MONTANA ADMINISTRATIVE REGISTER

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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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 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) 444-9000.

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PROPOSAL NOTICE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.2.101 pertaining to procedural rules	)	NOTICE OF PROPOSED AMENDMENT
	)	
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On February 23, 2018, the Department of Administration proposes to amend the above-stated rule.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Administration no later than 5:00 p.m. on January 26, 2018, to advise us of the nature of the accommodation that you need. Please contact Gretchen Bingman, Department of Administration, 125 N. Roberts, Room 155, P.O. Box 200101, Helena, Montana 59620-0101; telephone (406) 444-3308; fax (406) 444-6194; Montana Relay Service 711; or e-mail gbingman@mt.gov.

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

2.2.101 MODEL PROCEDURAL RULES (1) The Department of Administration adopts and incorporates by reference the following model rules, which may be found at http://sos.mt.gov/:

(a) the Attorney General's model procedural rules ARM ~~1.3.101, 1.3.102, and~~ 1.3.201, 1.3.202, ~~1.3.210~~ 1.3.211 through 1.3.224, and 1.3.226 through 1.3.233, including the appendix of sample forms in effect ~~October 16, 2009~~ January 2, 2018. These rules provide model rules of practice for contested case hearings and declaratory rulings; and

(b) the Secretary of State's model rules ARM 1.3.101, 1.3.102, 1.3.301, 1.3.302, 1.3.304, 1.3.305, 1.3.307 through 1.3.309, and 1.3.311 through 1.3.313 in effect ~~October 16, 2009~~ January 2, 2018. These rules define model requirements for rulemaking under the Montana Administrative Procedure Act.

AUTH: 2-4-201, MCA
IMP: 2-4-201, MCA

STATEMENT OF REASONABLE NECESSITY: The department is proposing to amend the above-stated rule to ensure its compliance with current Attorney General's and Secretary of State's Model Rules.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Gretchen Bingman, Department of Administration, 125 N. Roberts, Room 155, P.O. Box 200101, Helena, Montana 59620-0101; telephone (406) 444-3308; fax (406) 444-6194; Montana Relay Service 711; or e-mail gbingman@mt.gov, and must be received no later than 5:00 p.m., February 9, 2018.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 4 above no later than 5:00 p.m., February 9, 2018.

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

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 mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding department rulemaking actions. 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.

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

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

10. The department has determined that under 2-4-111, MCA, the proposed amendment will not significantly and directly affect small businesses.

By: /s/ John Lewis
John Lewis, Director
Department of Administration

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

Certified to the Secretary of State January 2, 2018.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.43.3501 and 2.43.5101 pertaining to the adoption by reference of the State of Montana Public Employee Defined Contribution Plan Document and the State of Montana Public Employee Deferred Compensation (457) Plan Document	))))))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On February 24, 2018, the Public Employees' Retirement Board proposes to amend the above-stated rules.

2. The Public Employees' Retirement Board 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 Montana Public Employee Retirement Administration no later than 5:00 p.m. on February 2, 2018 to advise us of the nature of the accommodation that you need. Please contact Kris Vladic, Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail kvladic@mt.gov.

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

2.43.3501 ADOPTION OF DEFINED CONTRIBUTION PLAN DOCUMENT AND TRUST AGREEMENT (1) remains the same.

(a) State of Montana Public Employee Defined Contribution Plan Document (~~December 2015~~ January 2018 edition) that was approved by the board on ~~December 22, 2015~~ December 14, 2017 ~~and subsequently amended April 14, 2016 retroactive to December 22, 2015~~ and describes the terms and conditions related to the operation and administration of the plan;

(b) and (2) remain the same.

AUTH: 19-3-2104, MCA
IMP: 19-3-2102, MCA

2.43.5101 ADOPTION OF DEFERRED COMPENSATION PLAN DOCUMENT AND TRUST AGREEMENT (1) remains the same.

(a) State of Montana Public Employee Deferred Compensation Plan Document (~~August 2015~~ January 2018 edition), that was approved by the board on

~~August 13, 2015~~ December 14, 2017, and describes the terms and conditions related to the operation and administration of the plan; and

(b) and (2) remain the same.

