

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 1

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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

In the matter of the adoption of New)
Rules I and II and the amendment of)
ARM 37.5.118, 37.5.304, 37.5.307,)
37.47.602, 37.47.610, 37.47.613,)
37.47.615, and 37.51.216 pertaining)
to substantiations of child abuse and)
neglect and background checks for)
placement and licensing)

NOTICE OF PUBLIC HEARING ON
PROPOSED ADOPTION AND
AMENDMENT

TO: All Concerned Persons

1. On February 4, 2015, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed 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 the Department of Public Health and Human Services no later than 5:00 p.m. on January 28, 2015, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

NEW RULE I USE OF DETERMINATIONS IN CHILD ABUSE OR NEGLECT
REPORT INVESTIGATIONS

(1) Findings, determinations, and associated case records on child abuse or neglect reports that are determined as unfounded, unsubstantiated, or founded are considered detrimental to the subject of the report and cannot be disclosed to any person other than the subject of the report without a valid court order.

(2) Child abuse or neglect reports that are determined to be unfounded, unsubstantiated, or founded cannot be the sole basis to deny a person a license to provide foster care, kinship care, or to be employed in a capacity where they have unsupervised access to children.

(3) Findings, determinations, and associated case records on child abuse or neglect reports that are determined to be substantiated are confidential, but may be disclosed pursuant to 41-3-205, MCA.

(4) Child abuse or neglect reports that are determined to be substantiated may be used as a basis to deny a person a license to provide foster care, kinship

care, or to be employed in a capacity where they have unsupervised contact with children.

(5) Nothing in this rule prohibits the department or its personnel from using the facts discovered during an investigation and the associated case record of a child abuse or neglect report investigation, as necessary, to support district court actions under Title 41 of the Montana Code Annotated or the department's administrative process.

AUTH: 41-3-205, 41-3-304, MCA

IMP: 41-3-205, 41-3-304, MCA

NEW RULE II DISQUALIFYING CRIMINAL OFFENSE FOR ADULTS RESIDING IN POTENTIAL EMERGENCY PLACEMENT (1) "Disqualifying criminal offenses" for adults residing in emergency placements are the same criminal offenses set forth for youth foster homes in ARM 37.51.216(1) and 45 CFR 1356.30.

AUTH: 41-3-304, MCA

IMP: 41-3-304, MCA

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

37.5.118 SUBSTANTIATED DETERMINATIONS OF REPORTS OF CHILD ABUSE OR NEGLECT: APPLICABLE HEARING PROCEDURES (1) remains the same.

(2) No hearing is available for child abuse or neglect reports that are determined as unfounded, unsubstantiated, or founded.

AUTH: 2-4-201, 41-3-208, MCA

IMP: 2-4-201, 2-4-612, 41-3-203, 41-3-204, MCA

37.5.304 DEFINITIONS For purposes of this subchapter, unless the context requires otherwise, the following definitions apply:

(1) "Adverse action" means:

(a) through (o) remain the same.

(p) a department determination denying, reducing, terminating, or failing to act upon a guardianship subsidy request within one year of the request as provided in ARM Title 37, chapter 5 50, subchapter 11; or

(q) a department determination denying, reducing, terminating, or failing to act upon an adoption subsidy request within one year of the request as provided in ARM Title 37, chapter 50, subchapter 11;

(r) a department determination denying, reducing, terminating, or failing to act upon an application for a license to provide foster care or kinship care; or

(q) remains the same, but is renumbered (s).

(i) through (13) remain the same.

AUTH: 41-3-208, 50-53-103, 52-2-111, 52-2-622, 52-2-704, 53-2-201, 53-2-606, 53-4-212, 53-6-111, 53-6-113, 53-7-102, 53-20-305, MCA
IMP: 41-3-202, 41-3-208, 50-53-101, 50-53-102, 50-53-103, 50-53-104, 50-53-106, 50-53-107, 52-2-603, 52-2-704, 52-2-726, 53-2-201, 53-2-606, 53-6-101, 53-6-107, 53-6-111, 53-6-113, 53-20-305, MCA

37.5.307 OPPORTUNITY FOR HEARING (1) A claimant who is aggrieved by an adverse action of the department ~~shall~~ will be afforded the opportunity for a hearing as provided in this chapter.

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

~~(b)~~ (3) The freedom to request a hearing ~~shall~~ must not be interfered with in any way. The local office of public assistance or child care resource and referral agency ~~shall~~ will assist a claimant who seeks help in requesting a hearing.

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

~~(i)~~ (5) A hearing request from a claimant must be received in writing within 30 days of the date of mailing of notice of the adverse action regarding:

(A) through (C) remain the same, but are renumbered (a) through (c).

~~(D)~~ (d) a proposal by the department to file a lien under 53-6-171, MCA; ~~or,~~

~~(ii)~~ (6) Except for fair hearing requests on a substantiated report, Hearing requests must be mailed or delivered to the department's Office of Fair Hearings, P.O. Box 202953, Helena, MT 59620-2953, ~~except hearing requests to contest a substantiated report of child abuse, neglect or exploitation must be mailed or delivered to the Division Administrator, Department of Public Health and Human Services, Child and Family Services Division, 1400 Broadway, P.O. Box 8005, Helena, MT 59604-8005. Requests for fair hearings on substantiated reports must be mailed to the Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, MT 59620.~~

~~(d)~~ (7) Cases in which the sole issue is one of state or federal policy may be consolidated for a single group hearing. Each claimant ~~shall~~ will be permitted to present his their own case.

