the ASWB. Because the ASWB registry receives and maintains primary source records of applicant credentials in a manner as safe and reliable as the method used by the department, the board concluded that obtaining the records from the ASWB would simplify and expedite the process for those applicants who participate in the registry. Applicants who do not participate in the registry can provide appropriate records as they have in the past.

The board is amending punctuation, grammar, and numbering throughout the rule to comply with ARM formatting requirements. Authority and implementation citations are amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.219.612 LICENSURE OF OUT-OF-STATE LICENSED APPLICANTS

(1) A license to practice as a licensed professional counselor in ~~the state of~~ Montana may be issued to the holder of an out-of-state licensed professional counselor or equivalent license at the discretion of the board, provided the applicant completes and files with the board an application for licensure and the required application fee. The candidate must meet the following requirements:

(a) The candidate holds a valid and unrestricted license to practice as a licensed professional counselor or equivalent in another state or jurisdiction, which was issued under standards substantially equivalent to or greater than current standards in this state. Official written verification of such licensure status must be received by the board directly from the other state(s) or jurisdiction(s);

(b) The candidate holds a graduate degree, which meets the requirements of 37-23-202, MCA, and shall supply a copy of the certified transcript sent directly from an accredited college, university, or institution, and shall complete the degree summary sheet provided by the board;

(c) The candidate shall supply proof of successful completion of the National Counselor Examination (NCE) or another board-approved licensing examination. Candidate scores on the examination must be forwarded directly to the board.

(d)(i) ~~The candidate shall submit proof the candidate has previously completed~~ of completion of 3000 hours of supervised counseling practice as defined in 37-23-202, MCA. The candidate may verify the experience hours by affidavit, and need not supply a supervisor's signature upon reasonable explanation of why the supervisor's signature is unavailable to the candidate; ~~or.~~

(ii) ~~(e)~~ (e) The candidate shall submit proof ~~the candidate has been in~~ of continuous practice as a licensed professional counselor or equivalent in another jurisdiction for the two years immediately preceding the date of application in Montana.

(f) The candidate shall answer questions about the applicant's character and fitness to practice on a form prescribed by the board, and the candidate shall provide all information required by the board in response to these questions.

(2) All candidates must submit the fingerprint and background checks required by the board.

AUTH: 37-1-131, 37-22-201, 37-23-103, MCA

IMP: 37-1-131, 37-1-304, 37-23-202, MCA

REASON: The board determined it is reasonably necessary to add (1)(f) to require that out-of-state professional counselor applicants complete the character and fitness questionnaire to help ensure that these individuals are committed to practicing ethically and professionally at the time of licensure in Montana. The board is adding (2) to clarify that out-of-state professional counselor applicants must also pass the fingerprint and background check requirement statutorily mandated by 37-23-202(3), MCA.

The board is amending punctuation, grammar, and numbering throughout the rule to comply with ARM formatting requirements. Authority and implementation citations are amended to accurately reflect all statutes implemented through the rule, provide the complete sources of the board's rulemaking authority, and delete reference to a repealed statute.

24.219.2401 COMPLAINT PROCEDURE (1) A person, government, or private entity may submit a written complaint to the board charging a licensee or license applicant with a violation of board statute or rules, and ~~specifying~~ specify the grounds for the complaint.

(2) Complaints must be in writing, and shall be filed on the proper complaint form prescribed by the board, which shall include a statement on release of confidentiality ~~and shall require a notarized signature by complainant.~~

(3) Upon receipt of the written complaint form, the board office shall log in the complaint ~~and assign it a complaint number.~~ The complaint shall then be sent to the licensee complained about for a written response ~~to be received within 20 calendar days from the date licensee receives the request for response.~~ Upon receipt of the licensee's written response, both complaint and response shall be considered, which must be submitted within the time set by the board. The department shall compile

all materials received regarding the complaint and response, if any, and make them available for consideration by the screening panel of the board for appropriate action, including dismissal, investigation, or a finding of reasonable cause of violation of a statute or rule. The board office shall notify both complainant and licensee of the determination made by the screening panel.

(4) remains the same.

AUTH: 37-1-131, 37-22-201, ~~37-23-103~~, MCA

IMP: 37-1-308, 37-1-309, MCA

REASON: The board determined it is reasonably necessary to amend this rule as it contradicts current complaint handling processes of the department. Following amendment, the rule will reflect the department procedures used to facilitate other boards that are administratively attached to the department.

Authority citations are amended to accurately reflect all statutes implemented through the rule and delete reference to a repealed statute.

4. The proposed rule 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 or education toward the requirements for licensure as a clinical professional counselor, clinical social worker, and marriage and family therapist.

(2) Relevant military training 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 or education that is equivalent to relevant licensure requirements for a clinical professional counselor, clinical social worker, or marriage and family therapist. 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, 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 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 Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdswwpc@mt.gov, and must be received no later than 5:00 p.m., May 23, 2014.

6. An electronic copy of this notice of public hearing is available at www.swpc.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 Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdswwpc@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 24.219.501, 24.219.512, 24.219.612, and 24.219.2401 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 from the Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdswhpc@mt.gov (board's e-mail).

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

BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
JOHN LYNN, LCPC, 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 April 14, 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 37.36.604 pertaining to) PROPOSED AMENDMENT
updating to 2014 levels the federal)
poverty index for the Montana)
telecommunications access program)

TO: All Concerned Persons

1. On May 15, 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 May 8, 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:

37.36.604 FINANCIAL ELIGIBILITY CRITERIA (1) Individuals whose annual family income during the 12 months immediately preceding the month of application is less than 250% of the ~~2013~~ 2014 poverty guidelines published by the U.S. Department of Health and Human Services (HHS) are eligible for a loan of specialized telecommunications equipment based on income. 250% of the HHS ~~2013~~ 2014 annual poverty guidelines for families of various sizes are shown in (2).

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

FAMILY SIZE	250% OF ANNUAL POVERTY GUIDELINE
One	\$28,725 <u>\$29,175</u>
Two	\$38,775 <u>\$37,325</u>
Three	\$48,825 <u>\$49,475</u>
Four	\$58,875 <u>\$59,625</u>

Five	\$68,925 <u>\$69,775</u>
Six	\$78,975 <u>\$79,925</u>
Seven	\$89,025 <u>\$90,075</u>
Eight	\$99,075 <u>\$100,225</u>
Each Additional Person, Add	\$10,050 <u>\$10,150</u>

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

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

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services proposes to amend ARM 37.36.604 to reflect the 2014 Federal Poverty Index (FPI). Each time the FPI changes, it impacts the Montana Telecommunications Access Program income guidelines. It is an amendment we do in response to the FPI change to maintain compliance with the FPI. The proposed amendment is necessary to align MTAP income guidelines with the federal level.

ARM 37.36.604

The dollar amount for each family size has been increased based on the 2014 federal increase to the FPI. The date has been changed from 2013 to 2014.

Fiscal Impact

The fiscal impact of the required change is minimal since the increase in the FPI is a cost of living increase and the number of new individuals is low.

5. The department intends to adopt this rule amendment effective July 1, 2014.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., May 22, 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/ Shannon L. McDonald
Shannon L. McDonald
Rule Reviewer

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

Certified to the Secretary of State April 14, 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 37.87.1803, 37.106.1955, and) PROPOSED AMENDMENT
37.106.1961 pertaining to the mental)
health center: comprehensive school)
and community treatment program)
(CSCT) endorsement requirements)

TO: All Concerned Persons

1. On May 15, 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 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 May 8, 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 amended provide as follows, new matter underlined, deleted matter interlined:

37.87.1803 COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM: REIMBURSEMENT (1) and (2) remain the same.

(3) One team with two full-time employees will not be reimbursed for more than 720 billing units per team per month. Services must be billed in the month the service is provided. The licensed or in-training mental health professional must provide at least ~~half~~ 40 percent of the units billed by the team each month. Billing units are calculated based on the sum total of minutes each professional spent with the youth per day.

(4) through (11) remain the same.

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

IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.106.1955 MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM (CSCT) ENDORSEMENT REQUIREMENTS (1) and (2) remain the same.

(3) As of ~~July 1, 2014~~ October 1, 2014, the child and adolescent needs and strengths (~~MT~~ CANS MT) assessment must be initiated for each youth with serious emotional disturbance (SED) enrolled to receive services in the CSCT program within fourteen calendar days of receipt of a referral signed by the person referring the youth and by a parent or legal representative/guardian of the youth. The ~~MT~~ CANS MT must be:

(a) through (4) remain the same.

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

IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.106.1961 MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT (CSCT) PROGRAM, RECORD REQUIREMENTS

(1) remains the same.

(2) In addition to (1), beginning ~~July 1, 2014~~ October 1, 2014, youth records must also include the child and adolescent needs and strengths (~~MT~~ CANS MT) assessment results.

(3) and (4) remain the same.

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

IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.87.1803, 37.106.1955, and 37.106.1961 that pertain to the Mental Health Center: Comprehensive School and Community Treatment Program (CSCT) endorsement requirements

ARM 37.87.1803

The department proposes to amend ARM 37.87.1803 to allow for the licensed or in-training mental health professional to provide for 40 percent of the units billed by the CSCT team each month rather than 50 percent. This is necessary to allow providers more flexibility of services using their clinical judgment in order to meet the youth's therapeutic needs.

ARM 37.106.1955 and 37.106.1961

The department proposes to amend these rules to change the implementation date that requires the providers to use the Child and Adolescent Needs and Strengths (CANS MT) assessment. This is necessary in order to allow providers adequate time during the summer months to train their staff on implementation of CANS MT.

Fiscal Impact

It is difficult to anticipate how this will change provider service and billing activity. It is expected that there may be some additional billing under the proposed rule, as the current rule may limit the number of units a team can bill in a month if the professional staff is not providing 50 percent of the allowable units of the face-to-face service. The behavioral aide under the current rule may only bill units equal to the professional staff; therefore, even if they provide more face-to-face service than the professional staff, they may only bill the number of units billed by the professional staff. Currently most teams have room under the limit cap of 720 units per month per team. On average 280 CSCT teams billed units each month in state fiscal year (SFY) 2013, but approximately 73 percent or 205 teams on average bill less than 700 units in a given month. If each of the 205 teams that billed less than 700 units increased billable services this could equate to additional federal funds and additional school match.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., May 22, 2014.

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

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

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

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

10. 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/ John C. Koch
John C. Koch
Rule Reviewer

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

Certified to the Secretary of State April 14, 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 37.85.104 and 37.85.105) PROPOSED AMENDMENT
pertaining to the revision of fee)
schedules for Medicaid provider rates)

TO: All Concerned Persons

1. On May 15, 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 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 May 8, 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 amended provide as follows, new matter underlined, deleted matter interlined:

37.85.104 EFFECTIVE DATES OF PROVIDER FEE SCHEDULES FOR MONTANA NON-MEDICAID SERVICES (1) The department adopts and incorporates by reference the fee schedule for the following programs within the Addictive and Mental Disorders Division and Developmental Services Division on the dates stated:

(a) Mental health services plan provider reimbursement, as provided in ARM 37.89.125, is effective ~~July 1, 2013~~ July 1, 2014.

(b) 72-hour presumptive eligibility for adult-crisis stabilization services reimbursement for services, as provided in ARM 37.89.523, is effective ~~July 1, 2013~~ July 1, 2014.

(c) Youth respite services reimbursement for services as provided in ARM 37.87.2233, is effective ~~July 1, 2013~~ July 1, 2014.

(2) Copies of the department's current fee schedules are posted at <http://medicaidprovider.hhs.mt.gov> and may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1401 East Lockett, P.O. Box 202951, Helena, MT 59620-2951. A description of the method for setting the reimbursement rate and the administrative rules applicable to the covered service is published in the chapter or subchapter of this title regarding that service.

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

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

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) Resource-based relative value scale (RBRVS) means the version of the Medicare resource-based relative value scale contained in the Medicare Physician Fee Schedule adopted by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services and published at ~~77 Federal Register 68892 (November 16, 2012), effective January 1, 2013~~ 78 Federal Register 74230 (December 10, 2013) effective January 1, 2014 which is adopted and incorporated by reference. Procedure codes created after January 1, 2014 will be reimbursed using the relative value units from the Medicare Physician Fee Schedule in place at the time the procedure code is created.

(b) Fee schedules are effective ~~July 1, 2013~~ July 1, 2014. The conversion factor for physician services is ~~\$34.32~~ \$35.86. The conversion factor for allied services is ~~\$23.08~~ \$24.33. The conversion factor for mental health services is ~~\$24.29~~ \$23.87. The conversion factor for anesthesia services is ~~\$28.10~~ \$28.66.

(c) Policy adjusters are effective ~~July 1, 2013~~ July 1, 2014. The maternity policy adjuster is 112%. The family planning policy adjuster is 105%. The psychological testing for youth policy adjuster is 145%.

(d) The ~~by-report rate~~ payment-to-charge ratio is effective ~~July 1, 2013~~ July 1, 2014 and is 44% of the provider's usual and customary charges.

(e) The specific percents for modifiers adopted by the department is effective ~~July 1, 2013~~ July 1, 2014.

(f) Psychiatrists receive a 112% provider rate of reimbursement adjustment to the reimbursement of physicians effective ~~July 1, 2013~~ July 1, 2014.

(g) Midlevel practitioners receive a 90% provider rate of reimbursement adjustment to the reimbursement of physicians for those services described in ARM 37.86.205(5)(b) effective ~~July 1, 2013~~ July 1, 2014.

(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 ~~January 1, 2014~~ July 1, 2014.

(i) Reimbursement for physician administered drugs described at ARM 37.86.105 is determined at 42 CFR 414.904.

(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) The inpatient hospital services fee schedule and inpatient hospital base fee schedule rates including:

(i) the APR-DRG fee schedule for inpatient hospitals as provided in ARM 37.86.2907, effective ~~July 1, 2013~~ July 1, 2014; and

(ii) the Montana Medicaid APR-DRG relative weight values, average national length of stay (ALOS), outlier thresholds, and APR grouper version ~~29~~ 31 are contained in the APR-DRG Table of Weights and Thresholds effective ~~July 1, 2013~~ July 1, 2014. The department adopts and incorporates by reference the APR-DRG Table of Weights and Thresholds effective ~~July 1, 2013~~ July 1, 2014.

(b) The outpatient hospital services fee schedules including:

(i) the Outpatient Prospective Payment System (OPPS) fee schedule as published by the Centers for Medicare and Medicaid Services (CMS) in 71 Federal Register 226, effective ~~January 1, 2007~~ January 1, 2013, and reviewed annually by CMS as required in 42 CFR 419.5 as updated by the department;

(ii) the conversion factor for outpatient services on or after ~~July 1, 2013~~ July 1, 2014 is ~~\$50.61~~ \$55.53;

(iii) the Medicaid statewide average outpatient cost-to-charge ratio is ~~44.5%~~ 46.3%; and

(iv) the bundled composite rate of ~~\$267.24~~ \$252.00 for services provided in an outpatient maintenance dialysis clinic effective on or after ~~July 1, 2013~~ July 1, 2014.

(c) The hearing aid services fee schedule, as provided in ARM 37.86.805, is effective ~~January 1, 2014~~ July 1, 2014.

(d) The Relative Values for Dentists, as provided in ARM 37.86.1004, reference published in ~~2013~~ 2014 resulting in a dental conversion factor of ~~\$31.89~~ \$32.53 and fee schedule is effective ~~July 1, 2013~~ July 1, 2014.

(e) The dental services covered procedures, the Dental and Denturist Program Provider Manual, as provided in ARM 37.86.1006, is effective ~~July 1, 2013~~ July 1, 2014.

(f) The outpatient drugs reimbursement, dispensing fees range as provided in ARM 37.86.1105(2)(b) is effective ~~July 1, 2013~~ July 1, 2014:

(i) a minimum of \$2.00 and a maximum of \$4.94 for brand-name and nonpreferred generic drugs;

(ii) a minimum of \$2.00 and a maximum of ~~\$6.52~~ \$6.65 for preferred brand-name and generic drugs and generic drugs not identified on the preferred list.