AUTH: 19-50-102, MCA
IMP: 19-50-102, MCA

STATEMENT OF REASONABLE NECESSITY: The Public Employees' Retirement Board, as administrator of the Public Employee Retirement System's Defined Contribution Retirement Plan (DCRP) and the State of Montana 457(b) Deferred Compensation Plan, is proposing to revise the DCRP Plan Document and the Deferred Compensation Plan Document to incorporate recent changes to federal and state law requirements and processes adopted by the Montana legislature effective July 1, 2017.

In the Defined Contribution Retirement Plan Document there are updates to some of the definitions including compensation and rollover accounts. There are also clarifications made regarding employer contributions as well as rollover contributions. In the section regarding transfers from the defined benefit retirement plan, there are updated dates and interest rates that are applied to the transferred funds.

In the State of Montana 457(b) Deferred Compensation Plan Document there are updates to definitions including normal retirement age and the Roth contribution retirement account. There are also clarifications made regarding employer contributions as well as rollover contributions. Another change is to the minimum deferral amount from $10.00 to $20.00 per calendar month for 2018. The IRS has indexed limits for 2018 and the plan document incorporates those maximum deferral amounts for both annual deferral and the age 50 catch-up annual deferral.

The revised plan documents were reviewed and approved by the board at its December 14, 2017 board meeting.

Because the board determined to adopt the original plan documents by reference, 2-4-307(3), MCA, requires that changes to the documents also be adopted by reference. Therefore, it is necessary to amend the rules that adopt the plan documents to indicate the version of the plan documents being adopted by reference.

The plan documents are available on the board's web page at mpera.mt.gov.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-3154; fax (406) 444-5428; or e-mail mpera@mt.gov, and must be received no later than 5:00 p.m., February 9, 2018.

5. If persons who are directly affected by the proposed amendments wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Kris Vladic at the above address no later than 5:00 p.m., February 9, 2018.

6. If the Public Employees' Retirement Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed amendment; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 1,178 persons based on approximately 2,541 participants in the Defined Contribution Retirement Plan and 9,239 participants in the Deferred Compensation Plan as of June 30, 2017, for a total of 11,780 participants.

7. The Public Employees' Retirement Board 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 PER Board.

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 Public Employees' Retirement Board has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Melanie A. Symons
Melanie A. Symons
Chief Legal Counsel
and Rule Reviewer

/s/ Maggie Peterson
Maggie Peterson
President
Public Employees' Retirement Board

Certified to the Secretary of State January 2, 2018.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.59.1738 pertaining to renewal fees for mortgage brokers, lenders, servicers, and originators	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On February 16, 2018, the Department of Administration proposes to amend the above-stated rule.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on February 2, 2018, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 841-2974; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

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

2.59.1738 RENEWAL FEES (1) Licenses issued under Title 32, chapter 9, part 1, MCA, expire December 31. Licensees shall submit their renewal applications by December 1 of each year to ensure issuance of the license to qualified renewal applicants by January 1 of the following year. The renewal fees for the license period January 1 through December 31 are:

(a) mortgage broker entity, $500.00, (except as provided in 32-9-117(1)(b), MCA);

(b) mortgage broker branch, $250.00;

(c) mortgage lender entity, $750.00;

(d) mortgage lender branch, $250.00;

(e) mortgage loan originator, $400.00;

(f) mortgage servicer entity, $750.00; and

(g) mortgage servicer branch, $250.00.

~~(2) The renewal fees listed in (1) are reduced by 50 percent for 2017. This section sunsets on March 1, 2017.~~

AUTH: 32-9-117, MCA
IMP: 32-9-117, 32-9-130, MCA

STATEMENT OF REASONABLE NECESSITY: The department is adding "(except as provided in 32-9-117(1)(b), MCA)" to this rule because this provision

existed prior to the insertion of (2), which sunset on March 1, 2017. The intent of the amendment is to make the renewal fees consistent with the initial license application fees that exist in statute. In addition, the department is earmarking the individual fees in (1) to provide additional clarity.

This amendment pertains to a mortgage broker who is both an individual mortgage loan originator licensee and the owner of a mortgage broker entity. The department does not believe it would be fair to charge separate renewal fees to an individual who is licensed as a mortgage loan originator as well as an owner of a mortgage broker entity.