~~(2)~~ (8) A provider other than a medical assistance provider who is aggrieved by an adverse action of the department ~~shall~~ must be granted the right to hearing as provided in this chapter, except as otherwise provided in other department rules.

(a) remains the same.

(b) A request for a hearing from a day care facility applicant, licensee, registrant, or legally unregistered provider must be received by the department in writing within ten days after the date of mailing of notice of the department's adverse action denying, suspending, canceling, reducing, modifying, or revoking a legally unregistered provider payment number or a day care license or registration certificate.

~~(3)~~ (9) Medical assistance providers aggrieved by adverse department actions, other than medical assistance providers appealing eligibility determinations as a real party in interest, ~~shall~~ will be granted the right to a hearing as provided in ARM 37.5.310.

(a) through (c)(ii) remain the same.

(4) remains the same, but is renumbered (10).

AUTH: 2-4-201, 41-3-208, 41-3-1142, 52-2-111, 52-2-112, 52-2-403, 52-2-704, 52-3-304, 52-3-804, 53-2-201, 53-2-606, 53-2-803, 53-3-102, 53-4-111, 53-4-212, 53-4-403, 53-4-503, 53-5-304, 53-6-111, 53-6-113, 53-6-402, 53-7-102, 53-20-305, MCA
IMP: 2-4-201, 41-3-202, 41-3-205, 41-3-1103, 52-2-603, 52-2-704, 52-2-726, 53-2-201, 53-2-306, 53-2-401, 53-2-606, 53-2-801, 53-4-112, 53-4-212, 53-4-404, 53-4-503, 53-4-513, 53-5-304, 53-6-111, 53-6-113, 53-6-402, 53-20-305, MCA

37.47.602 PROTECTIVE SERVICES: DEFINITIONS For purposes of this subchapter, the following definitions shall apply:

(1) ~~(2)~~ (2) "Case records" means any records maintained by the department relating to reports and investigations of child abuse, neglect, or exploitation. Photographs, video and audio ~~tapes~~ recordings may also be included as part of the case record. The term does not include confidential reports or evaluations, such as psychological evaluations, provided to the department by other professionals, or licensing or registration files of providers licensed, registered, or certified by the department.

(2) ~~(3)~~ (3) "Child abuse or neglect" means that defined in 41-3-102, MCA, including the various definitions for the types of abuse, neglect, and exploitation.

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

(7) "Founded report" means that, after an investigation, the investigating worker has determined that there is probable cause to believe that an act of child abuse or neglect occurred.

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

(7) ~~(8)~~ (8) "Report of child abuse, neglect, or exploitation" means a referral alleging that a child may be abused, neglected, or exploited.

(8) ~~(9)~~ (9) "Subject" means the person responsible for a child's welfare who is the alleged perpetrator of the child abuse, neglect, or exploitation.

(9) ~~(10)~~ (10) "Substantiated report" means that, after an investigation, the investigating worker has determined by a preponderance of the evidence that the reported act of child abuse, neglect, or exploitation occurred, based upon credible information or facts and that the perpetrator of the abuse, neglect, or exploitation may pose a danger to children.

(10) ~~"Unfounded report" means that, after an investigation, the investigating worker has determined the reported abuse, neglect or exploitation has not occurred.~~

(11) ~~"Unsubstantiated report" means that, after an investigation, the investigator was unable to determine by a preponderance of the evidence that the reported abuse, neglect or exploitation occurred.~~

AUTH: 2-4-201, 41-3-208, 52-3-205, MCA

IMP: 2-4-201, 41-3-102, 41-3-202, 41-3-205, 52-3-205, MCA

37.47.610 CHILD PROTECTIVE SERVICES: RIGHT TO FAIR HEARING TO CONTEST SUBSTANTIATED REPORTS (1) The subject of a substantiated child abuse or neglect report that is determined to be substantiated may request a fair hearing ~~unless the circumstances provided in ARM 37.47.615 exist.~~

(2) The request for a fair hearing must be in writing and be sent within 30 days after the date of mailing of the department's initial notice of its substantiation determination. The request must be sent to: ~~Division Administrator, Department of Public Health and Human Services, Child and Family Services Division, 301 S. Park, P.O. Box 8005, Helena, MT 59604-8005~~ the Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, MT 59604.

(3) Upon receipt of the request for a fair hearing, the department will conduct an informal review of the substantiated report and the case record information.

(a) remains the same.

(b) If, after the informal review, the department determines that the substantiated report is in error, the department will amend the finding to reflect that the report is unfounded, unsubstantiated, or founded, and notify ~~t~~ The subject of the decision will be notified of the decision.

(c) If, after the informal review, the department determines that the substantiated report is not in error, the department will notify the department's ~~e~~ Office of fFair hHearings so that a hearing date and time may be scheduled.

(4) The fair hearing will be conducted pursuant to ~~Title 2, chapter 4, part 6, MCA, of the Montana Administrative Procedure Act and ARM 37.5.118~~ the procedures specified in ARM 37.5.304, 37.5.307, 37.5.313, 37.5.322, 37.5.325, 37.5.328, 37.5.331, 37.5.334, and 37.5.337, subject to the limitations specified in ARM 37.47.615.

(5) ~~A hHearsay statements~~ of the child victim is are admissible as evidence in the fair hearing if the statement is sufficiently indicative of its reliability, in accordance with Montana law on a substantiated child abuse or neglect report. The administrative law judge will determine the weight to give each child victim's hearsay statement. The factors to be considered in determining the weight of the child hearsay statement include:

(a) through (d) remain the same.

(6) Hearsay statements of persons other than the child victim are admissible in accordance with Montana Rules of Evidence and relevant case law.