(g) The outpatient drugs reimbursement, compound drug dispensing fee range as provided in ARM 37.86.1105(4), will be \$12.50, \$17.50, or \$22.50 based on the level of effort required by the pharmacist, effective July 1, 2013.

(h) The outpatient drugs reimbursement, vaccine administration fee as provided in ARM 37.86.1105(5), will be \$21.32 for the first vaccine and ~~\$13.38~~ \$12.68 for each additional administered vaccine, effective ~~July 1, 2013~~ July 1, 2014.

(i) The out-of-state providers will be assigned a \$3.50 dispensing fee.

(j) The outpatient drugs reimbursement, unit dose prescriptions fee as provided in ARM 37.86.1105(9), will be \$0.75 per pharmacy-packaged unit dose medication, effective November 1, 2013.

(k) The home infusion therapy services fee schedule, as provided in ARM 37.86.1506, is effective ~~July 1, 2013~~ July 1, 2014.

(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 January 1, 2014. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM 37.86.1807, is effective January 1, 2014.

(m) The early and periodic screening, diagnostic and treatment (EPSDT) services fee schedules for private duty nursing, nutrition and orientation, and mobility specialists as provided in ARM 37.86.2207(2), is effective ~~July 1, 2013~~ July 1, 2014.

(n) The transportation and per diem fee schedule, as provided in ARM 37.86.2405, is effective ~~July 1, 2013~~ July 1, 2014.

(o) The specialized nonemergency medical transportation fee schedule, as provided in ARM 37.86.2505, is effective July 1, 2013.

(p) The ambulance services fee schedule, as provided in ARM 37.86.2605, is effective ~~July 1, 2013~~ July 1, 2014.

(q) The audiology fee schedule, as provided in ARM 37.86.705, is effective July 1, 2014.

(r) The therapy fee schedules for occupational therapists, physical therapists, and speech therapists, as provided in ARM 37.85.610, are effective July 1, 2014.

(4) The department adopts and incorporates by reference, the fee schedule for the following programs within the Senior and Long-Term Care Division on the date stated:

(a) Home and community-based services for elderly and physically disabled persons fee schedule, as provided in ARM 37.40.1421, is effective ~~July 1, 2013~~ July 1, 2014.

(b) Home health services fee schedule, as provided in ARM 37.40.705, is effective ~~July 1, 2013~~ July 1, 2014.

(c) Personal assistance services fee schedule, as provided in ARM 37.40.1105, is effective ~~July, 2013~~ July 1, 2014.

(d) Self-directed personal assistance services fee schedule, as provided in ARM 37.40.1303, is effective ~~July 1, 2013~~ July 1, 2014.

(5) The department adopts and incorporates by reference, the fee schedule for the following programs within the Addictive and Mental Disorders Division on the date stated:

(a) Case management services for adults with severe disabling mental illness reimbursement, as provided in ARM 37.86.3515, is effective ~~July 1, 2013~~ July 1, 2014.

(b) Mental health center services for adults reimbursement, as provided in ARM 37.88.907, is effective ~~July 1, 2013~~ July 1, 2014.

(c) Home and community-based services for adults with severe disabling mental illness, reimbursement, as provided in ARM 37.90.408, is effective ~~July 1, 2013~~ July 1, 2014.

(d) Targeted case management services for substance use disorders, reimbursement, as provided in ARM 37.86.4010, is effective ~~July 1, 2013~~ July 1, 2014.

(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 ~~January 1, 2014~~ July 1, 2014.

(b) Mental health services for youth, as provided in ARM 37.87.1313 in the 1915(i) HCBS State Plan Program for Youth with Serious Emotional Disturbance Fee Schedule, is effective ~~July 1, 2013~~ July 1, 2014.

(c) Mental health services for youth, as provided in ARM 37.87.1030 in the 1915(c) HCBS Bridge Waiver for Youth with Serious Emotional Disturbance Fee Schedule, is effective ~~July 1, 2013~~ July 1, 2014.

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

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

4. STATEMENTS OF REASONABLE NECESSITY

STATEMENT OF REASONABLE NECESSITY - HEALTH RESOURCES DIVISION

The Health Resources Division of the Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.85.105 for the purpose of implementing an approximate 2% increase in Medicaid fees to providers. This increase is funded by House Bill 2 (HB2) of the 63rd Montana Legislature. The increase is necessary to maintain Medicaid provider rates at a level consistent with efficiency, economy, quality of care, and to ensure the continued participation of providers.

Updates will be added regarding fee schedules, effective dates, conversion factors, percentages, and rates for services provided through the Health Resources Division (HRD). These services include inpatient hospital, outpatient hospital, physician, pharmacy, and allied health services.

In addition, language describing the "by report" reimbursement methodology will be changed to "payment-to-charge ratio." This is necessary because the Center for Medicare and Medicaid Services (CMS) no longer recognize the "by report" reimbursement methodology. This proposed change in language will affect those services provided within the Health Resources Division that utilize the payment-to-charge reimbursement methodology.

Statement of Reasonable Necessity - Physician Services

The resource-based relative value scale (RBRVS) is used nationwide by most health plans, including Medicare and Medicaid. The relative value unit component of RBRVS is revised annually by the CMS and the American Medical Association. The department annually amends ARM 37.85.105 to adopt current relative value units (RVUs). An RVU is a numerical value assigned to each medical procedure. RVUs are based on physician work, practice expense, and malpractice insurance expenses and express the relative effort and expense expended to provide one

procedure compared with another. RVUs are added for new procedures and the RVUs of particular procedures may increase or decrease from year to year.

The department annually calculates conversion factors for physician services, allied services, mental health services, and anesthesia services. These conversion factors are calculated by dividing the Montana Legislature's appropriation for Medicaid member's health care during the upcoming State Fiscal Year (SFY) by the estimated total units of health care, expressed as total RVUs paid, to be provided during the upcoming SFY. The resulting quotient is the conversion factor. The RVU for a procedure multiplied by the conversion factor is the fee paid for the procedure. The conversion factor for licensed physicians is further set by 53-6-124 through 53-6-127, MCA, and the fees paid are funded by legislative appropriations.

In SFY 2015, the physician services conversion factor will increase by 4.5%. HB2 also funds an approximate 2% provider increase for allied services, mental health services, and anesthesia services. The conversion factor amounts for physician services, allied services, mental health services, and anesthesia services will be determined by modeling data.

The payment-to-charge ratio is determined by dividing the amount that is reimbursed for services by the amount billed for the services. For SFY 2015 the department has determined the payment-to-charge ratio is 44%.

It is necessary for the department to provide these updates to reflect the most current provider rate increases as funded by HB2, and to reference the most current information regarding fee schedules, effective dates, conversion factors, and percentages where applicable for each service.

Summary of Proposed Amendments - Physician Services

The following describes the proposed rule amendments to ARM 37.85.105(2) pertaining to Physician Services:

(a) – update the reference to the Federal Register regarding the RBRVS to include the effective date, and add new language stating that procedure codes created after January 1, 2014, will be reimbursed using the relative value units from the Medicare Physician Fee Schedule in place at the time the procedure code is created;

(b) – revise the effective date regarding RBRVS fee schedules to July 1, 2014; and update the conversion factor for physician services from \$34.32 to \$35.86, allied services from \$23.08 to \$24.33, mental health services from \$24.29 to \$23.87, and anesthesia services from \$28.10 to \$28.66;

(c) – revise the effective date regarding policy adjustors to July 1, 2014 and maintain the policy adjustor percentage for maternity at 112%, family planning at 105%, and psychological testing for youth at 145%;

(d) – remove the language regarding the "by report rate" and replace it with language regarding the "payment-to-charge ratio," revise the effective date regarding the "payment-to-charge ratio" to July 1, 2014, and maintain the "payment-to-charge ratio" of the provider's usual and customary charges at 44%;

(e) – revise the effective date regarding the specific percents for modifiers adopted by the department to July 1, 2014;

(f) – revise the effective date regarding the rate of reimbursement for psychiatrists to July 1, 2014 and maintain the reimbursement rate at 112% of the physician reimbursement rate;

(g) – revise the effective date regarding the rate of reimbursement for mid-level practitioners to July 1, 2014 and maintain the reimbursement rate of 90% of the physician reimbursement rate; and

(h) – revise the effective date regarding reimbursement of optometric services to July 1, 2014.

The fiscal impact and number of providers affected can be found within the "fiscal impact" section of this document.

Statement of Reasonable Necessity - Hospital Services

Outpatient hospital services are reimbursed on a predetermined rate per service basis. These services are classified according to a list of Ambulatory Payment Classification (APC) groups published annually in the Code of Federal Regulations. APC group reimbursement is based on the Current Procedural Terminology (CPT) or the Healthcare Common Procedural Coding System (HCPCS) code associated with the service.

The department uses a conversion factor to establish an outpatient rate that is less than the rate established by Medicare's outpatient conversion factor. This conversion factor is an average base rate used to translate APC relative weights into payment rates and is the same for all APC groups. The APC payment equals the Medicare specific weight for each APC, multiplied by the Medicaid conversion factor. Currently, the conversion factor for outpatient services is \$50.61. This rate will be updated to \$55.53 with an effective date of July 1, 2014.

The department's All Patient Refined – Diagnosis Related Groups (APR-DRG) prospective payment system for inpatient hospital services is based on the classification of inpatient hospital discharges to APR-DRGs. The department assigns an APR-DRG to each Medicaid member discharge in accordance with the current APR grouper program version as developed by 3M Health Information Systems. The current grouper version is version 29 which will be updated to version 31 with an effective date of July 1, 2014.

The Centers for Medicare and Medicaid Services (CMS) is requiring that the Medicaid composite rate for dialysis clinics be adjusted to reflect the current Medicare rate. Therefore, effective July 1, 2014, the current Medicaid composite rate of \$267.24 will be reduced to the current Medicare composite rate of \$252.00. This change in dialysis rates is necessary to allow Medicaid to stay within the clinic upper payment level (UPL) as required by CMS.

It is necessary for the department to provide these updates to reflect the most current provider rate increases as funded by HB2, and to reference the most current information regarding fee schedules, effective dates, conversion factors, and percentages where applicable for each service.

Summary of Proposed Amendments - Hospital Services

The following describes the proposed rule amendments to ARM 37.85.105(3) pertaining to Hospital Services:

(a)(i) – revise the effective date regarding the inpatient hospital fee schedule to July 1, 2014;

(a)(ii) – revise the effective date regarding the APR-DRG Table of Weights and Thresholds to July 1, 2014, and update the APR-DRG grouper version from version 29 to version 31;

(b)(ii) – increase the conversion factor for outpatient services from \$50.61 to \$55.53, and revise the effective date to July 1, 2014;

(b)(iii) – update the outpatient statewide average cost-to-charge ratio from 44.5% to 46.3%; and

(b)(iv) – update the composite rate for dialysis clinics from \$267.24 to \$252.00; and revise the effective date to July 1, 2014.

The fiscal impact and number of providers affected can be found within the "fiscal impact" section of this document.

Statement of Reasonable Necessity – Allied Health Services

It is necessary for the department to provide these updates to reflect the most current provider rate increases as funded by HB2, and to reference the most current information regarding fee schedules, effective dates, conversion factors, and percentages where applicable for each service.

The following describes the proposed rule amendments to ARM 37.85.105(3) pertaining to Allied Health Services:

(c) – revise the effective date of the hearing aid services fee schedule to July 1, 2014;

(d) – revise the Relative Value for Dentists publish date to 2014; update the dental conversion factor from \$31.89 to \$32.53, and revise the effective date to July 1, 2014;

(e) – revise the effective date of the dental/denturist provider manual to July 1, 2014;

(f) – revise the effective date of the outpatient drug reimbursement dispensing fee range to July 1, 2014;

(f)(ii) – update the maximum dispensing fee for preferred brand name and generic drugs and generic drugs not identified on the preferred list to a maximum of \$6.65;

(h) – update the vaccine administration fees from \$21.32 for the first vaccine and \$13.38 for each additional administered vaccine to \$21.32 for the first vaccine and \$12.68 for each additional vaccine; and revise the effective date to July 1, 2014;

(k) – revise the effective date of the home infusion therapy services fee schedule to July 1, 2014;

(m) – revise the effective date regarding the Early Periodic Screening, Diagnostic, and Treatment (EPSDT) fee schedule for private duty nursing, nutrition and orientation, and mobility specialists to July 1, 2014;

(n) – revise the effective date regarding the transportation and per diem fee schedule to July 1, 2014;

(p) – revise the effective date regarding the ambulance services fee schedule to July 1, 2014; and

(q) – add new language that indicates the effective date for the audiology services fee schedule is July 1, 2014.

The fiscal impact and number of providers affected can be found within the "fiscal impact" section of this document.

Fiscal Impact for Human Resources Division

The proposed amendments as funded in HB2 to the above-mentioned rules regarding services provided through the Health Resources Division will increase the Medicaid budget by approximately 2% for state fiscal year (SFY) 2015. The following amounts are the budget figures reflecting this increase:

	SFY 2015
Allied Health Services	\$838,440
MAR Notice No. 37-670	8-4/24/14

Hospital Services	\$2,265,503
Clinic Services	(\$15,900)
Indian Health Pharmacy	\$3,856
Physician/Mid-level Services	\$1,125,607
Breast and Cervical	\$92,402
HMK Pharmacy	\$8,987
Acute Pharmacy	\$117,152
Total	\$4,436,047

This increase in Medicaid funding will have a positive impact upon 372 hospitals; 32 audiologists; 24 hearing aid dispensers; 277 pharmacy providers; 11 home infusion therapy providers; 169 optometric providers; 12 private duty nursing providers; 7 nutrition providers; 92 chiropractic providers; 360 school-based services providers; 4 orientation and mobility specialists; 14 transportation providers; 103 ambulance providers; 373 dental providers; 9,341 physicians; 2,428 mid-level practitioners; 64 podiatrists; 86 occupational therapists; 322 physical therapists; 77 speech therapists; 45 public health clinics; 24 Independent Diagnostic Testing Facilities (IDTF) providers; 133 lab and x-ray providers; and 15 family planning clinics. This increase in funding will maintain access to Medicaid services for 114,746 members within Montana.

STATEMENT OF REASONABLE NECESSITY- ADDICTIVE AND MENTAL DISORDERS DIVISION

The Addictive and Mental Disorders Division (AMDD) of the Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.85.104 and 37.85.105 for the purpose of implementing an approximate 2% increase in Medicaid fees to providers and reference to updating the fee schedules effective July 1, 2014. The increase is necessary to maintain Medicaid provider rates at a level consistent with efficiency, economy, quality of care, and to ensure the continued participation of providers.

The proposed amendments as funded by HB2 to the above-mentioned rules regarding services provided through the AMDD will increase the Medicaid and the Mental Health Services Plan (MHSP) budget by approximately 2% for State Fiscal Year (SFY) 2015. The increase will have a positive impact for providers with mental health centers, mental health waiver programs, mental health and substance abuse programs, MHSP, and the 72-Hour Presumptive Crisis Stabilization program.

Summary of Proposed Amendments - Mental Health Services

ARM 37.85.104

The department is proposing changing the effective date in (1)(a) and (b) from July 1, 2013 to July 1, 2014.

ARM 37.85.105

The department is proposing changing the effective date in (5)(a), (b), (c), and (d) from July 1, 2013 to July 1, 2014.

Fiscal Impact

The AMDD is proposing to update the reimbursement pages for the approximate 2% provider rate increase for Medicaid and general fund adult mental health programs. The proposed provider rate increase, as funded by HB2, will increase the Medicaid and MHSP budget by approximately 2% for FY 2015. The following budget amounts reflect the increase.

	SFY 2015
Mental Health Centers	\$747,125
Chemical Dependency Case Management	\$75,603
Mental Health Case Management	\$422,183
SDMI HCBS Waiver Program	\$154,224
72-Hour Presumptive Program	\$58,806
<u>Mental Health Services Plan</u>	<u>\$272,930</u>
Total	\$1,730,871

The increase in Medicaid and MHSP funding will have a positive impact among the chemical dependency providers, mental health centers, home and community-based waiver providers, and six hospitals providing 72-hour presumptive crisis stabilization.