Under this amendment, a person who owns a mortgage broker entity and is also individually licensed as a mortgage loan originator will pay a single license renewal fee of $500. This represents a $400 decrease in renewal fees for licensees that meet these criteria. There are 128 mortgage broker entities currently licensed in Montana. The division has determined 34 mortgage broker entities have an owner who is also individually licensed as a mortgage loan originator. The department predicts that all affected licensees will renew their licenses. This proposed change to the rule will reduce department revenues by approximately $13,600.

The department is deleting (2) because this provision sunset on March 1, 2017.

4. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., February 9, 2018.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 4 above no later than 5:00 p.m., February 9, 2018.

6. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 13 persons based on the 128 existing mortgage broker licensees.

7. An electronic copy of this proposal notice is available through the department's web site at http://doa.mt.gov/administrativerules. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In

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

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

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

10. The department has determined that under 2-4-111, MCA, the proposed amendment of the above-stated rule will not significantly and directly affect small businesses.

By: /s/ John Lewis
John Lewis, Director
Department of Administration

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

Certified to the Secretary of State January 2, 2018

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the amendment of ARM 6.6.2602, independent liability fund definitions; and the repeal of ARM 6.6.2606, independent liability fund penalties	)))))	NOTICE OF PROPOSED AMENDMENT AND REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI), proposes to amend the above-stated rules.

2. The CSI 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 CSI no later than 5:00 p.m. on January 23, 2018, to advise us of the nature of the accommodation that you need. Please contact Ramona Bidon, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail rbidon@mt.gov.

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

6.6.2602 DEFINITIONS As used in this subchapter ~~ARM 6.6.2601 through 6.6.2606~~ and Title 33, chapter 27, MCA, the following definitions apply unless the context requires otherwise:

(1) "Health" means the extent to which:~~that~~

(a) assets in an independent liability fund are accurately valued; and

(b) ~~really worth the amount assigned to them and that all~~ the investments and assets ~~contained in~~ constituting an independent liability fund meet the criteria established by 33-2-501~~,~~ and 33-2-502,~~ and Title 33, chapter 2, part 8, MCA, and have been properly valued as investments and assets of that nature would be valued under 33-2-532,~~ MCA. ~~"Health" does not mean that the investments and assets contained in an independent liability fund are sufficient to cover claims.~~

(2) "Inviolability" means that the business entity establishing the independent liability fund has provided security, third-party oversight, or both, in accordance with these rules so as to satisfy the commissioner that the investments and assets that comprise the independent liability fund cannot be misappropriated or dissipated ~~in violation of the requirements of the laws governing independent liability funds~~.

(3) ~~"Secure"~~ "Security" means measures taken to provide ~~that there is~~ a reasonable expectation that an independent liability fund will remain inviolable over the time period it is to remain available to pay the costs of third-party liability claims.

(4) ~~"Viable"~~ "Viability" means the extent to which ~~reasonable expectation that~~ the investments and assets ~~that make up~~ constituting an independent liability fund

will retain their value or increase in value over the time period they are to remain available to pay the costs of any third-party liability claim.

AUTH: 33-27-104, MCA
IMP: Title 33, ch. 27, MCA

REASON: The CSI proposes to amend this rule to provide clarification and to eliminate references to now-repealed statutes. Specifically, the rule cites Title 33, chapter 2, part 8, MCA, as well as 33-2-532, MCA, all of which have been repealed. Additionally, the proposal amends definitions to more clearly inform the statutes and rules they apply to. For example, ARM 6.6.2605 uses the concepts "security" and "viability," rather than the current "secure" and "viable."

4. The CSI proposes to repeal the following rule:

6.6.2606 PENALTIES

AUTH: 33-27-104, MCA
IMP: Title 33, ch. 27, MCA

REASON: The CSI proposes to repeal this rule because it restates applicable statutes. Specifically, it states that violations of subchapter 26 are subject to fines under 33-1-317, MCA, after a hearing under 33-1-701, MCA. This process applies to all violations of the Insurance Code and rules promulgated thereunder. Therefore, the rule is superfluous.