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

(8) A fair hearing is not available for reports that are determined to be unfounded, unsubstantiated, or founded.

AUTH: 2-4-201, 41-3-208, MCA

IMP: 2-4-201, 2-4-612, 41-3-203, 41-3-204, MCA

37.47.613 CHILD PROTECTIVE SERVICES: LISTING OF DETERMINATION IN THE PROTECTION INFORMATION SYSTEM (1) and (2) remain the same.

(3) If the subject requests a fair hearing pursuant to ARM 37.47.610(2), the department's determination will be listed as pending in its protective services information system until all administrative appeals have been exhausted and all judicial appeals have been decided.

(4) Reports of child abuse or neglect that are determined to be unfounded or unsubstantiated will be listed in the department's protective services information

system described in ARM 37.47.315, subject to the confidentiality provisions of [New Rule I] until purged in accordance with 41-3-202, MCA.

(5) Reports of child abuse or neglect that are determined to be founded will be listed in the department's protective services information system described in ARM 37.47.315 for a period of three years from the date of the report, subject to the confidentiality provisions of [New Rule I] and the retention requirements contained in (8).

(6) Reports of child abuse or neglect that are determined to be substantiated will be listed in the department's protective services information system described in ARM 37.47.315 in perpetuity, subject to the confidentiality provisions of [New Rule I].

(7) Child abuse or neglect reports that are received by the department but are not investigated will be listed in the department's protective services information system described in ARM 37.47.315 for informational purposes for a period of one year from the date of the report.

(8) Informational and founded reports that are associated with a prior or subsequent child abuse or neglect report that is investigated and determined as unsubstantiated or substantiated will be retained in the department's protective services information system described in ARM 37.47.315 for the applicable time period for the associated report.

AUTH: 2-4-201, 41-3-208, MCA

IMP: 2-4-201, 41-3-202, 41-3-204, MCA

37.47.615 CHILD PROTECTIVE SERVICES: EXCEPTIONS TO RIGHT TO FAIR HEARING (1) The subject of a substantiated report of child abuse, neglect, or exploitation is not entitled to a fair hearing if:

(a) the subject has been criminally convicted, as defined in 45-2-101(15), MCA, of an offense related to child abuse, neglect, or exploitation which contains the same facts as the substantiated report and involves the same child victim; or

(b) pursuant to 41-3-437(2) or 41-3-434, MCA, there has been a district court adjudication, or a stipulation by the parents, that the child in the substantiated report is a youth in need of care, as defined in 41-3-102, MCA; and

(i) the facts of the district court adjudication, or the allegations in the affidavit in the case of a stipulation, are the same as that of the substantiated report; and

(ii) ~~the subject of the substantiated report has been determined by the district court to be~~ is the perpetrator of the child abuse, neglect, or exploitation; or

(c) a court or administrative hearing officer has made any adjudication in a prior proceeding as to the factual findings of the child abuse, neglect, or exploitation contained in the substantiated report.

AUTH: 2-4-201, 41-3-208, MCA

IMP: 2-4-201, 41-3-205, MCA

37.51.216 YOUTH FOSTER HOMES: NEGATIVE LICENSING ACTION

(1) The department, through written notice to the applicant, or licensee, or potential emergency placement shall will deny, revoke, or restrict a license or emergency placement upon finding that:

~~(a) the applicant, licensee, or member of the applicant's or licensee's household has a conviction for a serious any of the following types of crimes; such as but not limited to~~

~~(a) felony crimes involving violence such as homicide, sexual intercourse without consent, sexual assault, aggravated assault, assault on a minor, assault on an officer, assault with a weapon, kidnapping, aggravated kidnapping, prostitution, robbery, or burglary; spousal abuse, felony partner-family member assault, and felony aggravated assault, but not including other assault and battery;~~

~~(b) the applicant, licensee, or member of the applicant's or licensee's household has a conviction for a crime pertaining to children or families, including but not limited to acts and other crimes against children such as child abuse or neglect, endangering the welfare of a child, incest, child sexual abuse, ritual abuse of a minor, felony partner or family member assault, child pornography, child prostitution, internet crimes involving children, felony endangering the welfare of a child, and felony unlawful transactions with children; or aggravated interference with parent-child contact; or~~

~~(c) the applicant, licensee, or member of the applicant's or licensee's household has within the previous five years had a felony conviction for a drug related offense, including but not limited to use, distribution, or possession of controlled substances, criminal possession of precursors to dangerous drugs, criminal manufacture of dangerous drugs, criminal possession of imitation dangerous drugs with the purpose to distribute, criminal possession, manufacture or delivery of drug paraphernalia, or driving under the influence of alcohol or other drugs if within the previous five years; or~~

~~(d) other crimes such as misdemeanor assault and battery, including misdemeanor partner-family member assault, robbery or burglary if convicted within the previous five years; or~~

~~(d) (e) the applicant, licensee, or member of the applicant's or licensee's household has been convicted of crimes against older persons or developmentally disabled persons such as abuse, sexual abuse, neglect, or exploitation of an elderly person or a person with a developmental disability.~~

(2) The department, through written notice to the applicant or licensee, may deny, suspend, restrict, or revoke a license upon a finding that:

~~(a) the applicant, licensee, or member of the licensee's household has a conviction for misdemeanor partner/family member assault, misdemeanor endangering the welfare of a child, misdemeanor unlawful transaction with children, or a crime involving an abuse of the public trust;~~

~~(b) through (e) remain the same, but are renumbered (a) through (d).~~

~~(f) (e) the foster parent has been named as the perpetrator of child abuse or neglect in a substantiated report of abuse or neglect;~~