STATEMENT OF REASONABLE NECESSITY- SENIOR AND LONG-TERM CARE DIVISION

The Senior and Long-Term Care Division of the Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.85.105 regarding an approximate 2% increase in Medicaid fees to providers for three of its programs; Home and Community Services (HCBS), Home Health Services, and Personal Assistance Services (PAS). This increase is funded by House Bill 2 (HB2) of the 63rd Montana Legislature. The purpose of the proposed rule amendments is to update and set provider rates to take into consideration the provider rate increase funding. The increase is necessary to maintain Medicaid provider rates at a level consistent with efficiency, economy, quality of care, and to ensure the continued participation of providers.

Fiscal Impact

HCBS Services: The fee schedule will include a 1.94% increase in provider rates which has been appropriated at \$746,160 in total funds by the Legislature in HB2. This funding will impact all Medicaid HCBS individuals and providers who utilize this service. The anticipated number of individuals who will receive HCBS services in SFY 2014 is approximately 2,500.

Home Health Services: The fee schedule will include a 1.9% increase in provider rates which has been appropriated at \$6,655 in total funds by the Legislature in HB2. This funding will impact all Medicaid Home Health individuals and Home Health providers who utilize this service. The anticipated number of individuals who will receive home health services in SFY 2014 is approximately 400.

Personal Assistance Services: The fee schedule will include a 1.83% increase in provider rates, which has been appropriated at \$752,015 in total funds by the Legislature in HB2. This funding will impact all Medicaid personal assistance service and self-directed personal assistance service individuals and providers. The anticipated number of recipients who will receive personal assistance and self-directed personal assistance services in SFY 2014 is approximately 3,600.

STATEMENT OF REASONABLE NECESSITY- DEVELOPMENTAL SERVICES DIVISION - CHILDREN'S MENTAL HEALTH BUREAU

The Children's Mental Health Bureau of the Department of Public Health and Human Services (the department) is proposing to amend ARM 37.85.104 and 37.85.105, for the purpose of implementing an approximate 2% rate increase in Medicaid fees to providers. The rate increase is necessary to implement HB2 of the 2013 Montana Legislature, which appropriated approximately \$2.8 million for the biennium for rate increases, of which approximately \$1.4 million remains for the state fiscal year 2015 rate increase. The department is also defining how it intends to price new Current Procedural Terminology (CPT) codes that do not have assigned Relative Value Units (RVU). The calculated rate percentage increases are determined using RBRVS rate modeling for those services priced using RBRVS; and for services from the fee schedule, the rate increases are determined using current and projected expenditures with the available appropriation amount.

Summary of Proposed Amendments - Children's Mental Health Bureau

ARM 37.85.104

The department proposes to amend the rates established in the Medicaid Youth Mental Health Services Fee Schedule, Individuals Under 18 Years of Age, fee schedule to implement an appropriated rate increase in non-Medicaid fees to providers of respite and update the effective date to July 1, 2014. The increase is necessary to implement HB2 of the 2013 Montana Legislature which funded the increase. The proposed increases are necessary to maintain Medicaid rates at a level consistent with efficiency, economy, quality of care, and to ensure the continued participation of providers.

ARM 37.85.105

The department proposes to amend the rates established in the Medicaid Youth Mental Health Services Fee Schedule, Individuals Under 18 Years of Age, fee

schedule to implement a rate increase in Medicaid fees to providers and update the effective date to July 1, 2014.

The department proposes to amend rates established in the 1915(i) HCBS State Plan Program for Youth with Serious Emotional Disturbance Fee Schedule and 1915 (c) HCBS Bridge Waiver to implement a rate increase in Medicaid fees to providers and update the effective date to July 1, 2014.

Fiscal Impact

The funding source of the rate increase is Medicaid match for Children's Mental Health Services. 15,500 youth and 1,800 providers are affected by this proposed rate increase. Total funds appropriated for the rate increase are approximately \$1.4 million for state fiscal year (SFY) 2015. CSCT also receives an increase which increases the federal expenditure for SFY 2015 by \$575,000.

5. The department intends to adopt these rule amendments effective July 1, 2014.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., May 22, 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 rules will not significantly and directly impact small businesses.

/s/ John C. Koch

John C. Koch
Rule Reviewer

/s/ Richard H. Opper

Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State April 14, 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 37.40.307, 37.40.326, and) PROPOSED AMENDMENT
37.40.361 pertaining to nursing)
facility reimbursement)

TO: All Concerned Persons

1. On May 16, 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 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 May 9, 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 amended provide as follows, new matter underlined, deleted matter interlined:

37.40.307 NURSING FACILITY REIMBURSEMENT (1) remains the same.

(2) Effective July 1, 2001, and in subsequent rate years, nursing facilities will be reimbursed using a price-based reimbursement methodology. The rate for each facility will be determined using the operating component defined in (2)(a) and the direct resident care component defined in (2)(b):

(a) through (c) remain the same.

(d) The total payment rate available for the period ~~July 1, 2013~~ July 1, 2014 through ~~June 30, 2014~~ June 30, 2015 will be the rate as computed in (2), plus any additional amount computed in ARM 37.40.311 and 37.40.361.

(3) Providers who, as of July 1 of the rate year, have not filed with the department a cost report covering a period of at least six months participation in the Medicaid program in a newly constructed facility ~~shall~~ will have a rate set at the statewide median price as computed on ~~July 1, 2013~~ July 1, 2014. Following a change in provider as defined in ARM 37.40.325, the per diem rate for the new provider ~~shall~~ will be set at the previous provider's rate, as if no change in provider had occurred.

(4) through (12) remain the same.

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

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

37.40.326 INTERIM PER DIEM RATES FOR NEWLY CONSTRUCTED FACILITIES AND NEW PROVIDERS (1) This rule specifies the methodology the department will use to determine the interim per diem rate for in-state providers, other than ICF/MR providers, which as of July 1 of the rate year have not filed with the department a cost report covering a period of at least six months participation in the Medicaid program in a newly constructed facility or following a change in provider as defined in ARM 37.40.325.

(a) remains the same.

(b) Effective July 1, 2001, and thereafter, the rate paid to newly constructed facilities or to facilities participating in the Medicaid program for the first time will be the statewide average nursing facility rate under the price-based reimbursement system. The direct care component of the rate will not be adjusted for acuity, until such time as there are three or more quarters of Medicaid CMI information available at the start of a state fiscal year. Once the CMI information is available the price-based rate will include the acuity adjustment as provided for in ~~ARM 37.40.307(5)(b)~~ 37.40.307(2)(b).

AUTH: 53-6-113, MCA

IMP: 53-6-101, 53-6-113, MCA

37.40.361 DIRECT CARE AND ANCILLARY SERVICES WORKERS' WAGE REPORTING/ADDITIONAL PAYMENTS INCLUDING LUMP SUM PAYMENTS FOR DIRECT CARE AND ANCILLARY SERVICES WORKERS' WAGE AND BENEFIT INCREASES (1) Effective for the period ~~July 1, 2013~~ July 1, 2014 and for the six months thereafter, nursing facilities must report to the department actual hourly wage and benefit rates paid for all direct care and ancillary services workers or the lump sum payment amounts for all direct care and ancillary services workers that will receive the benefit of the increased funds. The reported data shall be used by the department for the purpose of comparing types and rates of payment for comparable services and tracking distribution of direct care wage funds to designated workers.

(2) The department will pay Medicaid certified nursing care facilities located in Montana that submit an approved request to the department a lump sum payment in addition to the amount paid as provided in ARM 37.40.307 and 37.40.311 to their computed Medicaid payment rate to be used only for wage and benefit increases or lump sum payments for direct care or ancillary services workers in nursing facilities.

(a) The department will determine the lump sum payments, twice a year commencing ~~July 1, 2013~~ July 1, 2014, and again in six months from that date as a pro rata share of appropriated funds allocated for increases in direct care and ancillary services workers' wages and benefits or lump sum payments to direct care and ancillary services workers.

(b) through (3) remain the same.

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

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.40.307 and 37.40.361 for the purpose of implementing an approximate 2% increase in Medicaid provider rates using state and federal funds. This increase is funded by House Bill 2 (HB2) of the 63rd Montana Legislature. The increase is necessary to maintain Medicaid provider rates at a level consistent with efficiency, economy, quality of care, and to ensure the continued participation of providers. The department is also proposing to amend ARM 37.40.326 to correct an ARM reference.

These rules continue the methodology for implementing legislative funding for nursing facility reimbursement, including updated estimated patient days, patient contribution amounts and case mix indices (acuity) into the rate calculation for state fiscal year 2015. Funding will continue to be available to provide for a direct care worker wage increase for nursing facility providers for workers who provide direct care and ancillary services in fiscal year 2015.

The Legislature continued approval for the use of local county matching funds as a source of additional revenue for nursing facility providers. The intergovernmental fund transfer (IGT) program maintains access to, and the quality of, nursing facility services, and will be available for state fiscal year (SFY) 2015.

The department will provide rate sheets to all providers in advance of the rule hearing for verification purposes and in order to facilitate comments. These sheets will distribute the funding available in order to meet the department goals for a price-based system of reimbursement and will incorporate legislative appropriated funding levels.

Fiscal Impact

The total state and federal funding available for state fiscal year (SFY) 2015 for rate calculation purposes utilizing the funding in HB2 is currently projected at \$145,522,658 which is comprised of \$16,694,858 in state special revenue, \$32,462,695 in state general funds, and \$96,365,105 in federal funds when the provider rate increases are included.

The additional funding of lump-sum payments to providers for direct care workers and ancillary staff of \$1,344,818 of state general funds and \$2,636,288 in federal funds for a total appropriation of \$3,981,106 for the nursing facility direct care worker wage program.

The estimated total funding available for SFY 2015 for nursing facility reimbursement is estimated at approximately \$179,058,229 of combined state and federal funds,

including \$33,535,571 in patient contributions. These numbers do not include at-risk provider funds or direct care wage funding.

Anticipated days for SFY 2015 are estimated at 1,060,581 using estimates of caseload adopted by the legislature.

The estimated total funding impact of the onetime payments to "at risk" nonstate governmental providers and other nursing facilities not determined to be "at risk," has been appropriated at \$23,945,170 in total funds of which \$8,088,679 comes from state special revenue funds and approximately \$15,856,491 comes from federal funding sources.

Eighty-one nursing facility providers participated in the Medicaid nursing facility payment program and approximately 4,837 recipients received services in nursing facilities under Medicaid.

The analysis of Medicaid nursing facility rates that is annually conducted by Myers and Stauffer, LC shows that in SFY 2013 (report dated 01/30/2014) that Montana Medicaid on average is reimbursing 97.43% of the cost of providing nursing facility services. The department considered the impact of the rate changes on efficiency, economy, quality of care, and access to Medicaid services and concluded that the rates are still sufficient to meet the requirements of 42 USC 1396a (a) (30)(A).

5. The department intends to adopt these rule amendments effective July 1, 2014.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., May 22, 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 rules will not significantly and directly impact small businesses.

/s/ Valerie A. Bashor
Valerie A. Bashor
Rule Reviewer

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

Certified to the Secretary of State April 14, 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
Rule I and amendment of 37.79.102,)	PROPOSED ADOPTION AND
37.79.304, 37.79.326, 37.86.610,)	AMENDMENT
37.86.705, 37.86.805, 37.86.1005,)	
37.86.2005, and 37.86.2605)	
pertaining to Medicaid allied health)	
services program reimbursement and)	
rates)	

TO: All Concerned Persons

1. On May 15, 2014, at 2:30 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 May 8, 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 OUTPATIENT DRUGS, FRAUD, WASTE, AND ABUSE

(1) Medicaid, Healthy Montana Kids, and Mental Health Services Plan members may be subject to investigation for prescription fraud and abuse in accordance with 42 CFR 455.

(2) "Fraud" means the intentional deception or misrepresentation with knowledge that the deception could result in some unauthorized benefit to the individual or some other person. Examples include:

- (a) doctor shopping;
- (b) reported cash payment for drugs of abuse where it is suspected that the member has circumvented the Medicaid benefit system to avoid detection; and
- (c) reports from providers of suspected drug misuse or diversion.

(3) "Abuse" means the misuse of the prescription drug program resulting in undue expenditures or substance abuse. Examples include:

- (a) high utilization;

- (b) multiple provider usages that result in the receipt of unnecessary services;
 - (c) seeking of medical services that are not medically necessary;
 - (d) repeated use of emergency rooms or urgent care clinics; and
 - (e) unwarranted multiple pharmacy usage.
- (4) Pharmacy providers may notify the department when Medicaid members pay cash for controlled substances (CII-CV), ultram (tramadol), ultracet (tramadol and acetaminophen), carisoprodol, and gabapentin.
- (5) Prescriptions for noncontrolled substances may be refilled after 75% of the estimated therapy days have elapsed. Prescriptions for controlled substances (CII-CV), ultram (tramadol), ultracet (tramadol and acetaminophen), carisoprodol, and gabapentin may be refilled after 90% of the estimated therapy days have elapsed. Members who have a "drug not covered" in place may be required to have 100% of the estimated therapy days elapse prior to a refill being authorized.
- (6) As stated in ARM 37.86.1102, the department does not authorize payment for medications dispensed in quantities greater than a 34-day supply excluding maintenance medications and where manufacturer packaging precludes the 34-day supply limit. Authorization for early refills, lost or stolen medication, or vacation supplies will not be granted.
- (7) The use of tamper-resistant pads for written prescriptions is required. The department follows ARM 24.174.510 established by the Montana Board of Pharmacy to define tamper-resistant prescriptions.

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

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

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

37.79.102 DEFINITIONS As used in this subchapter, unless expressly provided otherwise, the following definitions apply:

(1) through (4) remain the same.

(5) "Benefit year" means:

(a) for medical and mental health, the period from October 1st through September 30th for those enrolled in the HMK coverage group. If an individual is enrolled in the HMK coverage group after October 1st, the benefit year is the period from the date of enrollment through the following September 30th.

(b) for dental, the period from July 1 through June 30 for those enrolled in the HMK coverage group. If an individual is enrolled in the HMK coverage group after July 1, the benefit year is the period from the date of enrollment through the following June 30.

(6) through (38) remain the same.

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1103, 53-4-1104, 53-4-1105, 53-4-1108, MCA

37.79.304 SERVICES COVERED (1) The department adopts and incorporates by reference the HMK Evidence of Coverage dated ~~October 1, 2013~~ July 1, 2014, which is available on the department's web site at www.hmk.mt.gov.

(2) remains the same.

AUTH: 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1005, 53-4-1109, MCA

37.79.326 DENTAL BENEFITS (1) The maximum dental benefits paid under the basic dental plan will be 85% of the billed services received. Up to ~~\$1,200~~ \$1,615 in basic dental care will be paid per benefit year for each enrollee. For example, ~~\$1,412~~ \$1,900 in services received results in ~~\$1,200~~ \$1,615 paid.

(a) remains the same.

(b) Providers may bill the enrollee, parent, or guardian for services received in excess of ~~\$1,412~~ \$1,900 per benefit year.

(2) Providers must bill for services using the procedure codes and modifiers set forth, and according to the definitions contained in the American Dental Association Manual of Current Dental Terminology (~~CDT 2009/2010~~) (CDT 2014).

(3) and (4) remain the same.

~~(5) Enrollees with significant dental needs beyond those covered in the basic dental plan may, with prior authorization, receive additional services through the HMK coverage group Extended Dental Plan (EDP). The EDP program is dependent on legislative appropriation for the program.~~

~~(a) An HMK coverage group enrollee determined eligible for extended dental benefits may receive additional services in the benefit year. The maximum EDP payment to all dental providers for an enrollee's additional dental services is \$1,000 per benefit year.~~

~~(b) The services covered by the EDP are the same services covered under the basic dental plan.~~

~~(c) The maximum basic and EDP payments combined is \$2,200 (\$1,200 basic plan and \$1,000 EDP) for a benefit year.~~

(6) and (7) remain the same, but are renumbered (5) and (6).

AUTH: 53-4-1004, 53-4-1005, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1005, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.86.610 THERAPIES, REIMBURSEMENT (1) remains the same.