5. Concerned persons may submit their data, views, or arguments in writing to: Michael A. Kakuk, Attorney, Commissioner of Securities and Insurance, Office of the Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-5223; fax (406) 444-3499; or e-mail mkakuk@mt.gov, and must be received no later than 5:00 p.m. on February 9, 2018.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Michael A. Kakuk at the above address no later than 5:00 p.m. on February 9, 2018.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 1 person based on the number of independent liability funds currently in existence.

8. The CSI 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 may sign up by clicking on the blue button on the CSI's website at: http://csimt.gov/laws-rules/ and may specify the subject matter they are interested in. Notices will be sent by e-mail unless a mailing preference is noted in the request. Request may also be sent to the CSI in writing. Such written request may be mailed or delivered to the contact information in 2 above, or may be made by completing a request form at any rules hearing held by the CSI.

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 and repeal of the above-referenced rules may significantly and directly impact a small business.

/s/ Michael A. Kakuk	/s/ Kris Hansen
Michael A. Kakuk	Kris Hansen
Rule Reviewer	Chief Legal Counsel

Certified to the Secretary of State January 2, 2018.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
OFFICE OF THE MONTANA STATE AUDITOR

In the matter of the amendment of ARM 6.6.6701, 6.6.6703, 6.6.6705, 6.6.6707, 6.6.6709, 6.6.6711, and 6.6.6713 regarding valuation of life insurance policies	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI), proposes to amend the above-stated rules.

2. The CSI 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 CSI no later than 5:00 p.m. on January 23, 2018, to advise us of the nature of the accommodation that you need. Please contact Ramona Bidon, CSI, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2726; TDD (406) 444-3246; fax (406) 444-3499; or e-mail rbidon@mt.gov.

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

6.6.6701 PURPOSE (1) and (2) remain the same.

AUTH: 33-1-313, 33-2-418, MCA
IMP: ~~33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, 33-2-537~~ 33-2-407, 33-2-408, 33-2-409, 33-2-410, 33-2-411, 33-2-412, 33-2-413, 33-2-414, 33-2-415, 33-2-416, 33-2-417, MCA

REASON: The CSI proposes to amend ARM 6.6.6701, 6.6.6703, 6.6.6705, 6.6.6707, 6.6.6709, 6.9.6711, and 6.6.6713 to update citations to the implementing statutes. In 2015, the Legislature renumbered all implementation statutes for this rule. This amendment renumbers the statutes accordingly. Additionally, the renumbering resulted in the applicability of an additional authorizing statute, which is proposed to be added.

6.6.6703 APPLICABILITY (1) and (2) remain the same.

AUTH: 33-1-313, 33-2-418, MCA
IMP: ~~33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, 33-2-537~~ 33-2-407, 33-2-408, 33-2-409, 33-2-410, 33-2-411, 33-2-412, 33-2-413, 33-2-414, 33-2-415, 33-2-416, 33-2-417, MCA

6.6.6705 DEFINITIONS For purposes of this subchapter ~~these rules~~:

(1) "Basic reserves" means reserves calculated in accordance with ~~33-2-525~~ 33-2-411, MCA.

(2) remains the same.

(3) "Deficiency reserves" means the excess, if greater than 0, of minimum reserves calculated in accordance with ~~33-2-526~~ 33-2-412, MCA, over basic reserves.

(4) remains the same.

(5) "Maximum valuation interest rates" means the interest rates defined in ~~33-2-527~~ 33-2-413, MCA, that are to be used in determining the minimum standard for the valuation of life insurance policies.

(6) through (12) remain the same.

AUTH: 33-1-313, 33-2-418, MCA

IMP: ~~33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, 33-2-537~~ 33-2-407, 33-2-408, 33-2-409, 33-2-410, 33-2-411, 33-2-412, 33-2-413, 33-2-414, 33-2-415, 33-2-416, 33-2-417, MCA

REASON: In addition to the reasons referenced under ARM 6.6.6701, the CSI proposes to amend this rule to update citations in the text of the rule to statutes that were renumbered in 2015.