~~(g) (f) the foster parent failed to report an incident of suspected child abuse or neglect of any child to the department as required by 41-3-201, MCA, within 24 hours of receiving information pertaining to the incident;~~

~~(h) and (i) remain the same, but are renumbered (g) and (h).~~

~~(3) and (4) remain the same.~~

AUTH: 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

IMP: 2-4-631, 52-1-103, 52-2-111, 52-2-601, 52-2-621, 52-2-622, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to adopt New Rules I and II and to amend ARM 37.5.118, 37.5.304, 37.5.307, 37.47.602, 37.47.610, 37.47.613, 37.47.615, and 37.51.216 pertaining to the determinations of child abuse or neglect reports as well as a person's right to a fair hearing resulting from such reports. New Rule I and proposed amendments to the existing administrative rules are necessary to update the rules to reflect the policies and practices of the department as to the use of the information collected during child abuse or neglect investigations. Specifically, the department is adding a new category to its child abuse or neglect determinations. Currently the investigating worker can determine that a child abuse or neglect report is in one of three categories: unfounded, unsubstantiated, or substantiated. The unfounded and unsubstantiated categories are adequate for those investigations that do not find acts of abuse or where children are not endangered. The definition for a substantiated report is problematic as it sets forth a high evidentiary standard that does not reflect department practice when it comes to concerns about child safety in the household. In practice, many investigations yield information that indicate that a child has been abused or neglected or raises concerns about the child's safety, but does not provide evidence to the preponderance of the evidence standard necessary under the definition for substantiated. In these cases, the department may initiate some action to protect the children and help the family, yet cannot substantiate abuse and neglect to the preponderance of the evidence standard. By implementing an additional determination category of "founded," the department will be able to describe properly the outcome of many investigations where abuse and neglect is indicated, but not substantiated.

The department is also proposing to update language in these rules to correspond with current terminology and to remove language that is no longer pertinent.

New Rule I

Proposed New Rule I provides how the department will use determinations of child abuse or neglect investigations. This rule is necessary because Montana law states that the department must investigate child abuse or neglect reports and make a determination, yet it does not say how the department can use the information from those determinations. New Rule I would provide a framework that allows disclosure of some information, while providing for confidentiality.

New Rule II

Proposed New Rule II sets forth what crimes will disqualify a person from consideration as an "emergency placement" for an abused child. This rule is necessary, as statute requires the department to adopt disqualifying crimes for background checks of emergency placements.

ARM 37.5.118

The department is proposing to amend ARM 37.5.118 to clarify that only child abuse or neglect reports that are substantiated are eligible for a fair hearing. This is necessary as the current rules do not explicitly state that fair hearings are not available for reports other than those child abuse and neglect reports that are substantiated. This amendment is necessary in light of the addition of the "founded" report definition in ARM 37.47.602.

ARM 37.5.304

The department is proposing to amend ARM 37.5.304 to clarify that certain determinations of subsidies for guardianships and adoptions are also granted a fair hearing. This proposed change is necessary to adopt into rule current department practice regarding the grant of a fair hearing to a potentially aggrieved party.

ARM 37.5.307

The department is proposing to amend ARM 37.5.307 to revise the proper mailing address for fair hearing requests. This amendment is necessary, as the department's practice of processing requests for fair hearings has changed along with the mailing address for sending such requests.

ARM 37.47.602

The department is proposing to amend ARM 37.47.602 to add a new definition for "founded" reports. Statute only defines unfounded and unsubstantiated reports. Substantiated reports are defined in ARM 37.47.602(9), based upon a preponderance of the evidence standard. An additional definition for "founded" reports is necessary as many investigations will find concerns about child safety, but not sufficient evidence of actual abuse or neglect to the preponderance of the evidence standard of a substantiated report. This additional definition will provide the investigating worker with an additional category to determine the outcome of a child abuse or neglect report, and the additional amendments remove the definitions of unfounded and unsubstantiated since they are defined in statute.

ARM 37.47.610

The proposed amendments to ARM 37.47.610 are mostly clerical to clarify and provide the proper address for fair hearing requests. The proposed amendment to (5) on child hearsay statements is necessary to clarify the standard the department will use for this type of hearsay evidence and to ensure that children are not a necessary party to appear and testify at these administrative hearings. Frequently in fair hearings on substantiated reports, the child victims are still in the custody of their parents and it may be inappropriate to ask them to attend a hearing to testify against a parent with whom they currently live. Further, it is common practice in state district

court dependency and neglect cases for the department to rely upon hearsay statements of the children, so this change will conform to the practice of Montana's district courts.

ARM 37.47.613

The department is proposing to amend ARM 37.47.613 to clarify the length of time each determination report category will be listed in the department's protective services information system. The amendments also contain a reference to New Rule I regarding confidentiality. These amendments are necessary to guide the department and inform the public as to the department's information retention practices involving child abuse or neglect reports.

ARM 37.47.615

The department is proposing to amend ARM 37.47.615 to clarify when a fair hearing on a substantiated report is not available. The amendment, which adds stipulation by the parties as a basis for denying a fair hearing, is necessary as many times children are removed from their homes and the parents stipulate to adjudication without stipulating to the facts of the abuse or neglect. Under the current rule, if the parents stipulate to adjudication but not to the facts of the abuse, the department must give them a fair hearing. If children are removed from their families and adjudicated as a Youth in Need of Care, there is no reason for an additional hearing on the substantiated report of the same incident(s).