(2) Subject to the requirements of this rule, the Montana Medicaid program pays the following for therapy services:

(a) For patients who are eligible for Medicaid, the lower of:

(i) the provider's usual and customary charge for the service; ~~or~~

(ii) the reimbursement provided in accordance with the methodologies described in ARM 37.85.212-; or

(iii) for items or services where no RBRVS or Medicare fee is available, the fee schedule amount will be calculated using the following methodology:

(A) Establishing a fee for a service that has been billed at least 50 times by all providers in the aggregate during the previous 12-month period. The department will set each fee at 44% of the average charge billed by all providers in the aggregate.

(B) For services where utilization cannot meet the methodology outlined in (A), the fee will be set at the same rate as a service similar in scope.

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

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

37.86.705 AUDIOLOGY SERVICES, REIMBURSEMENT (1) remains the same.

(2) Subject to the requirements of this rule, the Montana Medicaid program pays the following for audiology services:

(a) For patients who are eligible for Medicaid, the lowest of:

(i) remains the same.

(ii) the reimbursement provided in accordance with the methodologies described in ARM 37.85.212; ~~or~~

(iii) 100% of the Medicare Region D allowable fee; or

(iv) for items or services where no RBRVS fee is available, the fee schedule amount will be calculated using the following methodology:

(A) Establishing a fee for a service or item that has been billed at least 50 times by all providers in the aggregate during the previous 12-month period. The department will set each fee at 44% of the average charge billed by all providers in the aggregate.

(B) For services where utilization cannot meet the methodology outlined in (A), the fee shall be set at the same rate as a service similar in scope.

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

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

37.86.805 HEARING AID SERVICES, REIMBURSEMENT (1) remains the same.

(2) For items or services where no Medicare allowable fee is available, the fee schedule amount in (1)(b) will be calculated using the following methodology:

(a) Establishing a fee for a service that has been billed at least 50 times by all providers in the aggregate during the previous 12-month period. The department will set each fee at 44% of the average charge billed by all providers in the aggregate.

(b) For supplies or equipment, reimbursement will be set at 75% of the manufacturer's suggested retail price. For items without a manufacturer's suggested retail price, the charge will be considered reasonable if the provider's acquisition cost from the manufacturer is at least 50% of the charge amount. For items that are custom-fabricated at the place of service, the amount charged will be considered reasonable if it does not exceed the average charge of all Medicaid providers by more than 20%.

- (c) For services where utilization cannot meet the methodology outlined in (a), the fee will be set at the same rate as a service similar in scope.
(2) remains the same, but is renumbered (3).

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

37.86.1005 DENTAL SERVICES, REIMBURSEMENT (1) For dental services listed in the ~~RVD scale~~ department's fee schedule, the department ~~shall~~ will pay the lowest of the following for dental services covered by the Medicaid program:

- (a) remains the same.
(b) the amount determined using the methodology described in ARM

37.86.1004; or

(c) for items or services when there is no RVD, the department will set the fee at the same rate as a service similar in scope.

~~(2) For dental services that are not listed in the RVD scale, the department shall pay the lowest of the following for dental services covered by the Medicaid program:~~

- ~~(a) the provider's usual and customary charge;~~
~~(b) the amount determined using the by-report method as 85% of the provider's approved usual and customary charge for the service.~~
(3) through (7) remain the same.

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

IMP: 53-6-101, 53-6-113, MCA

37.86.2005 OPTOMETRIC SERVICES, REIMBURSEMENT (1) Subject to the requirements of this rule, the Montana Medicaid Program ~~pays the following for~~ department will pay the lowest of the following for optometric services:

(a) For patients who are eligible for Medicaid, the lower of: the provider's usual and customary charge for the service or item;

(b) the reimbursement provided in accordance with the methodologies described in ARM 37.85.212; or

(c) the amount specified for the particular service or item in the department's fee schedule.

~~(i) the provider's usual and customary charge for the service; or~~

(2) For items or services where no RBRVS or Medicare is available, the fee schedule amount in (1)(c) will be calculated using the following methodology:

(a) Establishing a fee for a service that has been billed at least 50 times by all providers in the aggregate during the previous 12-month period. The department will set each fee at 44% of the average charge billed by all providers in the aggregate.

(b) For supplies or equipment, reimbursement will be set at 75% of the manufacturer's suggested retail price. For items without a manufacturer's suggested retail price, the charge will be considered reasonable if the provider's acquisition charge from the manufacturer is at least 50% of the charge amount. For items that are custom-fabricated at the place of service, the amount charged will be considered

reasonable if it does not exceed the average charge of all Medicaid providers by more than 20%.

(c) For services where utilization cannot meet the methodology outlined in (a), the fee shall be set at the same rate as a service similar in scope.

~~(ii) (3) To address problems of access to optometric services, subject to funding, a provider rate of reimbursement adjustment is up to the level provided in ARM 37.85.105(3)(2)(h) of the reimbursement for allied services provided in accordance with the methodologies described in ARM 37.85.212.~~

AUTH: 53-6-113, MCA

IMP: 53-6-101, 53-6-113, 53-6-141, MCA

37.86.2605 AMBULANCE SERVICES, REIMBURSEMENT (1) remains the same.

(2) The department adopts and incorporates by reference the Montana Medicaid Fee Schedule, Ambulance as provided in ARM 37.85.105(3) and ARM 37.85.105(2) for drugs.

(3) For items and services for which no fee has been set in the department's fee schedule referred to in (2), reimbursement will be ~~based on the by-report method and rate specified in ARM 37.85.105(2) set by the following method:~~

~~(a) The department will review billings for items and services, other than those items for which a specific fee has been set, to determine the total number of times each such item has been billed by all providers in the aggregate within the state fiscal year period.~~

~~(b) Upon review of the aggregate billings as provided in (3)(a), the department will establish a fee for each item which has been billed in the following manner:~~

~~(i) (a) if Medicare sets a fee, the Medicare fees are applicable as the Medicaid fee; or~~

~~(ii) (b) if Medicare does not set a fee, the Medicaid fees are set by evaluating the fees of similar services similar in scope to the new code; or.~~

~~(iii) a fee will be calculated based on the by-report percentage of the average charges billed by all providers in the aggregate for such items or services.~~

(4) remains the same.

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

IMP: 53-6-101, 53-6-113, 53-6-141, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to adopt New Rule I and amend ARM 37.79.102, 37.79.304, 37.79.326, 37.86.610, 37.86.705, 37.86.805, 37.86.1005, 37.86.2005, and 37.86.2605 that pertain to Medicaid Allied Health Services Program reimbursement and rates. Programs included in this rulemaking are: Medicaid Fraud and Abuse; Healthy Montana Kids (HMK) Dental Benefit and Evidence of Coverage; Hearing Aids and Audiology,

Therapies Reimbursement, Ambulance and Dental Services; and Optometric Reimbursement Methodology.

Medicaid Fraud and Abuse

In 2013 the pharmacy program had a legislative audit. This audit found that there were insufficient procedures in place to investigate and track member fraud and abuse. Since this audit, internal processes have been strengthened and refined in regards to member fraud and abuse. Given these refined processes, the department would like to further strengthen internal policies through an administrative rule.

Proposed New Rule I would allow providers to report cash payment in reporting suspected fraud, abuse, or both. This is necessary because the recent amendment to the Health Insurance Portability and Accountability Act (HIPAA) prevents providers from reporting cash payment to health plans if requested by a member unless there are regulations in place that allow it. In addition, the rule will explicitly state department policy on early refills and lost or stolen medication.

The proposed anti-fraud and anti-abuse provisions are necessary to maintain the integrity of Montana's medical assistance programs.

New Rule I

The department is proposing to add a fraud and abuse rule to the Outpatient Drug Services administrative rules. This rule will contain a provision to allow providers to disclose to the department when Medicaid members pay cash for prescription medications. In addition, the rule will include the following policies: a link to the Board of Pharmacy's rule on Tamper Resistant Pads; a link to 42 CFR Part 455, Prescription Fraud and Abuse; a description of the department's policy on early refills for both controlled and noncontrolled substances; and a description of the department's policy on lost or stolen medication.

Fiscal Impact

No fiscal impact is anticipated by the proposed rule amendments. These changes are expected to be budget neutral. The proposed rules are estimated to effect up to 273 in state pharmacies, 127 out-of-state pharmacies, 23,000 HMK recipients and 114,746 Medicaid recipients.

Healthy Montana Kids (HMK) Dental Benefit and Evidence of Coverage

The department is proposing to amend this rule to reduce the administrative burden on providers and staff and to streamline needed dental services for HMK members. The change will increase the Healthy Montana Kids Basic Dental Benefit to \$1900 while eliminating the HMK Extended Dental Benefit. The Extended Dental Benefit required dentists to submit a written request form along with the child's treatment

plan for approval before the dental work was to be done. The HMK Dental Program Officer checked eligibility for the child, previous Basic Dental usage, calculated the amount needed for dental work (maximum billed amount of \$1176), and entered this amount in CHIMES. The proposed changes are necessary to reduce the complexity of the HMK dental program and make it easier and less costly to administer.

Additionally the effective date of the Evidence of Coverage must be changed to incorporate these changes effective July 1, 2014.

ARM 37.79.102

The department is proposing to amend the definitions for "Benefit Year" by adding "Benefit Year" for medical and mental health and a new paragraph for dental to this definitions rule. The benefit period for dental is July 1st through June 30th. If the member's effective date is after July 1st, the dental benefit period begins with the member's effective date and ends on June 30th.

ARM 37.79.326

The proposed amendments to this rule reflect the department's proposal to increase the Health Montana Kids (HMK) dental benefit to \$1900 and eliminate the HMK extended dental program. This is necessary to increase access to services and reduce the administrative burden on providers. The Extended Dental Benefit currently requires dentists to submit a written request form along with the child's treatment plan for approval before the dental work can be done. The amendment also updates the dental coding and modifier reference to the Current Dental Terminology 2014 publication. This is necessary to maintain reimbursement rates at a level consistent with efficiency, economy, and quality of care and to ensure the continued participation of providers in the Montana Medicaid Program.

ARM 37.79.304

The department is proposing to change the effective date of the Evidence of Coverage (EOC) from October 1, 2013 to July 1, 2014 to incorporate dental program changes and perform general revisions for clarity. Revisions include: capitalize references throughout the EOC of words that are defined in definitions; revise definitions; clean up words that were struck out in the previous version and were not removed in the final version; restructure and rename articles of the EOC for benefit information; include covered services information for Children's Special Health Services clinic available for HMK members; include additional covered over-the-counter drugs; update the HMK dental program benefit; clarify benefit maximums for the HMK Extended Mental Health benefit; update consultation services administration; and remove implantology as a non-covered benefit. The proposed changes are necessary to maintain and improve administration of the HMK program.

Significant Changes

The department proposes to allow reimbursement for enteral formula for medically necessary treatment of conditions other than inborn errors of metabolism.

Lack of access to certain types of provider services throughout Montana has been problematic for HMK members. The department proposes to cover telemedicine services to allow better access to participating provider services. This is necessary to assure access by HMK participants to essential services.

Fiscal Impact

No fiscal impact to the HMK program is anticipated by the proposed dental rule amendment. These changes are expected to be budget neutral.

The proposed amendments that would allow reimbursement for enteral formula for medically necessary treatment of conditions other than inborn errors of metabolism, are anticipated to result in additional costs of \$14,000 annually.

The proposed amendments that would add telemedicine as a covered benefit are anticipated to result in additional costs of \$13,620 annually.

The addition of pyridoxine, doxylamine, triamcinolone acetonide nasal spray, and oxybutynin transdermal as covered over-the-counter products is expected to be budget neutral. This expectation is because generally, over-the-counter drugs are a less costly alternative to prescription drug costs.

The proposed rule is estimated to affect up to 444 HMK dental providers, 77 durable medical equipment (DME) providers, 177 pharmacy providers, and 23,384 Healthy Montana Kids members.

Hearing Aids and Audiology

The department is proposing changes to ARM 37.86.705 and 37.86.805 to include specific language in regards to the methodology used to establish a fee schedule rate for a service or item that does not have an RBRVS fee or existing fee schedule amount. The proposed rule amendments are necessary because CMS has mandated that the existing "By Report" or percentage of billed charges language and methodology be replaced with a set fee and an established methodology of how those fees are calculated. The proposed changes are necessary to maintain Medicaid rates at a level consistent with efficiency, economy, quality of care, and to ensure the continued participation of providers.

ARM 37.86.705 and 37.86.805

Language would be included in the rule to include the methodology used to establish a fee schedule amount when there is no Medicare fee or established fee schedule amount available. For services when no other methodology can be used, the

department will adopt a rule the same as a service similar in scope, after notice and an opportunity for public comment.

Fiscal Impact

The amendments to the rules pertaining to hearing aids and audiology are budget neutral. The proposed rules are estimated to affect: 24 hearing aid providers; 32 audiology providers, and 114,746 Medicaid recipients.

Therapies Reimbursement

The department is proposing to add language to define what methodology will be used when no Medicare fee or RBRVS method can be used to reimburse providers for their services, equipment or supplies, or both. An updated fee schedule for physical, occupational, and speech therapy providers will be completed by July 1, 2014. This proposed rule is necessary because CMS has mandated that the existing "By Report" or percentage of billed charges language and methodology be replaced with a set fee and an established methodology of how those fees are calculated.

ARM 37.86.610

Language is being proposed in the rule to include the methodology used to establish a fee schedule amount for therapy services when there is no Medicare fee or established fee schedule amount available. For services when no other methodology can be used, the department will adopt a rule the same as a service similar in scope, after notice and an opportunity for public comment.

Ambulance and Dental Services

The department is proposing amendments to ARM 37.86.1006 and 37.86.2605 regarding the payment methodology for some Medicaid fees to providers. The change is based on a requirement by CMS to no longer use the "By-Report" payment methodology. Updates will be added regarding the reimbursement methodology and how the department sets fees where there are no RBRVS, RVD, Medicare, or other established fees for the service. It is necessary for the department to provide these updates to reflect the most current provider rate payment methodology as mandated by CMS, and to reference the most current information regarding fee schedules, effective dates, and conversion factors where applicable for each service.

ARM 37.86.1005

The department proposes adding the set fee to the Medicaid dental services reimbursement method. This proposed rule change eliminates "By Report" reimbursement and sets the department fee methodology. For dental services that are not listed in the RVD scale the department will set the fee at the same amount

as a service similar in scope to the new code after notice and an opportunity for public comment. This fee will remain in place until an RVD is established using the methodology described in ARM 37.86.1004.

ARM 37.86.2605

The department proposing a reference to the ambulance fee schedule found in ARM 37.35.105(2) for drugs. This amendment eliminates the "By Report" methodology. If Medicare does not have a fee set for the Medicaid covered service the department will set the fee by evaluating the fees of services similar in scope to the new code after notice and an opportunity for public comment.

Fiscal Impact

The proposed change in payment methodology will have budget neutral fiscal impact to the dental and ambulance programs. This change will impact 373 dental and 103 ambulance providers. This change may also affect 114,746 members within Montana.

Optometric Reimbursement Methodology

The department is proposing to add language to ARM 37.86.2005 to define what methodology will be used when no Medicare fee or RBRVS method can be used to reimburse providers for their services, equipment or supplies, or both. An updated fee schedule for optometric providers will be effective July 1, 2014. This proposed rule is necessary because CMS has mandated that the existing "By Report" or percentage of billed charges language and methodology be replaced with a set fee and an established methodology for of how those fees are calculated. For services when no other methodology can be used, the department will adopt a rule the same as a service similar in scope, after notice and an opportunity for public comment.

ARM 37.86.2005

The proposed amendment to the optometric services reimbursement rule adds to the methodology that the department will pay the lowest of the following for optometric services: the provider's usual and customary charge for the service or item; or the reimbursement provided in accordance with the methodologies described in ARM 37.85.212; 100% of the Medicare Region D allowable fee; or the amount specified for the particular service or item in the department's fee schedule.

The proposed rule also corrects an error directing the reader to the appropriate reference in 37.85.105 from (3) to (2)(h).