6.6.6707 GENERAL CALCULATION REQUIREMENTS FOR BASIC RESERVES AND PREMIUM DEFICIENCY RESERVES (1) remains the same.

(2) Deficiency reserves, if any, are calculated for each policy as the excess, if greater than 0, of the quantity A over the basic reserve. The quantity A is obtained by recalculating the basic reserve for the policy using guaranteed gross premiums instead of net premiums when the guaranteed gross premiums are less than the corresponding net premiums. At the election of the insurer for any one or more specified plans of insurance, the quantity A and the corresponding net premiums used in the determination of quantity A may be based upon the 1980 CSO valuation tables with select mortality factors. If select mortality factors are elected, they may be:

(a) through (6) remain the same.

AUTH: 33-1-313, 33-2-418, MCA

IMP: ~~33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, 33-2-537~~ 33-2-407, 33-2-408, 33-2-409, 33-2-410, 33-2-411, 33-2-412, 33-2-413, 33-2-414, 33-2-415, 33-2-416, 33-2-417, MCA

REASON: In addition to the reasons referenced under ARM 6.6.6701, the CSI proposes to amend this rule to insert a word inadvertently omitted at the rule's adoption. This subchapter is based upon the National Association of Insurance Commissioners Valuation of Life Insurance Policies Model Regulation. A review of the model confirms the word "factors" should be inserted as indicated above, as is clear from the context of the rule itself.

6.6.6709 CALCULATION OF MINIMUM VALUATION STANDARD FOR POLICIES WITH GUARANTEED NONLEVEL GROSS PREMIUMS OR GUARANTEED NONLEVEL BENEFITS (OTHER THAN UNIVERSAL LIFE POLICIES) (1) through (15) remain the same.

AUTH: 33-1-313, 33-2-418, MCA
IMP: ~~33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, 33-2-537~~ 33-2-407, 33-2-408, 33-2-409, 33-2-410, 33-2-411, 33-2-412, 33-2-413, 33-2-414, 33-2-415, 33-2-416, 33-2-417, MCA

6.6.6711 CALCULATION OF MINIMUM VALUATION STANDARD FOR FLEXIBLE PREMIUM AND FIXED PREMIUM UNIVERSAL LIFE INSURANCE POLICIES THAT CONTAIN PROVISIONS RESULTING IN THE ABILITY OF A POLICYOWNER TO KEEP A POLICY IN FORCE OVER A SECONDARY GUARANTEE PERIOD (1) through (8) remain the same.

AUTH: 33-1-313, 33-2-418, MCA
IMP: ~~33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, 33-2-537~~ 33-2-407, 33-2-408, 33-2-409, 33-2-410, 33-2-411, 33-2-412, 33-2-413, 33-2-414, 33-2-415, 33-2-416, 33-2-417, MCA

6.6.6713 SELECT MORTALITY FACTORS (1) through (5) remain the same.

AUTH: 33-1-313, 33-2-418, MCA
IMP: ~~33-2-521, 33-2-522, 33-2-523, 33-2-524, 33-2-525, 33-2-526, 33-2-527, 33-2-528, 33-2-529, 33-2-531, 33-2-537~~ 33-2-407, 33-2-408, 33-2-409, 33-2-410, 33-2-411, 33-2-412, 33-2-413, 33-2-414, 33-2-415, 33-2-416, 33-2-417, MCA

4. Concerned persons may submit their data, views, or arguments in writing to: Michael A. Kakuk, Attorney, Office of the Commissioner of Securities and Insurance, Montana State Auditor, 840 Helena Ave., Helena, Montana, 59601; telephone (406) 444-5223; fax (406) 444-3499; or e-mail mkakuk@mt.gov, and must be received no later than 5:00 p.m. on February 9, 2018.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Michael A. Kakuk at the above address no later than 5:00 p.m. on February 9, 2018.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 45

persons based on the number of life insurers with a Montana certificate of authority. Almost all of the rule changes are non-substantive and have no impact on any party, but are necessary for the CSI to satisfy its requirements for periodic review of administrative rules.

7. The CSI 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 may sign up by clicking on the blue button on the CSI's website at: http://csimt.gov/laws-rules/ and may specify the subject matter they are interested in. Notices will be sent by e-mail unless a mailing preference is noted in the request. Request may also be sent to the CSI in writing. Such written request may be mailed or delivered to the contact information in 2 above, or may be made by completing a request form at any rules hearing held by the CSI.