ARM 37.51.216

The department is proposing to amend ARM 37.51.216, which is necessary to conform to the requirements of the federal Adam Walsh Act (Public Law 109-248) and for consistency with the other proposed amendments involving determinations of child abuse or neglect reports.

Fiscal Impact

There is no fiscal impact from these proposed new rules and amendments.

6. The department intends to apply the following rules effective on July 1, 2015: New Rule I; ARM 37.5.118, ARM 37.47.602 except for (10) and (11); ARM 37.47.610(8); and ARM 37.47.613. The reason for the future effective date is to give time for the updating of forms and other documents used by the State of Montana and Montana counties. All other proposed amendments will be effective the day after publication of the final adoption notice

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., February 12, 2015.

8. The department's Office of Legal Affairs 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/ Mark Prichard
Mark Prichard, Attorney
Rule Reviewer

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

Certified to the Secretary of State January 5, 2015.

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

In the matter of the adoption of New)
Rule I and the amendment of ARM)
37.97.102, 37.97.132, and 37.97.186)
pertaining to updating rules for youth)
care facilities)

NOTICE OF PUBLIC HEARING ON
PROPOSED ADOPTION AND
AMENDMENT

TO: All Concerned Persons

1. On February 4, 2015, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption 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 the Department of Public Health and Human Services no later than 5:00 p.m. on January 28, 2015, 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 YOUTH CARE FACILITY (YCF): FIRE SAFETY (1) The department adopts and incorporates by reference group R-3 of the International Fire Code (IFC), January 1, 2012, which sets forth the fire safety regulations that apply to youth care facilities. A copy of group R-3 of the International Fire Code may be obtained from the Fire Prevention and Investigation Section of the Department of Justice, 2225 11th Avenue, Helena, Montana, 59620.

(2) The state fire marshal must annually certify a YCF for fire and life safety.

(3) Smoke detectors approved by a recognized testing laboratory must be located on each level of the facility, at the top of stairways, in any bedroom, in any hallway leading to bedrooms, and in areas requiring separation as set forth in the International Fire Code according to Section 907.2.10, IFC.

(4) Carbon monoxide detectors installed in facilities with fuel-burning appliances or with attached garages must be installed per manufacture recommendations according to Section 1103.9, IFC.

(5) A workable portable fire extinguisher, with a minimum rating of 2A10BC, must be located on each floor of the facility. Fire extinguishers must be:

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

- (b) no more than 75 feet from each other;
- (c) inspected, recharged, and tagged at least once a year by a person certified by the state to perform such services; and
- (d) not obstructed or obscured from view.
- (6) Facility staff must check smoke detector batteries at least once each month and the batteries must be replaced at least once each year. Documentation, including the date and the signature of the person checking or replacing the batteries, must be maintained at the facility.
- (7) The staff must be trained in the proper use of facility fire extinguishers and documentation of the training must be maintained at the facility.
- (8) Staff, at the time of hire, and residents, at the time of admission, must be instructed in the facility's fire evacuation procedure. The fire evacuation procedure must be posted in a conspicuous place in the YCF.
- (9) All exits must be clear and unobstructed at all times.
- (10) Paint, flammable liquids, and other combustible material must be kept in locked storage away from heat sources or in outbuildings not used by the youth.
- (11) The YCF must conduct at least four fire drills annually, no closer than two months apart, with at least one drill occurring on each shift. Drill observations must be documented and maintained in the facility files for at least two years. The documentation must include:
 - (a) location of the drill;
 - (b) identification of participating staff;
 - (c) problems identified during the drill; and
 - (d) steps taken to correct such problems.

AUTH: 52-2-111, 52-2-113, 52-2-603, 52-2-622, MCA
IMP: 52-2-111, 52-2-603, 62-2-622, MCA

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

37.97.102 YOUTH CARE FACILITY (YCF): DEFINITIONS The following definitions apply to all YCF licensing rules:

- (1) remains the same.
- (2) "Child" or "youth" means any person under the age of 18 years, without regard to emancipation, except for youth covered by Montana Medicaid programs which allow for participation of youth up to the age of 24 20 years as defined in ARM 37.87.102, and parenting or pregnant youth, up to the age of 21 years, who are placed in a child care agency-maternity home.
- (3) through (33) remain the same.

AUTH: 41-3-1142, 52-2-111, 52-2-603, 52-2-622, MCA
IMP: 52-2-113, 52-2-602, 52-2-622, 53-2-201, MCA

37.97.132 YOUTH CARE FACILITY (YCF): GENERAL REQUIREMENTS FOR ALL ADMINISTRATORS, STAFF, INTERNS, AND VOLUNTEERS (1) A

YCF ~~shall~~ must have written personnel and program policies and procedures covering ~~but not limited to~~ the following items:

- (a) through (e) remain the same.
- (2) A YCF ~~shall~~ must maintain records for each staff member, volunteer, and intern regarding the following:
 - (a) through (3) remain the same.
 - (4) The department may require an evaluation or medical examination ~~of, and/or~~ a signed authorization for release of medical records, or both from any YCF staff, intern, or volunteer if there are grounds to believe these individuals have engaged in behaviors which may place the YCF youth at risk of harm.
 - (5) and (6) remain the same.
 - (7) YCF volunteers and interns ~~shall~~ must:
 - (a) and (b) remain the same.
 - ~~(c) be provided orientation and initial training procedures. The training must include orientation on all YCF policies and procedures;~~
 - ~~(d) (c) follow written policies and procedures developed by the YCF defining the responsibilities, limitations, and supervision of volunteers and interns; and~~
 - ~~(e) (d) complete all required background checks; and~~
 - (e) be provided orientation and initial training procedures. The training must include orientation on all YCF policies and procedures.
 - (8) All direct-care staff must have a valid driver's license and follow all laws applicable to driving in Montana.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA
IMP: 52-2-111, 52-2-603, 52-2-622, MCA