Fiscal Impact

The change to ARM 37.86.2005 is expected to have no fiscal impact to the department and no material effects on Medicaid recipients or Medicaid providers.

6. The department intends to adopt these rule amendments effective July 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, and must be received no later than 5:00 p.m., May 22, 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/ John C. Koch
John C. Koch
Rule Reviewer

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

Certified to the Secretary of State April 14, 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 37.85.212, 37.86.101,) PROPOSED AMENDMENT
37.86.105, 37.86.1201, 37.86.3205,)
37.87.901, and 37.88.907 pertaining)
to revision of by report)
reimbursement)

TO: All Concerned Persons

1. On May 15, 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 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 May 8, 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 amended provide as follows, new matter underlined, deleted matter interlined:

37.85.212 RESOURCE-BASED RELATIVE VALUE SCALE (RBRVS)
REIMBURSEMENT FOR SPECIFIED PROVIDER TYPES (1) and (2) remain the same.

(3) ~~Except as set forth in (8) through (12),~~ The RBRVS fee for a covered service is calculated by multiplying the RVUs determined in accordance with (7) by the conversion factor. The RBRVS fee may also be multiplied by a rate variable to calculate the fee paid by Medicaid.

(4) through (6) remain the same.

(7) The RVUs for most services are adopted from the Medicare Physician Fee Schedule described in (1). ~~For services for which Medicare does not specify RVUs, the department sets those RVUs as follows:~~

~~(a) convert the existing dollar value of a fee to an RVU value;~~

~~(b) evaluate the RVU of similar services and assign an RVU value; or~~

~~(c) convert the average by report dollar value of a fee to an RVU value.~~

~~(8) Except for physician administered drugs and vaccine administration as provided in ARM 37.86.105(4), clinical, laboratory services, and anesthesia services,~~

if neither Medicare nor Medicaid sets RVUs or anesthesia units, then reimbursement is by report.

~~(a) Through the by-report methodology the department reimburses a percent of the provider's usual and customary charges for a procedure code where no fee has been assigned. The percentage is determined by dividing the previous state fiscal year's total Medicaid reimbursement for RBRVS provider covered services by the previous state fiscal year's total Medicaid billings.~~

~~(b) The effective date and by-report rate are as provided in ARM 37.85.105(2).~~

~~(9) For clinical laboratory services for which there is an established fee:~~

~~(a) the department pays the lower of the following for procedure codes with fees:~~

~~(i) the provider's usual and customary charges for the service; or~~

~~(ii) 60% of the Medicare fee schedule for physician offices and independent labs and hospitals functioning as independent labs; or~~

~~(iii) the established Medicaid fee.~~

~~(b) for clinical laboratory services for which there is no established fee, the department pays the lower of the following for procedure codes without fees:~~

~~(i) the provider's usual and customary charges for the service;~~

~~(ii) the rate established using the by-report methodology; or~~

~~(A) for purposes of (9)(b) through (9)(b)(iii), the by-report methodology means averaging 50 paid claims for the same code that have been submitted within a 12-month span and then multiplying the average by the amount specified in (8)(b).~~

~~(iii) the historical comparative value of the procedure as indicated by the reimbursement amount paid by Medicaid and other third party payors for the same procedure within the last 12 months.~~

~~(10) For anesthesia services the department pays the lower of the following for procedure codes with fees:~~

~~(a) the provider's usual and customary charges for the service;~~

~~(b) a fee determined by multiplying the anesthesia conversion factor by the applicable anesthesia units, and then multiplying the product by the applicable policy adjuster, if any; or~~

~~(c) the department pays the lower of the following for procedure codes without fees:~~

~~(i) the provider's usual and customary charges for the services; or~~

~~(ii) the by-report rate.~~

~~(11) For providers listed at ARM 37.85.212(2) billing for durable medical equipment, prosthetics, orthotics, and medical supplies (DMEPOS), except for the bundled items as provided in (13), the department pays:~~

~~(a) the fee listed on the Medicaid fee schedule as provided in ARM 37.86.1807; or~~

~~(b) if there is no fee in (11)(a), the amount determined by multiplying the by-report rate provided in (8)(b) by the billed charges.~~

~~(12) (8) Subject to the provisions of (12)(8)(a), when billed with a modifier, payment for procedures established under the provisions of (7) is a percentage of the rate established for the procedures.~~

~~(a) through (a)(iii) remain the same.~~

(13) and (14) remain the same, but are renumbered (9) and (10).

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

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-125, MCA

37.86.101 PHYSICIAN SERVICES, DEFINITIONS (1) through (6) remain the same.

(7) Payment-to-charge ratio means the percent determined by dividing the previous state fiscal year's total Medicaid reimbursement for RBRVS provider covered services as defined in ARM 37.85.212 by the previous state fiscal year's total Medicaid charges for RBRVS provider covered services. The effective date and payment-to-charge ratio are as provided in ARM 37.85.105(2).

AUTH: 53-6-113, MCA

IMP: 53-6-101, 53-6-113, 53-6-141, MCA

37.86.105 PHYSICIAN SERVICES, REIMBURSEMENT/GENERAL REQUIREMENTS AND MODIFIERS (1) through (3) remain the same.

(4) Reimbursement to physicians for physician-administered drugs which are billed under HCPCS "J" and "Q" codes is made according to the department's fee schedule or the provider's usual and customary charge, whichever is lower. The department's fee schedule is updated at least annually based upon:

(a) through (c) remain the same.

(d) the by-report amount as defined in ARM 37.85.212 the Medicaid fee as determined in (7).

(5) and (6) remain the same.

(7) A Medicaid fee is determined for physician services and anesthesia services as defined at ARM 37.85.212 and birth attendant services as defined at ARM 37.86.1201 for services without fees.

(a) The Medicaid fee is determined for procedure codes that are new (less than one year in existence), or have no or low utilization, or have inconsistent charges by reviewing cost information for the service if available, or by reviewing the reimbursement of similar services if cost information is not available.

(b) Otherwise, the Medicaid fee in (7) is determined by multiplying the average charge for the service by the payment-to-charge ratio.

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

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

IMP: 53-6-101, 53-6-113, MCA

37.86.1201 BIRTH ATTENDANT SERVICE (1) and (2) remain the same.

(3) Reimbursement for birth attendants will be determined in accordance with ARM 37.85.212 ~~for allied service providers~~ and 37.86.105.

(4) The definitions found in the introduction to Physicians Current Procedural Terminology, fourth edition (CPT4), published by the American Medical Association of Chicago, Illinois and adopted at ARM 37.86.101 describe the terms commonly

used by the Montana Medicaid Program in implementation of the program's birth attendant fee schedule.

(5) The "Physician-Related Services Manual" adopted at ARM 37.86.101 governs the administration of the Birth Attendant Program.

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

IMP: 53-6-101, MCA

37.86.3205 NONHOSPITAL LABORATORY AND RADIOLOGY (X-RAY) SERVICES, REIMBURSEMENT (1) through (3) remain the same.

(4) For clinical laboratory services, the department pays the lower of:

(a) the provider's usual and customary charges for the service;

(b) 60% of the Medicare fee schedule for physician offices and independent labs and hospitals functioning as independent labs; or

(c) the Medicaid fee as determined at ARM 37.86.105(7) if there is no fee determined at (4)(b).

AUTH: 53-6-113, MCA

IMP: 53-6-113, 53-6-141, MCA

37.87.901 MEDICAID MENTAL HEALTH SERVICES FOR YOUTH, REIMBURSEMENT (1) Medicaid reimbursement for mental health

services shall will be the lowest of:

(a) and (b) remain the same.

(2) For services for which Medicare does not specify Relative Value Unit (RVU) as provided in ARM 37.87.212, the department determines the Medicaid fee for children's mental health services as follows:

(a) if there is use resulting in Medicaid reimbursements totaling at least \$10,000 in a state fiscal year (SFY), and a minimum of four separate providers have billed the code, then the Medicaid fee is determined by multiplying the average charges by the payment-to-charge ratio; or

(b) if there is use resulting in Medicaid reimbursements totaling less than \$10,000 in an SFY and fewer than four separate providers have billed the code in an SFY, the Medicaid fee will be determined by:

(i) reviewing similar procedure codes within the same service scope and adjusting the rate to be equal to a comparable procedure code or the average of similar procedure codes if there is more than one; or

(ii) reviewing similar procedure codes within the same service scope and adjusting the rate to be equal to a comparable procedure code or the average of similar codes plus 10% when severity is higher or increased resources are needed for the service. If the code is determined to have a lower severity component or fewer resources are required than when compared to the similar procedure code or average of similar procedure codes, the rate will equal the comparable procedure code or average of similar procedure codes less 10%.

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

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

37.88.907 MENTAL HEALTH CENTER SERVICES FOR ADULTS, REIMBURSEMENT (1) through (7) remain the same.

(8) For services for which Medicare does not specify Relative Value Unit as provided in ARM 37.85.105, the department determines the Medicaid fee for adult mental health services as follows:

(a) if there is use resulting in Medicaid reimbursements totaling at least \$10,000 in a state fiscal year (SFY), and a minimum of four separate providers have billed the procedure code, then the Medicaid fee is determined by multiplying the average charges by the payment-to-charge ratio;

(b) if there is use resulting in Medicaid reimbursements totaling less than \$10,000 in an SFY and fewer than four separate providers have billed the procedure code in an SFY, then the Medicaid fee will be determined by:

(i) reviewing similar procedure codes within the same service scope and adjusting the rate to be equal to a comparable procedure code or the average of similar procedure codes if there is more than one; or

(ii) reviewing similar procedure codes within the same service scope and adjusting the rate to be equal to a comparable procedure code or the average of similar codes plus 10% when severity is higher or increased resources are needed for the service. If the code is determined to have a lesser severity component or fewer resources are required than when compared to the similar procedure code or average of similar procedure codes, the reimbursement rate will equal the comparable procedure code or average of similar procedure codes less 10%.

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

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.85.212, 37.86.101, 37.86.105, 37.86.1201, 37.86.3205, 37.87.901, and 37.88.907 pertaining to the By Report Procedure Codes and the methodology used to determine reimbursement rates. These proposed amendments affect three divisions' rules within the department: Health Resources Division (HRD); Developmental Services Division, Children's Mental Health Bureau (CMHB); and the Addictive and Mental Disorders Division (AMDD), Mental Health Services Bureau.

The Centers for Medicare and Medicaid Services (CMS) will no longer allow "by report" reimbursement methodology effective July 1, 2014. "By report" reimbursement methodology means paying a percentage of the charges listed for a service on a claim line. These rule amendments remove "by report" language in the RBRVS rule and replaces it with approvable reimbursement methodology in the HRD, AMDD and CMHB rules. The proposed rule is necessary for the department to administer and maintain compliance with federal funding requirements.

Proposed Amendments to HRD Rules

ARM 37.85.212, 37.86.101 and 37.86.105

The department is proposing to remove "by report" reimbursement language from the RBRVS rule and replace it with "payment-to-charge ratio" and an approvable reimbursement methodology in the physician rules.

ARM 37.86.1201

The department is proposing to incorporate current procedural terminology (CPT) and the provider manual into the birth attendant rule.

ARM 37.85.212 and 37.86.3205

The department is proposing to move lab reimbursement language from the RBRVS rule to the lab rule.

Fiscal Impact

No fiscal impact is expected.

Proposed Amendments to CMHB Rules

ARM 37.87.901

Effective July 1, 2014, the Center for Medicare and Medicaid Services (CMS) no longer allows the department to use the "pay by report" method of reimbursing new codes established in the Current Procedural Terminology (CPT) manual. The department is proposing the method to price new CPT codes when an assigned Relative Value Units (RVU) has not been established by Medicare. This amendment is necessary to comply with CMS.

Proposed Amendments to AMDD Rules

ARM 37.88.907

For reimbursements totaling over \$10,000 and having a minimum of four separate providers billing the procedure code, the department is proposing that the fee will be determined by multiplying the average charges by the payment to ratio. For procedure codes with less than \$10,000 and fewer than four providers, the reimbursement rate will be determined by either:

- a. reviewing similar procedure codes with the same service scope and adjusting the rate to be equal to comparable procedure codes or the average of similar codes; or
- b. reviewing similar procedure codes and adjusting the rate to be equal to comparable procedure codes, or an average plus 10%, if the severity is higher or increased resources are needed to provide the service. However, if the code is determined to have a lesser component or less resources are required, the

reimbursement rate will equal the comparable procedure code or average of similar codes less 10%.

5. The department intends to adopt these rule amendments effective July 1, 2014.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., May 22, 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 rules will not significantly and directly impact small businesses.

/s/ John C. Koch

John C. Koch
Rule Reviewer

/s/ Richard H. Oppen

Richard H. Oppen, Director
Public Health and Human Services

Certified to the Secretary of State April 14, 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 37.86.1401, 37.86.1402,) PROPOSED AMENDMENT
37.86.1405, and 37.86.1406)
pertaining to Medicaid reimbursement)
for ambulatory surgery centers (ASC))

TO: All Concerned Persons

1. On May 16, 2014, at 2:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on May 9, 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 amended provide as follows, new matter underlined, deleted matter interlined:

37.86.1401 CLINIC SERVICES, DEFINITIONS (1) and (2) remain the same.

~~(3) "Class I anesthesia risk" means an individual with no detectable systemic diseases and no physical abnormalities which would in any way impair the functioning of his jaw, neck, airway, chest, or abdominal function.~~

~~(4) "Class II anesthesia risk" means an individual who has only one systemic disease which can potentially threaten the safe outcome of an anesthesia.~~

~~(5) "Public health department services" mean physician services and mid-level practitioner services as provided for in 50-2-116, 50-2-118, and 50-2-119, MCA.~~

~~(6) "Protocols" mean written plans developed by a public health clinic in collaboration with physician and nursing staff specifying the nursing procedures to be followed in giving a specific exam, or providing care for particular conditions. Protocols must be updated and approved by a physician at least annually.~~

~~(7) The definitions found in the introduction to Physicians Current Procedural Terminology, fourth edition (CPT4), published by the American Medical Association of Chicago, Illinois adopted at ARM 37.86.101 sets forth meanings of terms~~

commonly used by the Montana Medicaid program in implementation of the program's public health clinic fee schedule.

~~(8) The "Physician-Related Services Manual" means the physician-related services manual adopted at ARM 37.86.101. It governs the administration of the Public Health Clinic program.~~

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

IMP: 53-6-101, 53-6-141, MCA

37.86.1402 CLINIC SERVICES, REQUIREMENTS (1) through (3) remain the same.

~~(4) Patients receiving ambulatory surgical center services must be either class I anesthesia risk or a class II anesthesia risk.~~

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

~~(6) Public health department services consist of the following types of services:~~

~~(a) Mid-level practitioner services which:~~

~~(i) are provided through a public health department; and~~

~~(ii) meet all requirements specified in ARM 37.86.201, 37.86.202 and 46.12.2012.~~

~~(b) Physician services which:~~

~~(i) are provided either:~~

~~(A) directly by the physician; or~~

~~(B) by a public health nurse under a physician's immediate supervision. This means the physician has seen the patient and ordered the services except that a minimal service does not require the physician to see the patient. Minimal services are covered when provided by a licensed registered nurse under protocols provided by a physician affiliated with the public health department. Protocols shall be updated at least annually.~~

~~(ii) meet the requirements specified in ARM 37.86.105.~~

~~(7) remains the same, but is renumbered (5).~~

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

IMP: 53-6-101, 53-6-141, MCA

37.86.1405 CLINIC SERVICES, COVERED PROCEDURES

(1) Ambulatory surgical center (ASC) services:

(a) remains the same.

(b) are limited as provided by ARM 37.86.1402(1) through ~~(5)~~ (4) with the term clinic taken to mean ASC.

(2) and (3) remain the same.