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/ Michael A. Kakuk	/s/ Kris Hansen
Michael A. Kakuk	Kris Hansen
Rule Reviewer	Chief Legal Counsel

Certified to the Secretary of State January 2, 2018.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I, II, III, IV, V, and VI pertaining to Wildlife Habitat Noxious Weed Grant Program	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On February 13, 2018, at 2:00 p.m., the Department of Fish, Wildlife and Parks (department) will hold a public hearing at the Fish, Wildlife and Parks Headquarters Building, 1420 East 6th Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The department 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 February 2, 2018, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

3. REASON: House Bill 434 of the 2017 legislative session, codified in Title 87, chapter 5, part 8 of the Montana Code Annotated, establishes the Wildlife Habitat Improvement Program that makes funding available to qualified applicants to address encroachment, management, and eradication of noxious weeds in priority wildlife habitat to restore wildlife habitat to benefit priority wildlife species. Specifically, the statute allows the department to expend money to restore, rehabilitate, improve, or manage areas of land as wildlife habitat through controlling or eradication of noxious weeds and improved grazing practices. Funding for the Wildlife Habitat Improvement Program is primarily from the Pittman-Robertson Federal Aid in Wildlife Restoration Act. These federal funds are restricted to specific wildlife conservation activities and require U.S. Fish and Wildlife Service (USFWS) approval prior to awarding funds. One purpose of these administrative rules is to assure that funding proposals meet the minimum eligibility requirements for consideration by the USFWS.

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

NEW RULE I DEFINITIONS In addition to the definitions provided in 87-5-802, MCA, the following definitions apply to this subchapter:

(1) "Measurable objective" means an anticipated response in vegetation that will be measured to evaluate the effectiveness of a treatment to restore, rehabilitate, improve, or manage land as wildlife habitat through noxious weed management.

(2) "Priority habitat" means plant communities or settings that provide a unique, high value habitat, important to one or more priority wildlife species.

(3) "Priority wildlife species" means species of conservation concern or game species that are recognized by the state of Montana for their ecological, economic, or recreational values.

(4) "Project area" means land comprising treatments and the area where benefits are anticipated, such as a watershed, ecological unit, or other defined area.

(5) "Project sponsor" means the local, state, or national organization, either public or private, administering a project.

(6) "Treatment areas" means specific sites where noxious weed management treatments occur.

(7) "Weed management strategy" means a planning document that provides direction for identifying, prioritizing, and treating noxious weeds.

(8) This rule expires June 30, 2023, pursuant to 87-5-808, MCA.

AUTH: 87-5-808, MCA
IMP: 87-5-803, 87-5-804, 87-5-805, 87-5-806, 87-5-807, MCA

NEW RULE II ELIGIBLE EXPENDITURES (1) Expenditures of grant and required non-federal matching funds may only be used for biological or mechanical control of noxious weeds, purchases and application of approved herbicides, seed purchases and application of seed; and grazing costs as a component of an overall integrated noxious weed management plan, which includes the following:

(a) specified goods limited to herbicides and additives, biological control agents, or materials required for restoration, reseeding, or prescribed grazing management; and

(b) specified services limited to herbicide application; biocontrol agent release; seedbed preparation, seeding, and seedling maintenance; and installation of prescribed grazing infrastructure.

(2) All expenditures of grant and matching funds shall be documented with original invoiced receipts.

(3) This rule expires June 30, 2023, pursuant to 87-5-808, MCA.

AUTH: 87-5-808, MCA
IMP: 87-5-803, 87-5-804, 87-5-805, 87-5-806, 87-5-807, MCA

NEW RULE III APPLICATION PROCEDURE (1) Grant proposals will be solicited annually on dates established by the department.

(2) Proposals with incomplete information may be rejected.

(3) The applicant may request assistance from the department in completing the application. The department will provide such assistance, the level of which will be determined by availability of staff and funds.

(4) The department will review and provide analysis to the advisory council regarding adherence to eligibility and application requirements. The advisory council will review, rank, and recommend proposed projects and funding according to this subsection. Advisory council recommendations will be submitted to the department for final review and determination of funding. The applicant will receive written notification from the department of the action taken on the proposal.