37.97.186 YOUTH CARE FACILITY (YCF): PHYSICAL ENVIRONMENT

- (1) A YCF ~~shall~~ must provide a minimum of ten foot-candles of light in all rooms and hallways, with the following exceptions:
 - (a) through (5) remain the same.
 - (6) The YCF ~~shall~~ must provide:
 - (a) and (b) remain the same.
 - (7) All resident rooms with toilets or shower/ and bathing facilities must have an operable window to the outside or must be exhausted to the outside by a mechanical ventilation system.
 - (8) and (9) remain the same.
 - (10) Hot and cold water must be available in the YCF. Water temperatures for hot water must be limited to 120°F or below.
 - (11) For adequate housekeeping the YCF must ensure that:
 - (a) the building and grounds are free, to the extent possible, of harborage for insects, rodents, and other vermin;
 - (b) the floors, walls, ceilings, furnishings, and other equipment is clean and in good repair, free of hazards, and offensive odors;
 - (c) cleaning equipment and supplies are provided in sufficient quantity to meet the housekeeping needs of the facility; and

(d) a maintenance policy and schedule, which describes the regular maintenance of the facility, is adhered to.

AUTH: 52-2-111, 52-2-603, 52-2-622, MCA

IMP: 52-2-113, 52-2-603, 52-2-622, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing to adopt New Rule I and to amend ARM 37.97.102, 37.97.132 and 37.97.186 pertaining to youth care facilities. New Rule I and the changes to the existing rules are necessary to update the administrative rules to reflect current fire safety standards, replace rules that were inadvertently left out of the 2011 revision and allow for licensure of Child Care Agency – Maternity Homes to admit residents up to the age of 21 pursuant to MAR Notice No. 37-685.

New Rule I

New Rule I is necessary to ensure the safety of all youth served in youth care facilities. New Rule I sets forth current fire safety regulations as required in the International Fire Code. The rule has been written with the assistance of the Montana Fire Prevention and Investigation Bureau. This rule provides for the proper installation and maintenance of fire safety equipment and training for staff and is necessary to ensure all staff and youth are prepared to respond and evacuate appropriately in the event a fire should occur.

ARM 37.97.102

There are two proposed amendments to this rule. The first proposed amendment implements the age requirement in ARM 37.97.102, which rule has been amended to change the age from 21 to 20. The second amendment is necessary to implement changes to ARM 37.50.315 with respect to the Foster Care Classification Model. That change, when effective, will add an additional level to the classification model allowing the department to contract with, and provide payment for Transitional Living Programs. The proposed amendment allows the department to license child care agency-maternity homes to provide the additional level of services.

Additionally, the proposed amendment to the definition of youth allows parenting or pregnant teens up to the age of 21 to be served in a child care agency-maternity home. The request to place older pregnant or parenting youth in a child care agency-maternity home has increased significantly within the past few years. The amended rule is necessary to allow the department to provide a safe environment for older youth while they learn appropriate parenting skills, as well as receive prenatal care in a safe, nurturing environment.

ARM 37.97.132

The proposed amendment is necessary to ensure all youth and staff are transported in a vehicle in a safe manner. The amended rule requires staff to follow all laws applicable to driving in the state of Montana. In addition, this rule allows for providers to employ college students or individuals that recently relocated to Montana that have been issued a driver's license in another state.

ARM 37.97.186

The proposed amendment is necessary to provide for safety elements that were missing and to ensure the facilities are well maintained, clean, and in good repair.

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., February 12, 2015.

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

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

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

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

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

/s/ Susan Callaghan
Susan Callaghan, Attorney
Rule Reviewer

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

Certified to the Secretary of State January 5, 2015.

BEFORE THE STATE PARKS AND RECREATION BOARD AND
THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
12.14.120 pertaining to payment of fees)
for outfitting services)

TO: All Concerned Persons

1. On November 6, 2014, the State Parks and Recreation Board (board) and the Fish and Wildlife Commission (commission) published MAR Notice No. 12-438 pertaining to the proposed amendment of the above-stated rule at page 2707 of the 2014 Montana Administrative Register, Issue Number 21.

2. The commission and board have amended the following rule as proposed but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

12.14.120 COMMERCIAL USE PERMITS (1) through (7) remain as proposed.

(8) A guide hired or contracted by an outfitter to provide authorized services may collect payment on behalf of the outfitter for services provided. Any and all payments must:

(a) ~~not be cash;~~ be collected only with the express consent of the supervising outfitter; and

(b) name the outfitter that hired or contracted the services; ~~and~~

~~(c) be directly deposited to the outfitter that hired or contracted the guide.~~

(9) The requirements in (8) do not prohibit the person a hired or contracted guide from receiving a cash tip that is separate from any the payment received for services provided as authorized by the sponsoring outfitter. ~~Proof of compliance with this rule must be made available to the department upon request. Any violation of these rules is subject to any and all penalties and fines by law.~~

(10) through (14) remain as proposed.

AUTH: 23-1-105, 23-1-106, 23-1-111, 87-1-301, 87-1-303, MCA

IMP: 23-1-105, 23-1-106, 87-1-303, MCA

3. The board and commission have thoroughly considered the comments and testimony received. A summary of the comments received and the responses are as follows:

COMMENT 1: A fishing outfitters' association commented that the current rule language could be simplified to align with current Board of Outfitters rules pertaining to the collection of fees by guides, which require the expressed consent of the outfitter in order for a guide to collect fees from a client. The association also

supported the proposal to allow guides to receive cash tips from any outfitter client fees.