AUTH: 53-6-113, MCA

IMP: 53-6-101, 53-6-141, MCA

37.86.1406 CLINIC SERVICES, REIMBURSEMENT

(1) Ambulatory surgical center (ASC) services as defined in ARM

37.86.1401(2) provided by an ASC will be reimbursed on a fee basis as follows:

(a) 100% of the Medicare allowable amount. For purposes of determining the Medicare allowable amount for ASC services to Medicaid ~~recipients~~ members under this rule, the department adopts and incorporates by reference the methodology at 42 CFR part 416, subpart E (2005), and the schedule listing the allowable amounts for ASC services in the Medicare Carriers Manual, section 5243. The cited authorities are federal regulations and manuals specifying the methods and rules used to determine reasonable cost for purposes of the Medicare program. Copies of the cited authorities may be obtained from the Department of Public Health and Human Services, Health Resources Division, P.O. Box 202951, Helena, MT 59620-2951.

(i) For purposes of applying the provisions of 42 CFR part 416, subpart E (2005), and the Medicare Carriers Manual, section 5243, any reference in such authorities to Medicare, Medicare beneficiary, beneficiary, intermediary or secretary shall be deemed to refer also to Medicaid, Medicaid ~~recipient~~ member, ~~recipient member~~, or the department.

~~(ii) For state fiscal year 2003, fees determined in accordance with this rule shall be reduced by 2.6%.~~

(b) For ASC services where no Medicare fee has been assigned, ~~the fee is 55% of usual and customary charges~~ the fees will be set at the average Medicaid payment-to-charge ratio for all ASC services that have a Medicaid fee.

(c) through (2) remain the same.

~~(3) Public health department services are reimbursed at the lowest of the following:~~

~~(a) the fees established by the department; or~~

~~(b) reimbursement for either physician services, provided in accordance with the methodologies described in ARM 37.85.212 and 37.86.105, or mid-level practitioner services, provided in accordance with the methodologies described in ARM 37.85.212 and 37.86.205.~~

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

IMP: 53-6-101, 53-6-141, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.86.1401, 37.86.1402, 37.86.1405, and 37.86.1406 regarding changes in Medicaid reimbursement for Ambulatory Surgery Centers (ASC).

The Centers for Medicare and Medicaid Services (CMS) will no longer allow "by report" reimbursement methodology effective July 1, 2014. This rule amendment removes the "by report" reimbursement language and replaces it with "payment-to-charge" reimbursement methodology which is approved by CMS. Also, these proposed amendments will remove additional outdated language and provide the necessary updates to ensure accuracy and clarity within the rules.

The following describes the purpose of the proposed rule amendments pertaining to Ambulatory Surgery Centers:

ARM 37.86.1401

Sections (5), (6), (7), and (8) are being removed as they pertain to the public health department. Public health departments are addressed in other department rules.

ARM 37.86.1402

Section (4) is being removed because Medicaid does not recognize the classes of anesthesia risk. Section (6) is being removed because the information is addressed in other rules pertaining to public health departments.

ARM 37.86.1405

In (1)(b) the citation is being corrected from (5) to (4) to reference the applicable sections in ARM 37.86.1402.

ARM 37.86.1406

In (1)(a) the department is proposing to replace the term "recipients" with "members." Subsection (1)(a)(ii) is being removed because it no longer applies. In (1)(b) the language referring to "usual and customary charges" is being removed and replaced with "payment-to-charge average" for ASC services. Section (3) is being removed because the information in this section is addressed in rules pertaining to the public health department.

5. The department intends to adopt these rule amendments effective July 1, 2014.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., May 22, 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 rules will not significantly and directly impact small businesses.

/s/ John C. Koch
John C. Koch
Rule Reviewer

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

Certified to the Secretary of State April 14, 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 37.86.4202 and 37.86.4205) PROPOSED AMENDMENT
pertaining to dialysis clinic method of)
reimbursement)

TO: All Concerned Persons

1. On May 16, 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 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 May 9, 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 amended provide as follows, new matter underlined, deleted matter interlined:

37.86.4202 DIALYSIS CLINICS FOR END STAGE RENAL DISEASE, REQUIREMENTS (1) These requirements are in addition to those contained in ARM 37.85.401, 37.85.402, 37.85.406, 37.85.407, 37.85.410, 37.85.414, and 37.85.415 ~~and 46.12.314.~~

(2) and (3) remain the same.

AUTH: 53-6-113, MCA

IMP: 53-6-101, MCA

37.86.4205 DIALYSIS CLINICS FOR END STAGE RENAL DISEASE, REIMBURSEMENT (1) Reimbursement for outpatient maintenance dialysis and other related services provided in a dialysis clinic to include the bundled Medicare composite rate is ~~effective as~~ provided in ARM 37.85.105(3). The department will not allow add-on adjustments to the composite rate.

AUTH: 53-6-113, MCA

IMP: 53-6-101, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.86.4202 and 37.86.4205 regarding Medicaid Dialysis clinic services.

The purpose of the proposed rule amendments is to update the current administrative rules governing dialysis clinics and incorporate the reimbursement methodology changes mandated by the Centers for Medicare and Medicaid Services (CMS).

The Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) requires CMS to implement a bundled prospective payment system (PPS) for providers of renal dialysis facility services. Medicaid proposes to use the Medicare composite payment rate methodology instead of the composite rate payment currently in use. This change will meet the Upper Payment Limit (UPL) requirements proposed by CMS.

The proposed amendments are necessary to maintain continued compliance with CMS requirements for Medicaid participation. It will maintain Medicaid rates at a level consistent with efficiency, economy and quality of care, and will ensure the continued participation of providers.

ARM 37.86.4202

The department is proposing to remove the citation to ARM 46.12.314 because it does not pertain to this rule. The inclusion of ARM 46.12.314 appears to be a clerical mistake.

ARM 37.86.4205

The department is proposing to pay dialysis claims at the Medicare composite rate as instructed by CMS. This will meet the upper payment limit requirements. Current composite rate payments are identified in the Medicaid Management Information System (MMIS) on the provider charge file.

5. The department intends to adopt these rule amendments effective July 1, 2014.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., May 28, 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 rules will not significantly and directly impact small businesses.

/s/ John C. Koch
John C. Koch
Rule Reviewer

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

Certified to the Secretary of State April 14, 2014.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 12.9.1301, 12.9.1302,)
12.9.1303, 12.9.1304, and 12.9.1305)
regarding gray wolf management)

TO: All Concerned Persons

1. On October 31, 2013, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-401 pertaining to the proposed amendment of the above-stated rules at page 1886 of the 2013 Montana Administrative Register, Issue Number 20.

2. The commission has amended ARM 12.9.1301 and 12.9.1304 as proposed.

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

12.9.1302 DEFINITIONS The following definitions apply to this subchapter:

(1) through (3) remain as proposed.

(4) "Breeding pair" means an adult male and an adult female wolf and with at least two pups ~~that survived until on~~ December 31 ~~of the year of their birth, during the previous breeding season~~ as referenced in the Montana Gray Wolf Conservation and Management Plan.

(5) "Confirms", "confirmed", or "confirmation" means an incident where the department or USDA Wildlife Services determines through a field investigation of dead or injured livestock that there is reasonable physical evidence that the animal was actually attacked and/or killed by a wolf. The primary confirmation would ordinarily be the presence of bite marks and associated subcutaneous hemorrhaging and tissue damage, indicating that the attack occurred while the victim was alive, as opposed to simply feeding on an already dead animal. Spacing between canine tooth punctures, feeding pattern on the carcass, fresh tracks, scat, hairs rubbed off on fences or brush, and/or eyewitness accounts of the attack may help identify the specific species or individual responsible for the depredation. Predation might also be confirmed in the absence of bite marks and associated hemorrhaging (i.e., if much of the carcass has already been consumed by the predator or scavengers) if there is other physical evidence to confirm predation on the live animal. This might include blood spilled or sprayed at a nearby attack site or other evidence of an attack or struggle. There may also be nearby remains of other victims for which there is still sufficient evidence to confirm predation, allowing reasonable inference of confirmed predation on the animal that has been largely consumed.

(6) through (11) remain as proposed.

(12) "Potential threat" means those wolves in immediate proximity to human dwellings, livestock, or domestic dogs.

(12) through (14) remain as proposed but are renumbered (13) through (15).

AUTH: 87-1-201, 87-1-301, 87-5-105, 87-5-110, 87-5-131, MCA

IMP: 87-1-201, 87-1-301, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-108, 87-5-131, MCA

12.9.1303 CONTROL METHODS OF THE GRAY WOLF INCLUDE NONLETHAL AND LETHAL MEANS (1) through (3) remain as proposed.

(4) Control of the gray wolf by an agency or an individual may include nonlethal and lethal actions. Specific control actions shall connect in both time and location to a wolf or wolves with the highest likelihood of having injured or killed the livestock.

(5) and (6) remain as proposed.

AUTH: 87-1-201, 87-1-301, 87-5-105, 87-5-110, 87-5-131, MCA

IMP: 87-1-201, 87-1-301, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-108, 87-5-131, MCA

12.9.1305 ALLOWABLE LETHAL CONTROL OF THE GRAY WOLF

(1) The commission delegates its authority to the department to authorize lethal control of problem wolves. The department may authorize the following to conduct lethal control of problem wolves:

(a) the department;
(b) USDA Wildlife Services pursuant to an interagency cooperative agreement that outlines the procedures for verifying the needs for lethal control and as part of a coordinated agency response;

(c) Department of Livestock pursuant to an interagency cooperative agreement that outlines the procedures for verifying the needs for lethal control and as part of a coordinated agency response;

(d) ~~control by~~ a livestock owner, immediate family member, employee, or other person authorized by the department with a permit issued by the department under the conditions authorized and specified on the permit;

(e) control to protect human safety; or
(f) control pursuant to 87-1-901, MCA.

(2) through (8) remain as proposed.

(9) The permit must specify:

(a) its duration and expiration date;
(b) total number of wolves that may be lawfully killed through the combined actions of the individuals named on the permit or other department authorization and the department or USDA Wildlife Services;

(c) the geographic area where the permit is valid; and

(d) that wolves may be killed using means of take authorized by the commission for wolf harvest seasons from the ground and in a manner that does not entail the use of intentional live or dead baits, scents, or attractants or deliberate use of traps or snares, or poisons; or use of radio telemetry equipment.

(10) remains as proposed.

(11) A landowner or landowner agent, pursuant to 87-1-901, MCA, may take a wolf on the landowner's property without permit or license when the wolf is a potential threat as defined in ARM 12.9.1302 ~~to human safety, livestock, or domestic dog~~ until the quota established by the commission under 87-1-901, MCA, is met.

(b) and (c) remain as proposed but are renumbered (a) and (b).

AUTH: 87-1-201, 87-1-301, 87-1-901, 87-5-105, 87-5-110, 87-5-131, MCA

IMP: 87-1-201, 87-1-301, 87-1-901, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-108, 87-5-131, MCA

4. The commission received a total of 1383 comments. The commission has thoroughly considered the comments received, and the commission's responses are as follows:

The department has thoroughly considered the comments and testimony received. 1383 duplicate and unique comments were tallied during the comment period in addition to relatively limited testimony received during public hearings. Many of the comments repeated common themes and inputs and many others did not directly speak to the proposed ARM amendments. A general summary of comments and the department's responses are as follows:

Comment 1: Multiple comments advocated retaining original language in ARM 12.9.1302 pertaining to wolf numbers, distribution, dispersal, genetic diversity, consideration of disease, and quotas because it is helpful to keep them visible to the public.

Response 1: Given the commission and department's responsibility and authority to manage all Montana wildlife in perpetuity, the amendments do not in any way prevent consideration or use of these elements in wolf management. Additionally, the general language does not preclude other potential elements that are not specifically enumerated.

Comment 2: Several comments identified opposition to taking a wolf without clear evidence of livestock depredation.

Response 2: The authority for a landowner to take a wolf under SB 200 (2013) does not require direct evidence of livestock depredation.

Comment 3: Multiple comments expressed agreement with the additional authority for landowners to take wolves.

Response 3: The additional authority provided in SB 200 is in effect.

Comment 4: Several comments advocated management of wolves should support healthy ecosystems including the relationship with prey.

Response 4: Montana currently enjoys and benefits from relatively intact ecosystems and the commission and department have long recognized the value of ecosystem integrity. Management plans and conservation strategies evaluate variables including range from habitat to interactions with other species.

Comment 5: There were multiple comments advocating protecting the wolf and requested the killing of wolves be prohibited.

Response 5: This is outside the scope of this rulemaking. State law provides for the harvest of wolves and provides a means of protecting humans, livestock, and domestic dogs.

Comment 6: There were several comments opposing the reintroduction of wolves and delisting of wolf and grizzly bear.

Response 6: The wolf has already been reintroduced and is currently delisted by federal law. Grizzly bear management is outside the scope of this process.

Comment 7: Several comments stated wolves that are alive provide an economical benefit.

Response 7: The department and commission recognize the economic aspects to its wildlife populations through nonconsumptive uses.

Comment 8: Multiple comments addressed the need for a clearer definition of potential threat in ARM 12.9.1305(11)(a).

Response 8: The commission has adopted a definition for potential threat in ARM 12.9.1302.

Comment 9: Multiple comments advocated further expanded authority for landowners to take wolves.

Response 9: Any expanded authority must be allowed in state law and is outside this rulemaking.

Comment 10: Multiple comments expressed concern regarding the removal of the quota language in ARM 12.9.1301.

Response 10: Quotas remain an option for the commission's consideration and implementation but not the only management tool.

Comment 11: One comment expressed concern regarding the tracking of harvest because there is no proper notification system.

Response 11: Landowners are required to report any take of wolves under SB 200.

Comment 12: Several comments stated Montana should treat wolves as a predator or like a coyote.

Response 12: There is no authority to reclassify wolves.

Comment 13: Several comments addressed the protection of the identity of landowners who take wolves under these ARM rules.

Response 13: The department and commission have no authority to keep public information from anyone who requests it.

Comment 14: Several comments stated confirming livestock loss or injury is the responsibility of USDA Wildlife Services and not the department.

Response 14: The proposed amendments do not require the department to confirm dead or injured livestock nor do they remove USDA Wildlife Services from their assigned task.

Comment 15: Several comments stated the taking of wolves under the authority of SB 200 is inconsistent with other statutory authority that allows take of wolves that are attacking, killing, or threatening to kill a person or livestock or a domestic dog.

Response 15: SB 200 establishes authority for landowners to take wolves representing a potential threat and is in addition to existing authority to take wolves that are attacking or killing.

Comment 16: Multiple comments advocated no change to the definition of breeding pair because the language matches the language found within the final federal delisting rule.

Response 16: The commission adopted the definition that is consistent with language within Montana's Gray Wolf Conservation and Management Plan as approved by the U.S. Fish and Wildlife Service.

Comment 17: A few comments specifically supported changing "hunting" to "harvest" in light of current trapping opportunities.

Response 17: The amendments clarify the availability of trapping as a management tool.

Comment 18: Multiple comments opposed striking language that describes response to wolf conflicts on a case by case basis to target those wolves most likely involved in the depredation. Several comments supported striking the language.

Response 18: The commission adopted language to maintain the element of appropriately targeted wolf removals.

Comment 19: For clarity, one comment opposed striking "to undertake control actions" in ARM 12.9.1303.

Response 19: The language of ARM 12.9.1303 still includes the language "to undertake control actions."

Comment 20: One comment identified awkward language in ARM 12.9.1305(1)(d).

Response 20: The commission clarified the language.

Comment 21: One comment advocated restoring "and when the department or USDA Wildlife Services confirms wolves are routinely present on the property or allotment and present a significant ongoing risk to livestock" in ARM 12.9.1305.

Response 21: Confirmation of wolf presence is not required to authorize targeted lethal removal in response to confirmed livestock loss by wolves.

Comment 22: One comment addressed clarifying when and how the quota for this new authority in SB 200 shall be set.

Response 22: The quota will be set using existing commission process that already includes public review and comment. Specific details of any quota will be addressed via that process.

Comment 23: One comment specifically advocated adding "The state of Montana recognizes and confirms gray wolf recovery has been achieved" in ARM 12.9.1301.

Response 23: This is outside the scope of rulemaking.

Comment 24: One comment specifically advocated adding language restating Montana's prohibition against harassment of hunters and trappers in legal pursuit of wolves.