(5) This rule expires June 30, 2023, pursuant to 87-5-808, MCA.

AUTH: 87-5-808, MCA
IMP: 87-5-803, 87-5-804, 87-5-805, 87-5-806, 87-5-807, MCA

NEW RULE IV GRANT APPLICATIONS (1) Grant applications must address how projects would restore, rehabilitate, improve, or manage land as wildlife habitat through noxious weed management, and must contain the following criteria:

(a) the name, address, and telephone number of the project sponsor, project manager, and liaison (if different than manager);

(b) the title or name of the proposed project;

(c) the total grant amount requested;

(d) the location and size (area) of the proposed project and maps depicting the specific location of the project area, ownership of participating lands, and treatment areas;

(e) a brief description of the history and background of the project;

(f) a description of priority wildlife species and habitat(s) involved and how the targeted noxious weeds are specifically impacting wildlife habitat functions;

(g) a description of the need and urgency of the proposed project, including details of how the project would restore, rehabilitate, improve, or manage land as wildlife habitat through noxious weed management;

(h) a description of the measurable objectives of the project, including acres of priority habitat to benefit from the proposed project;

(i) a treatment plan as described in (2);

(j) a funding plan as described in (3);

(k) a statement that the project sponsor, if the grant receives approval, is willing to enter into a contract with the department for utilization of grant funds and required documentation, reporting, and monitoring; and

(l) a layout of a monitoring plan as described in (4). The monitoring plan allows the department to analyze how noxious weed management is restoring, rehabilitating, improving, or managing land as wildlife habitat. Monitoring shall provide actual results of the proposed measurable objectives.

(2) The treatment plan must include the following:

(a) an inventory of the current weed infestation in the project area and surrounding vicinity;

(b) a description of native plant life and occurrence in association with weed infestations;

(c) a description of causative factors for the weed infestation and how those may be addressed;

(d) a description of proposed treatment methods including a schedule of major project phases; a list of herbicides, biological control agents, and cultural methods; acreage estimate of treatments; proportion of infestation to be treated; anticipated follow-up treatment(s);

(e) measures to minimize impacts to non-target plant species; and

(f) post treatment management to reduce susceptibility to weed invasion.

(3) The funding plan must include the following:

(a) a list of partners and their respective non-federal cash commitments sufficient to meet grant matching requirements;

(b) leveraged funds and in-kind contributions that are in addition to the minimum non-federal match requirements; and

(c) signed letters of commitment from funding partners that identify the partner role, the source and amount of funds committed, and other contributions toward the proposed project.

(4) The layout of the monitoring plan must include the following:

(a) documentation of pre- and post-treatment conditions using repeatable quantitative and photographic methods:

(i) for herbicide and cultural treatments, measurements of targeted noxious weeds and native plant life, to be annually conducted at representative treatment locations during the treatment year and three consecutive years post-treatment; and

(ii) for biocontrol methods, three years of post-release sampling to determine occurrence of biocontrol agent. Measurements of targeted noxious weeds and native plant life at representative release locations, during the treatment year and years three and five post-treatment.

(5) This rule expires June 30, 2023, pursuant to 87-5-808, MCA.

AUTH: 87-5-808, MCA
IMP: 87-5-803, 87-5-804, 87-5-805, 87-5-806, 87-5-807, MCA

NEW RULE V GRANT APPLICATION SCORING AND RANKING (1) Prior to scoring by the council, the department will review and provide analysis to the advisory council regarding application completeness and adherence to eligibility and application requirements.

(2) The council will make funding recommendations to the department based upon the final rank scores. The department will make final decisions on which projects will be recommended for funding. Approval of project grant proposals is ultimately at the discretion of the U.S. Fish and Wildlife Service Federal Aid program.