RESPONSE 1: The commission and board adopted language that allows a guide to collect payment on behalf of an outfitter as long as the guide has the express consent of the supervising outfitter and the payment is directly deposited to the outfitter that hired or contracted the guide. The commission and the board also adopted language allowing a guide to receive a tip separate from the payment for services provided.

COMMENT 2: One comment supported the proposed changes with the exception of the language that would have prohibited a guide from collecting a cash payment from a client explaining that it is a common practice in the fishing outfitting industry and that most clients do not pay with a check or credit card.

RESPONSE 2: The commission and the board decided not to adopt the proposed language that would have prohibited cash payment. The commission and the board recognized that clients, particularly nonresident clients, often do not have the ability to pay with a check.

COMMENT 3: One comment stated the Board of Outfitters' rules already allow a guide to collect fees from clients as long as the guide has the express consent of the outfitter and the language was put in place to prevent guides from illegally acting as outfitters. This comment supported applying this language to fishing outfitting but opposed using it for hunting outfitting.

RESPONSE 3: The commission and board adopted language that allows a guide to collect payment on behalf of an outfitter as long as the guide has the express consent of the supervising outfitter and the payment is directly deposited to the outfitter that hired or contracted the guide. The commission and the board did not make a distinction between fishing and hunting outfitting but notes that hunting outfitting is prohibited on lands under the jurisdiction of the commission and the board.

COMMENT 4: One comment expressed concern that by allowing a guide to collect fees from clients, guides would begin to illegally operate as outfitters. They recommended that the commission and the board leave the rules as currently written.

RESPONSE 4: The commission and the board are satisfied that the adopted language requiring the express consent of the supervising outfitter will help to address the concern about guides illegally operating as an outfitter.

COMMENT 5: One comment opposed the proposed changes due to concern that the changes would further the commercialization of the people's wildlife and stated that it should not be that difficult to collect payment via internet, money order, or

other non-personal exchange of funds.

RESPONSE 5: The commission and the board are satisfied that the adopted language requiring the express consent of the supervising outfitter will help to address the concern about guides illegally operating as an outfitter which may help to address this individual's concerns about the further commercialization of wildlife.

/s/ Tom Towe
Tom Towe, Chairman
State Parks and Recreation Board

/s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

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

Certified to the Secretary of State January 5, 2015.

BEFORE THE TRANSPORTATION COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF DECISION ON
ARM 18.6.202, 18.6.203, 18.6.205,) PROPOSED AMENDMENT
18.6.206, 18.6.211, 18.6.212,)
18.6.215, 18.6.231, 18.6.239,)
18.6.251, 18.6.252, pertaining to)
Outdoor Advertising Control)

TO: All Concerned Persons

1. On December 11, 2014, the Department of Transportation published MAR Notice No. 18-153 pertaining to the proposed amendment of the above-stated rules at page 2909 of the 2014 Montana Administrative Register, Issue Number 23.

2. The Department has decided not to amend the above-stated rules at this time due to its identification of further revisions which may be necessary. The department will consider publication of a future notice of proposed amendment pertaining to Outdoor Advertising Control rules at a later date.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Pat Wise
Pat Wise
Deputy Director
Department of Transportation

/s/ Kevin Howlett
Kevin Howlett
Chair
Transportation Commission

Certified to the Secretary of State January 5, 2015.

BEFORE THE BOARD OF RESPIRATORY CARE PRACTITIONERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF AMENDMENT,
ARM 24.213.301 definitions,)	ADOPTION, AND REPEAL
24.213.402 application for licensure,)	
24.213.408 examination, 24.213.415)	
inactive status, 24.213.504)	
authorization to perform testing,)	
24.213.2101 continuing education)	
requirements, 24.213.2104 and)	
24.213.2107 traditional education by)	
organizations, 24.213.2111 teaching -)	
category III, 24.213.2114 papers,)	
publications, journals, and course)	
work, and 24.213.2301)	
unprofessional conduct, the adoption)	
of NEW RULE I training—conscious)	
sedation, and the repeal of ARM)	
24.213.501 institutional guidelines)	
concerning education and certification)	

TO: All Concerned Persons

1. On September 4, 2014, the Board of Respiratory Care Practitioners (board) published MAR Notice No. 24-213-18 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 1960 of the 2014 Montana Administrative Register, Issue No. 17.

2. On September 29, 2014, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Several comments were received by the October 6, 2014, deadline.

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

COMMENT 1: Several commenters expressed concern regarding NEW RULE I and the repeal of ARM 24.213.501, asserting that conscious sedation IV medications should be reserved for trained and educated nurses and advanced practice nurses. The commenters further stated the best practice is to have a respiratory therapist in the room to monitor airway.

RESPONSE 1: The board notes that studies show that respiratory care practitioners trained to perform conscious sedation can provide competent care, reduce costs, and function in settings in which an APRN or RN might not be available.

The American Society of Anesthesiologists' "Practice Guidelines for Sedation and Analgesia by Non-Anesthesiologists" sets guidelines for pulmonary ventilation, oxygenation, etc., for practitioners in a variety of settings who are not specialists in anesthesiology. These guidelines are routinely referenced by other state boards and medical centers. The board relies on Montana health care facilities to set appropriate guidelines and protocols regarding education and training. The board is adopting NEW RULE I and repealing ARM 24.213.501 exactly as proposed.