Response 24: The prohibition on harassment of hunters and trappers is clearly stated within statute and does not require additional statement here.

Comment 25: Several comments requested the language regarding the means of take in ARM 12.9.1305(9)(d) not be removed.

Response 25: The commission adopted ARM 12.9.1305(9)(d) with the language restored.

Comment 26: Several comments requested restoring the language in ARM 12.9.1302 describing how USDA Wildlife Services will confirm wolf depredation.

Response 26: The commission adopted ARM 12.9.1302 with the language restored.

Comment 27: One comment opposed replacing "assure" with "ensure."

Response 27: This edit was suggested by the Attorney General office as a matter of standardization. The department does not believe either word significantly changes intent.

Comment 28: One comment expressed concern and frustration over accidental harvest of a domestic dog by a wolf hunter.

Response 28: While this circumstance was unfortunate and deeply emotional, it is outside the scope of this process.

Comment 29: Several comments advocated that the commission and department should not be relinquishing authority for lethal removal of wolves.

Response 29: State law clarifies the authority for landowners to take wolves.

/s/ Dan Vermillion

Dan Vermillion, Chairman
Fish and Wildlife Commission

/s/ Rebecca Jakes Dockter

Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State April 14, 2014

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of a) NOTICE OF ADOPTION OF
temporary emergency rule pertaining) TEMPORARY EMERGENCY RULE
to the Bitterroot River in Ravalli)
County)

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) is adopting the following emergency rule due to danger created by the Supply Ditch Diversion Dam (dam). The dam spans the Bitterroot River approximately three river miles downstream of the Woodside Fishing Access Site near Corvallis, Montana. This portion of the Bitterroot River is actively floated by the public and at most flow levels is the only channel available. The dam is a low-head structure that creates dangerous currents that have caused numerous boat accidents including a fatality in 2013. Signs have been in place for several years warning floaters about the danger and signaling portage routes around the dam. Despite the warnings signs, at least two accidents have occurred in recent months. At the current water levels, portage around the dam is very difficult.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 16, 2014, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jesssnyder@mt.gov.

3. The temporary emergency rule is effective April 11, 2014, when this rule notice is filed with the Secretary of State.

4. The text of the temporary emergency rule provides as follows:

NEW RULE I BITTERROOT RIVER TEMPORARY EMERGENCY CLOSURE (1) A portion of the Bitterroot River is located in Ravalli County.

(2) The Bitterroot River is closed to all boating and floating from Woodside Fishing Access Site to Tucker West Fishing Access Site.

AUTH: 2-4-303, 23-1-106, MCA

IMP: 2-4-303, 23-1-106, MCA

5. The rationale for the temporary emergency rule is as set forth in paragraph 1.

6. A standard rulemaking procedure will be undertaken prior to the expiration of this temporary emergency rule.

7. Concerned persons are encouraged to submit their comments during the upcoming standard rulemaking process. If concerned persons wish to be personally notified of that rulemaking process, they should submit their names and addresses to: Sharon Rose, Department of Fish, Wildlife and Parks, 3201 Spurgin Road, Missoula, MT, 59804; fax 406-542-5529; e-mail shrose@mt.gov.

8. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ Mike Volesky

Mike Volesky

Chief of Staff

Department of Fish, Wildlife and Parks

/s/ William Schenk

William Schenk

Rule Reviewer

Certified to the Secretary of State April 11, 2014.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.22.301, 24.22.307,)
24.22.311, 24.22.316, 24.22.321,)
regarding incumbent worker training)
fund availability)

TO: All Concerned Persons

1. On February 27, 2014, the Department of Labor and Industry published MAR Notice No. 24-22-282 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 360 of the 2014 Montana Administrative Register, Issue Number 4.
2. The department amends the above-stated rules as proposed.
3. No comments or testimony were received.
4. The amendments are effective July 1, 2014.

/s/ Mark Cadwallader
Mark Cadwallader
Alternate Rule Reviewer

/s/ Pam Bucy
Pam Bucy
Commissioner
Department of Labor & Industry

Certified to the Secretary of State April 14, 2014.

BEFORE THE BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULE I military training or experience)

TO: All Concerned Persons

1. On January 30, 2014, the Board of Architects and Landscape Architects (board) published MAR Notice No. 24-114-35 regarding the public hearing on the proposed adoption of the above-stated rule, at page 187 of the 2014 Montana Administrative Register, Issue No. 2.

2. On February 20, 2014, a public hearing was held on the proposed adoption of the above-stated rule in Helena. No comments were received by the February 28, 2014, comment deadline.

3. The board has adopted NEW RULE I (ARM 24.114.411) exactly as proposed.

BOARD OF ARCHITECTS AND
LANDSCAPE ARCHITECTS
BAYLISS WARD, 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 April 14, 2014

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

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULE I military training or experience)

TO: All Concerned Persons

1. On January 16, 2014, the Board of Chiropractors (board) published MAR Notice No. 24-126-34 regarding the public hearing on the proposed adoption of the above-stated rule, at page 10 of the 2014 Montana Administrative Register, Issue No. 1.

2. On February 10, 2014, a public hearing was held on the proposed adoption of the above-stated rule in Helena. No comments were received by the February 14, 2014, comment deadline.

3. The board has adopted NEW RULE I (ARM 24.126.502) exactly as proposed.

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 April 14, 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 ADOPTION
RULE I military training or experience)

TO: All Concerned Persons

1. On January 16, 2014, the Board of Nursing Home Administrators (board) published MAR Notice No. 24-162-39 regarding the public hearing on the proposed adoption of the above-stated rule, at page 20 of the 2014 Montana Administrative Register, Issue No. 1.

2. On February 10, 2014, a public hearing was held on the proposed adoption of the above-stated rule in Helena. No comments were received by the February 14, 2014, comment deadline.

3. The board has adopted NEW RULE I (ARM 24.162.502) exactly as proposed.

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 April 14, 2014

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 44.5.114 through 44.5.121,) REPEAL
44.6.104 and 44.6.105, and the)
repeal of ARM 44.2.202 and 44.2.203)
pertaining to fees charged by the)
Business Services Division)

TO: All Concerned Persons

1. On March 13, 2014, the Secretary of State published MAR Notice No. 44-2-195 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 489 of the 2014 Montana Administrative Register, Issue Number 5.

2. The Secretary of State has amended the following rules as proposed: 44.5.116, 44.5.117, 44.5.118, 44.5.119, 44.5.120, 44.6.104, and 44.6.105.

3. The Secretary of State has repealed the following rules as proposed: 44.2.202 and 44.2.203.

4. The Secretary of State has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

44.5.114 CORPORATIONS – PROFIT AND NONPROFIT FEES (1) through (3)(i) remain as proposed.
~~(j) appointment of commercial registered agent~~ 100.00
(k) remains as proposed, but is renumbered (j).
(4) and (5) remain as proposed.

AUTH: 2-15-405, 35-1-1307, 35-2-1107, 35-7-103, MCA
IMP: 2-15-405, 35-1-217, 35-1-1206, 35-1-1307, 35-2-119, 35-2-1003, 35-6-201, MCA

44.5.115 LIMITED LIABILITY COMPANY FEES (1) through (1)(f) remain as proposed.
~~(g) articles of revocation of dissolution~~ 15.00
(h) and (i) remain as proposed, but are renumbered (g) and (h).
(4) and (5) remain as proposed.

AUTH: 2-15-405, MCA
IMP: 2-15-405, 35-8-208, 35-8-211, 35-8-212, MCA

44.5.121 MISCELLANEOUS FEES (1) through (6) remain as proposed.

- (7) ~~Geophysical exploration bond, cashier's check, or certificate of deposit~~ 15.00
(8) and (9) remain as proposed, but are renumbered (7) and (8).

AUTH: 2-15-405, 30-9A-526, 35-1-1307, 35-2-1107, 35-7-103, MCA
IMP: 2-6-103, 2-15-405, 30-9A-525, 30-13-320, 35-1-1206, 35-2-119, 35-2-1003,
35-2-1107, 35-7-103, ~~82-1-104~~, MCA

5. No member of the public commented on the rule notice. The Secretary of State received comments from K. Virginia Aldrich, attorney for the State Administration and Veterans' Affairs Interim Committee. The Secretary of State has thoroughly considered the comments received. The Secretary of State's responses are as follows:

COMMENT 1: Ms. Aldrich stated that the fee "increase" for the appointment of a commercial registered agent in ARM 44.5.114(j) would require a dollar amount estimate and number of persons affected statement per 2-4-302, MCA.

RESPONSE 1: The Secretary of State has removed (j) because the fee for the appointment of a commercial registered agent is set forth in ARM 44.5.121, Miscellaneous Fees.

COMMENT 2: Ms. Aldrich questioned the authority for the fee for articles of revocation of dissolution added as (g) in ARM 44.5.115.

RESPONSE 2: The Secretary of State has removed (g) from ARM 44.5.115 because articles of revocation of dissolution do not apply to limited liability companies.

COMMENT 3: Ms. Aldrich questioned the authority for the fee for "geophysical exploration bond, cashier's check, or certificate of deposit" added as (7) in ARM 44.5.121 and stated that it is a fee "increase" that would require a dollar amount estimate and number of persons affected statement per 2-4-302, MCA.

RESPONSE 3: The Secretary of State is required by 2-15-405, MCA, to "set by administrative rule each fee authorized by law." Each fee "must be commensurate with the overall costs of the office" and "must reasonably reflect the prevailing rates charged in the public and private sectors for similar services." The Secretary of State has always charged a fee for the filing of bonds, cashier's checks, and certificates of deposit although the statute imposing this particular duty, 82-1-104, MCA, does not state that the Secretary of State may charge a fee for this service. The Secretary of State believes the lack of this authority in the statute is a legislative oversight that may require a legislative fix. Also, the Secretary of State did not believe this required a dollar amount estimate and number of persons affected statement per 2-4-302, MCA, because the \$15 filing fee is an existing fee. However, the Secretary of State agrees that under the technical language of 2-4-302, MCA, this would be deemed a fee "increase" under 2-4-302, MCA, because it has never

before been set forth in administrative rule. Therefore, the Secretary of State is removing (7) from ARM 44.5.121 and will re-notice this amendment in the future and include the statements required by 2-4-302, MCA.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 14th day of April, 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.
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 December 31, 2013. This table includes those rules adopted during the period January 1, 2014, through March 31, 2014, 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 December 31, 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 2013/2014 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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BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in March 2014 appear. Vacancies scheduled to appear from May 1, 2014 through July 31, 2014, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of April 1, 2014.

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

BOARD AND COUNCIL APPOINTEES FROM MARCH 2014

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Hail Insurance (Agriculture)			
Mr Gary Gollehon	Governor	reappointed	3/7/2014
Brady			5/1/2017
Qualifications (if required): Public Representative			
Board of Outfitters (Labor and Industry)			
Mr. Patrick Tabor	Governor	Wilkinson	3/7/2014
Swan Lake			10/1/2016
Qualifications (if required): Big Game Hunting Outfitter			
Board of Private Security (Labor and Industry)			
Mr. Charles Pesola	Governor	Taylor	3/7/2014
Kalispell			8/1/2015
Qualifications (if required): Contract Security Company			
Board of Regents of Higher Education (Education)			
Mr. William Johnstone	Governor	McLean	3/19/2014
Great Falls			2/1/2017
Qualifications (if required): District 1 and a Democrat			
Ms. Martha Sheehy	Governor	Buchanan	3/19/2014
Billings			2/1/2021
Qualifications (if required): District 2 and a Democrat			
Burial Preservation Board (Administration)			
Ms. Rosemary Caye	Governor	Mathias	3/7/2014
Elmo			9/1/2015
Qualifications (if required): Representative of Confederated Salish and Kootenai Tribes			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2014

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Burial Preservation Board (Administration) cont.			
Mr. Robert P. Four Star Poplar	Governor	reappointed	3/7/2014 9/1/2015
Qualifications (if required): Representative of Fort Peck Tribe			
Ms. Skye Gilham Browning	Governor	reappointed	3/7/2014 9/1/2015
Qualifications (if required): Physical Anthropologist			
Mr. Steve Platt Helena	Governor	reappointed	3/7/2014 9/1/2015
Qualifications (if required): Montana Historical Preservation Officer Representative			
Mr. George Reed St. Xavier	Governor	White Clay Sr	3/7/2014 8/22/2013
Qualifications (if required): Representative of Crow Tribe			
Ms. Marilyn Silva Miles City	Governor	reappointed	3/7/2014 9/1/2015
Qualifications (if required): Public Representative			
Committee on Telecommunications Access Services for Persons with Disabilities (Public Health and Human Services)			
Mr. Tyler Peart Missoula	Governor	McGlenn	3/7/2014 7/1/2015
Qualifications (if required): Largest Service Provider in Montana			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2014

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Economic Development Advisory Council (Commerce)			
Rep. Julie E. French	Governor	Tail Feather	3/14/2014
Scobey			7/23/2014
Qualifications (if required): Great Northern Development Corporation Regional Representative			
Governor's Healthier Montana Task Force (Public Health and Human Services)			
Ms. Peggy Kopp	Governor	Webb	3/14/2014
Sidney			10/25/2015
Qualifications (if required): Hospital Representative			
Livestock Loss Board (Livestock)			
Mr. Seth Wilson	Governor	Leahy	3/7/2014
Missoula			1/1/2017
Qualifications (if required): Wildlife Conservation			
Montana Cherry Commodity Advisory Committee (Agriculture)			
Mr. Cody Herring	Governor	Reappointed	3/14/2014
Big Fork			5/17/2017
Qualifications (if required): None Specified			
Ms. Lise Rousseau	Governor	Reappointed	3/14/2014
Polson			5/17/2017
Qualifications (if required): None Specified			
Montana Children's Trust Fund Board (Public Health and Human Services)			
Ms. Leslie Caye	Governor	Kipp	3/7/2014
Pablo			1/1/2015
Qualifications (if required): Public Representative			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2014

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Council on Developmental Disabilities (Commerce)			
Ms. Erin Butts Helena	Governor	Swanby	3/7/2014 1/1/2017
Qualifications (if required): Agency Representative			
Potato Commodity Advisory Council (Agriculture)			
Mr. Dan Lake Ronan	Governor	Reappointed	3/14/2014 2/13/2015
Qualifications (if required): Potato Producer			
Mr. Sid Schutter Manhattan	Governor	Not Listed	3/14/2014 2/13/2015
Qualifications (if required): Potato Producer			
State Employee Charitable Giving Campaign Advisory Council (Administration)			
Ms. Shelly Clinch Helena	Governor	Mayer	3/14/2014 2/18/2015
Qualifications (if required): Employee Representative			
Ms. Donna Hanson Helena	Governor	Paton	3/14/2014 2/18/2015
Qualifications (if required): Employee Representative			
Ms. Diane Larson Helena	Governor	Wright	3/14/2014 2/18/2015
Qualifications (if required): Employee Representative			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2014

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Employee Charitable Giving Campaign Advisory Council (Administration) cont.			
Mr. Mike Manion	Governor	Lynch	3/14/2014
Helena			2/18/2015
Qualifications (if required): Employee Representative			
State Workforce Investment Board (Labor and Industry)			
Ms. Sarah Calhoun	Governor	Copps	3/14/2014
White Sulphur Springs			7/1/2017
Qualifications (if required): Private Sector			
Mr. Kirk Hammerquist	Governor	reappointed	3/7/2014
Kalispell			7/1/2017
Qualifications (if required): Private Sector			
Mr. John McKee	Governor	Kujawa	3/7/2014
Butte			7/1/2017
Qualifications (if required): Private Sector			
Western Interstate Energy Board (Environmental Quality)			
Mr. Jeff Blend	Governor	Compton	3/14/2014
Helena			1/1/2017
Qualifications (if required): Board Member			
Mr. Andy Poole	Governor	Blend	3/14/2014
Helena			1/1/2017
Qualifications (if required): Alternate Board Member			