COMMENT 2: Commenters requested that the board amend ARM 24.213.301(2) to further limit the administration of conscious sedation by a respiratory care provider to procedures related to respiratory care. The commenters also asked the board to set minimum guidelines or protocols for conscious sedation for institutions in NEW RULE I.

RESPONSE 2: The board notes that conscious sedation administered by a respiratory care practitioner would always involve respiratory care, because conscious sedation requires that the airway be continuously and independently maintained so the patient can respond to physical stimulation and verbal commands. The proposed definition is within the scope of 37-28-102, MCA.

The board does not have jurisdiction over institutions and cannot dictate protocols or guidelines for them. Some boards do, by statute, have jurisdiction over programs or facilities, such as the Board of Veterinary Medicine's statutory jurisdiction over Certified Euthanasia Agencies, or the Board of Medical Examiner's statutory mandate to create a physician assistance program for which it dictates terms. However, the board has no statutory authority to set standards for health care facilities. The board is adopting NEW RULE I exactly as proposed.

4. The board has amended ARM 24.213.301, 24.213.402, 24.213.408, 24.213.415, 24.213.504, 24.213.2101, 24.213.2104, 24.213.2107, 24.213.2111, 24.213.2114, and 24.213.2301 exactly as proposed.

5. The board has adopted NEW RULE I (24.213.502) exactly as proposed.

6. The board has repealed ARM 24.213.501 exactly as proposed.

BOARD OF RESPIRATORY CARE
PRACTITIONERS
MARIA CLEMONS, PRESIDING OFFICER

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

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

Certified to the Secretary of State January 5, 2015

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.50.315 pertaining to the)
addition of a new supervision level)
within the foster care classification)
model system)

TO: All Concerned Persons

1. On August 7, 2014, the Department of Public Health and Human Services published MAR Notice No. 37-685 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1772 of the 2014 Montana Administrative Register, Issue Number 15.

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

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

COMMENT #1: Several commenters thanked the department for extending the age of the parenting youth, able to be served in maternity homes, to age 21. The commenters believe the scope of fiscal savings will far exceed the department's projections and they are hopeful that in future rule changes the department will look at further extending the age past 20.

RESPONSE #1: The department thanks the commenters for their comments and support.

COMMENT #2: The Department of Public Health and Human Services (DPHHS), Quality Assurance Division (QAD) applauds the efforts being made by the proposed changes to ARM 37.50.315 with respect to the Foster Care Classification Model. The proposed change adds an additional level to the classification model allowing the department to contract with and provide payment for Transitional Living Programs. However, QAD would like to point out that these changes, while good in intent, do not allow for the licensure of such programs.

The licensure of Child Care Agency (CCA) - Maternity Homes falls under Title 37 chapter 97 and currently does not allow for youth to be served past the age of 18 unless they are participating in the Montana Medicaid program. Child care agencies of and by themselves are not considered Montana Medicaid programs. In order to accomplish what Child and Family Services Division (CFSD) is attempting to accomplish in this rulemaking, changes will need to be made to the licensure rules

and would include allowing a transitional living program to operate within a CCA and serve youth ages 18 to 21.

QAD is prepared to make those rule changes in order to support CFSD and the efforts intended by this proposed rule.

RESPONSE #2: The CFSD agrees with the comment and thanks the QAD for taking the necessary steps to allow for transitional living program licensure in accordance with the changes to the Foster Care Classification Model.

/s/ Susan Callaghan
Susan Callaghan, Attorney
Rule Reviewer

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

Certified to the Secretary of State January 5, 2015.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.85.105 pertaining to the)
revision of fee schedules for Medicaid)
provider rates)

TO: All Concerned Persons

1. On October 23, 2014, the Department of Public Health and Human Services published MAR Notice No. 37-692 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2544 of the 2014 Montana Administrative Register, Issue Number 20.

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

3. No comments or testimony were received.

4. The department intends to apply this rule amendment retroactively to January 1, 2015. A retroactive application of the proposed rule amendment does not result in a negative impact to any affected party.

/s/ Geralyn Driscoll
Geraldyn Driscoll
Rule Reviewer

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

Certified to the Secretary of State January 5, 2015.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF AMENDMENT AND
ARM 42.17.101, 42.17.111,)	REPEAL
42.17.131, 42.17.134, 42.17.222,)	
42.17.602, 42.17.603, and 42.17.605)	
and the repeal of ARM 42.17.219)	
pertaining to withholding and)	
estimated tax payments - general)	
withholding and mineral royalty)	
withholding)	

TO: All Concerned Persons

1. On November 20, 2014, the Department of Revenue published MAR Notice No. 42-2-926 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 2815 of the 2014 Montana Administrative Register, Issue Number 22.

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

3. No comments or testimony were received.

/s/ Laurie Logan
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director of Revenue

Certified to the Secretary of State January 5, 2015.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 44.12.204 pertaining to the)
payment threshold--inflation)
adjustment for lobbyists)

TO: All Concerned Persons

1. On November 20, 2014, the Commissioner of Political Practices published MAR Notice No. 44-2-203 pertaining to the proposed amendment of the above-stated rule at page 2823 of the 2014 Montana Administrative Register, Issue Number 22.

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

3. No comments or testimony were received.

/s/ Jaime MacNaughton
Jaime MacNaughton
Rule Reviewer

/s/ Jonathan R. Motl
Jonathan R. Motl
Commissioner

Certified to the Secretary of State December 22, 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 September 30, 2014. This table includes those rules adopted during the period October 1, 2014, through December 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 September 30, 2014, 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 2014 Montana Administrative Register.

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