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2014 THROUGH JULY 31, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
9-1-1 Advisory Council (Administration)		
Mr. Joe Calnan, Montana City	Director	5/1/2014
Qualifications (if required): Montana State Volunteer Fire Fighters Association		
Mr. Kevin Myhre, Lewistown	Director	5/1/2014
Qualifications (if required): Montana League of Cities and Towns		
Ms. Kim Burdick, Fort Benton	Director	5/1/2014
Qualifications (if required): Association of Public Safety Communications Officials (APCO)		
Sheriff Leo C. Dutton, Helena	Director	5/1/2014
Qualifications (if required): Montana Sheriff's and Peace Officers Association		
Commissioner Gary A. Macdonald, Wolf Point	Director	5/1/2014
Qualifications (if required): Montana Association of Counties (MACO)		
Ms. Joanna Hamilton, Hamilton	Director	5/1/2014
Qualifications (if required): Public Safety Answering Point (PSAP Representative for populations of more than 30,000		
Ms. Peggy Hartwell, no city listed	Director	5/1/2014
Qualifications (if required): Public Safety Answering Point (PSAP) Representative for populations of 30,000 or less		
Mr. Justin Grohs, Great Falls	Director	5/1/2014
Qualifications (if required): Montana Emergency Medical Services Association		
Mr. Rick Musson, Laurel	Director	5/1/2014
Qualifications (if required): Montana Association of Chiefs of Police		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2014 THROUGH JULY 31, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
9-1-1 Advisory Council (Administration) cont. Mr. Jeff Miller, Butte Qualifications (if required): Montana State Fire Chiefs Association	Director	5/1/2014
Mr. Ed Auker, Hardin Qualifications (if required): Association of Disaster & Emergency Services Coordinators	Director	5/1/2014
Aging Advisory Council (Public Health and Human Services) Rep. Beverly Barnhart, Bozeman Qualifications (if required): public representative	Governor	7/18/2014
Mrs. Jessie James-Hawley, Harlem Qualifications (if required): public representative	Governor	7/18/2014
Ms. Lauren Lynch, Butte Qualifications (if required): public representative	Governor	7/18/2014
Mr. Marvin Carter, Laurel Qualifications (if required): public representative	Governor	7/18/2014
Mr. Bill Koenig, Kalispell Qualifications (if required): agriculture producer	Governor	7/1/2014
Ms. Patricia Quisno, Harlem Qualifications (if required): agriculture producer	Governor	7/1/2014

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2014 THROUGH JULY 31, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Agriculture Development Council (Agriculture) Mr. David Tyler, Belgrade Qualifications (if required): agriculture producer	Governor	7/1/2014
Board of Banking (Administration) Dr. Maureen J. Fleming, Missoula Qualifications (if required): public representative	Governor	7/1/2014
Mr. Josh Webber, Denton Qualifications (if required): state bank officer	Governor	7/1/2014
Board of Funeral Service (Labor and Industry) Mr. R.J. Dick Brown, Lewistown Qualifications (if required): mortician	Governor	7/1/2014
Board of Hearing Aid Dispensers (Labor and Industry) Mr. Wyman McDonald, Ronan Qualifications (if required): public representative with a hearing aid	Governor	7/1/2014
Ms. Mary Eve Tolbert, St. Ignatius Qualifications (if required): dispenser with master's degree and national certification	Governor	7/1/2014
Board of Nursing (Labor and Industry) Ms. Brenda Schye, Fort Peck Qualifications (if required): public representative	Governor	7/1/2014
Ms. Kathleen Sprattler, Billings Qualifications (if required): licensed practical nurse	Governor	7/1/2014

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2014 THROUGH JULY 31, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Nursing (Labor and Industry) cont. Mr. N. Gregory Kohn, Billings Qualifications (if required): public representative	Governor	7/1/2014
Ms. Lanette Perkins, Missoula Qualifications (if required): registered nurse	Governor	7/1/2014
Board of Nursing Home Administrators (Labor and Industry) Mr. Loren Hines, Butte Qualifications (if required): representative of an institution caring for chronically ill or aged	Governor	5/28/2014
Board of Pharmacy (Labor and Industry) Ms. Rebecca H. Deschamps, Missoula Qualifications (if required): licensed pharmacist	Governor	7/1/2014
Mr. Michael Bertagnolli, Three Forks Qualifications (if required): licensed pharmacist	Governor	7/1/2014
Board of Physical Therapy Examiners (Labor and Industry) Mr. Brian Miller, Kalispell Qualifications (if required): physical therapist	Governor	7/1/2014
Board of Plumbers (Labor and Industry) Mr. Timothy E. Regan, Miles City Qualifications (if required): master plumber	Governor	5/4/2014
Mr. Olaf Stimac, Great Falls Qualifications (if required): journeyman plumber	Governor	5/4/2014

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2014 THROUGH JULY 31, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Professional Engineers and Land Surveyors (Labor and Industry)		
Rep. Hal Jacobson, Helena	Governor	7/1/2014
Qualifications (if required): public representative		
Mr. David Elias, Anaconda	Governor	7/1/2014
Qualifications (if required): licensed land surveyor		
Mr. Ronald Drake, Helena	Governor	7/1/2014
Qualifications (if required): licensed chemical engineer		
Board of Public Accountants (Labor and Industry)		
Mr. Michael Johns, Deer Lodge	Governor	7/1/2014
Qualifications (if required): Certified Public Accountant		
Mr. Tony Ennenga, Kalispell	Governor	7/1/2014
Qualifications (if required): Certified Public Accountant		
Ms. Kathleen VanDyke, Bozeman	Governor	7/1/2014
Qualifications (if required): public representative		
Board of Public Accountants (Labor and Industry)		
Mr. Wayne Hintz, Helena	Governor	7/1/2014
Qualifications (if required): Certified Public Accountant		
Board of Radiologic Technologists (Labor and Industry)		
Ms. Sharon Dinstel, Colstrip	Governor	7/1/2014
Qualifications (if required): public representative		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2014 THROUGH JULY 31, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Radiologic Technologists (Labor and Industry) cont.		
Ms. Anna L. Hazen, Fort Benton Qualifications (if required): permit holder	Governor	7/1/2014
Dr. Jesse Cole, Butte Qualifications (if required): radiologist	Governor	7/1/2014
Ms. Janet Fuller, Anaconda Qualifications (if required): Radiologic Technologist	Governor	7/1/2014
Board of Real Estate Appraisers (Labor and Industry)		
Mr. Todd Schmidt, Kalispell Qualifications (if required): real estate appraiser	Governor	5/1/2014
Ms. Anzarina Moore, Great Falls Qualifications (if required): real estate appraiser	Governor	5/1/2014
Mr. Thomas G. Stevens, Missoula Qualifications (if required): real estate appraiser	Governor	5/1/2014
Mr. George Simek, Billings Qualifications (if required): real estate appraiser	Governor	5/1/2014
Board of Realty Regulation (Labor and Industry)		
Mr. Stephen Hess, Butte Qualifications (if required): public representative and identifies himself as a Democrat	Governor	5/9/2014

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2014 THROUGH JULY 31, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Regents of Higher Education (Education) Mr. Al Smith, Helena Qualifications (if required): none specified	Governor	6/30/2014
Board of Research and Commercialization Technology (Commerce) Mr. Leonard Smith, Billings Qualifications (if required): Native American Public Representative	Governor	7/1/2014
Board of Sanitarians (Labor and Industry) Mr. Donald E. Pizzini, Great Falls Qualifications (if required): public representative	Governor	7/1/2014
Ms. Kathleen Driscoll, Hamilton Qualifications (if required): public representative	Governor	7/1/2014
Mayor Gene Townsend, Three Forks Qualifications (if required): public representative	Governor	7/1/2014
Ms. Susan K. Brueggeman, Polson Qualifications (if required): sanitarian	Governor	7/1/2014
Board of Veterinary Medicine (Labor and Industry) Dr. Bruce Sorensen, Belgrade Qualifications (if required): veterinarian	Governor	7/31/2014

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2014 THROUGH JULY 31, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Water Well Contractors (Natural Resources and Conservation) Mr. Kirk Waren, Butte Qualifications (if required): none specified	Director	6/30/2014
Clinical Laboratory Science Practitioners (Labor and Industry) Ms. Alison Mizner, Kalispell Qualifications (if required): licensed pharmacist	Governor	7/1/2014
Community Service Commission (Labor and Industry) Mr. James B. Corson, Billings Qualifications (if required): representative with experience in promoting volunteerism	Governor	7/1/2014
Mr. James Steele, Arlee Qualifications (if required): representative of Tribal government	Governor	7/1/2014
Mr. Jack Chambers, Missoula Qualifications (if required): representative of a non-profit organization	Governor	7/1/2014
Mr. David Van Son, Great Falls Qualifications (if required): expert in public safety services	Governor	7/1/2014
Mr. Dustin Whitford, Box Elder Qualifications (if required): Representing Tribal Government	Governor	7/1/2014
District Court Council (Supreme Court) Mr. Jim Reno, Billings Qualifications (if required): none specified	Supreme Court	6/30/2014

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2014 THROUGH JULY 31, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Economic Development Advisory Council (Commerce)		
Mr. Brent Campbell, Missoula Qualifications (if required): Public Representative	Governor	7/23/2014
Director Sheila Hogan, Helena Qualifications (if required): public representative	Governor	7/23/2014
Mr. Curt Starr, Billings Qualifications (if required): public representative	Governor	7/23/2014
Ms. Kathie Bailey, Lewistown Qualifications (if required): public representative	Governor	7/23/2014
Mr. Walter White Tail Feather, Poplar Qualifications (if required): public representative	Governor	7/23/2014
Electrical Board (Labor and Industry)		
Mr. Rick Hutchinson, Black Eagle Qualifications (if required): licensed electrician	Governor	7/1/2014
Future Fisheries Review Panel (Fish, Wildlife and Parks)		
Mr. Marvin Miller, Butte Qualifications (if required): mining reclamation expert	Governor	7/1/2014
Mr. Alan Johnstone, Wilsall Qualifications (if required): commercial agriculture representative	Governor	7/1/2014

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Future Fisheries Review Panel (Fish, Wildlife and Parks) cont. Mr. Jim Stone, Ovando Qualifications (if required): irrigated agriculture representative	Governor	7/1/2014
Historical Society Board of Trustees (Historical Society) Ms. Lee Rostad, Martinsdale Qualifications (if required): public member	Governor	7/1/2014
Mr. Jim Court, Billings Qualifications (if required): public member	Governor	7/1/2014
Mr. Jim Utterback, Helena Qualifications (if required): public member	Governor	7/1/2014
Interagency Coordinating Council for State Prevention Programs (Public Health and Human Services) Ms. Diane Cashell, Bozeman Qualifications (if required): experience in prevention programs and services	Governor	6/16/2014
Ms. Patty Stevens, Ronan Qualifications (if required): experience in prevention programs and services	Governor	6/16/2014
Library Commission (Higher Education) Mr. Richard Quillin, Whitefish Qualifications (if required): public representative	Governor	5/22/2014
Ms. Lee Phillips, Butte Qualifications (if required): public representative	Governor	5/22/2014

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Mental Disabilities Board of Visitors (Governor) Mr. Graydon Davies Moll, Ronan Qualifications (if required): experience with the treatment and welfare of adults with developmental disabilities	Governor	7/1/2014
Montana Cherry Commodity Advisory Committee (Agriculture) Ms. Tanya Campbell, Qualifications (if required): none specified	Director	5/3/2014
Mr. Cody Herring, Big Fork Qualifications (if required): none specified	Director	5/3/2014
Montana Heritage Preservation and Development Commission (Commerce) Rep. Bob Lawson, Whitefish Qualifications (if required): public representative	Governor	5/23/2014
Mr. Paul Tuss, Havre Qualifications (if required): Tourism Advisory Council representative	Governor	5/23/2014
Ms. Cynthia Andrus, Bozeman Qualifications (if required): representative of the Tourism Advisory Council	Governor	5/23/2014
General James Womack, Dillon Qualifications (if required): Montana historian	Governor	5/23/2014
Dr. Timothy Lehman, Billings Qualifications (if required): Montana historian	Governor	5/23/2014

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Petroleum Tank Release Compensation Board (Environmental Quality) Mr. Steve Sendon, Bozeman Qualifications (if required): banker	Governor	6/30/2014
Ms. Kate Cassidy, Whitefish Qualifications (if required): environmental regulatory experience	Governor	6/30/2014
Postsecondary Scholarship Advisory Council (Governor) Ms. Margaret Bird, Browning Qualifications (if required): experience in financial aid at a postsecondary institution	Governor	6/20/2014
Potato Commodity Advisory Council (Agriculture) Mr. Sid Schutter, Manhattan Qualifications (if required): Potato Producer	Director	5/20/2014
Mr. Roger Starkel, Ronan Qualifications (if required): none specified	Director	5/20/2014
Public Defender Commission (Administration) Mr. Kenneth R. Olson, Great Falls Qualifications (if required): attorney nominated by the Montana Supreme Court	Governor	7/1/2014
Ms. Ann Sherwood, Pablo Qualifications (if required): attorney nominated by the State Bar, experienced in defense of juvenile delinquency	Governor	7/1/2014
Mr. Christopher Daem, Billings Qualifications (if required): a member of an organization advocating on behalf of people with mental illness	Governor	7/1/2014

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State-Tribal Economic Development Commission (Commerce)		
Mr. Joseph Durglo, Pablo	Governor	6/30/2014
Qualifications (if required): representative of the Confederated Salish and Kootenai Tribes		
Mr. Richard Sangrey, Box Elder	Governor	6/30/2014
Qualifications (if required): representative of the Chippewa Cree Tribe of the Rocky Boy's Reservation		
Mr. Tracy Robinson, Lame Deer	Governor	6/30/2014
Qualifications (if required): representative of the Northern Cheyenne Tribe		
Ms. Jennie Small Lafranier, Lame Deer	Governor	6/30/2014
Qualifications (if required): representative of the Northern Cheyenne Tribe		
Mr. Terry Pitts, Pablo	Governor	6/30/2014
Qualifications (if required): representative of the Confederated Salish and Kootenai Tribes		
Mr. Leonard Gray, Pablo	Governor	6/30/2014
Qualifications (if required): representative of the Confederated Salish and Kootenai Tribes		
Teachers' Retirement Board (Administration)		
Mr. Robert Pancich, Great Falls	Governor	7/1/2014
Qualifications (if required): public representative		
Telecommunications Access Services for Persons with Disabilities (Administration)		
Ms. Pat Ingalls, Butte	Governor	7/1/2014
Qualifications (if required): audiologist		

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Telecommunications Access Services for Persons with Disabilities (Administration) cont. Ms. Char Harasymczuk, Billings Qualifications (if required): person with a hearing disability	Governor	7/1/2014
Mr. Charles Charette, Lame Deer Qualifications (if required): person with a hearing disability	Governor	7/1/2014
Mr. Drew Arnot, Missoula Qualifications (if required): independent local exchange company representative	Governor	7/1/2014
Tourism Advisory Council (Commerce) Mr. Paul Tuss, Havre Qualifications (if required): resident of Russell Country	Governor	7/1/2014
Mr. Ed DesRosier, East Glacier Park Qualifications (if required): resident of Glacier Country	Governor	7/1/2014
Ms. Gail Richardson, Bozeman Qualifications (if required): resident of Yellowstone Country	Governor	7/1/2014
Ms. Amber Wood-Jensen, Butte Qualifications (if required): resident of Goldwest Country	Governor	7/1/2014
Ms. Meg O'Leary, Big Sky Qualifications (if required): resident of Yellowstone Country	Governor	7/1/2014

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<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Tourism Advisory Council (Commerce) cont. Mr. Philip Aaberg, Chester Qualifications (if required): resident of Russell Country	Governor	7/1/2014
Mr. Matt Ellis, Missoula Qualifications (if required): Public Representative	Governor	7/1/2014
Tourism Advisory Council (Governor) Ms. Stacey Kiehn, Charlo Qualifications (if required): Glacier Country Tourism Region	Governor	7/1/2014
Ms. Glenn Indreland, Bozeman Qualifications (if required): Yellowstone Country	Governor	7/1/2014
Western Interstate Commission on Higher Education (Governor) Rep. Franke Wilmer, Bozeman Qualifications (if required): Legislator	Governor	6/19/2014