(3) Scoring criteria is the primary guide for ranking applications and for determination of grant viability. Additional factors outside of the scoring criteria may be considered. Applications that meet minimum qualifications will receive a score based on the following criteria:

(a) Proposal involves a noxious weed threat with compelling information on how the infestation directly diminishes the effectiveness of a priority habitat to support one or more priority wildlife species. (0 to 20 pts)

(b) Proposal would significantly reduce or resolve noxious weed threat and support habitat effectiveness over a sizable portion of priority habitat and associated watersheds. Applications that do not include a minimum acreage of priority habitat to benefit from grant funding will receive zero points. (0 to 20 pts)

(c) Project would help implement an established weed management strategy, is technically feasible, and would maintain or restore native vegetation. (0 to 10 pts)

(d) Management of project area addresses the primary spread of noxious weeds to native wildlife habitats (up to 5 pts) while also providing for native plant community health to reduce susceptibility to weed invasion (up to 5 pts). (0 to 10 pts)

(e) Project involves funding commitments from multiple partners (up to 5 pts) and leverages additional funding or in-kind contribution beyond the minimum required (up to 5 pts). (0 to 10 pts)

(f) Project demonstrates an effective collaboration across multiple land ownerships. Cooperative Weed Management Areas, as defined in the Montana State Weed Management Plan, would receive the highest points. (0 to 15 pts)

(g) Project area provides access for public. (0 to 15 pts)

(h) Monitoring plan meets or exceeds requirements as described in [NEW RULE IV]. (0 to 10 pts)

(i) The grant application, including proposal information, funding plan, and monitoring plan, is clear, well organized, and reflects a high likelihood of success for all aspects of the proposed project. (0 to 10 pts)

(4) This rule expires June 30, 2023, pursuant to 87-5-808, MCA.

AUTH: 87-5-808, MCA
IMP: 87-5-803, 87-5-804, 87-5-805, 87-5-806, 87-5-807, MCA

NEW RULE VI GRANTS (1) Successful applicants for grants funded by federal Pittman-Robertson Wildlife Restoration funding are federal grant sub-recipients subject to administrative requirements of the Pittman-Robertson Wildlife Restoration Act, including Title 51 CFR 80.20-160.

(2) Grants may be up to 5 years in duration although funding allocations will be provided on an annual basis; after the first year, annual allocations will be dependent upon satisfactory completion of grant award requirements (implementation and reporting) the previous year.

(3) Grants will be on a reimbursable basis. Reimbursement will be based on documented, eligible expenses up to the amount awarded and in proportion to spending of eligible match.

(4) Minimum criteria to qualify for a grant are listed as follows and serve as a basis for competitive ranking of proposals:

(a) the project must enhance priority habitats for one or more priority wildlife species through control, management, or eradication of noxious weeds;

(b) noxious weed invasion must represent a direct threat to priority habitat function;

(c) the project area must include ecologically important wildlife habitat that is in need of restoration;

(d) the project would have a reasonable probability of treatment effectiveness that includes effective methodology, anticipated plant community recovery, preservation of non-target plant species, post treatment management;

(e) the proposal exhibits a landscape scale approach or benefit;

(f) the project must include a minimum 25% nonfederal match and must meet additional match requirements depending on the funding source of the project. The proposal must describe the source and type of nonfederal match. The match funds may only be spent on eligible grant activities as described in [NEW RULE II]; and

(g) projects must occur in an eligible county as required by the Montana Wildlife Habitat Improvement Act, 87-5-801 through 87-5-808, MCA.

(5) Reports of monitoring results shall be provided to the department by the end of December of each year.

(6) The department may develop standardized monitoring techniques, consistent with these rules.

(7) This rule expires June 30, 2023, pursuant to 87-5-808, MCA.

AUTH: 87-5-808, MCA
IMP: 87-5-803, 87-5-804, 87-5-805, 87-5-806, 87-5-807, MCA

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: Wildlife Habitat Improvement Program ARM Comments, Attn: Nick Mulvaney, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail FWPNoxiousWeeds@mt.gov, and must be received no later than February 16, 2018.

5. Kaedy Gangstad or another person appointed by the department has been designated to preside over and conduct this hearing.

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 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, or may be made by completing the request form at any rules hearing held by the department.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was notified in person on November 14, 2017.

8. 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/ Aimee Hawkaluk
Aimee Hawkaluk
Rule Reviewer

/s/ Martha Williams
Martha Williams
Director
Department of Fish, Wildlife and Parks

Certified to the Secretary of State January 2, 2018.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to a Pilot Program for Aquatic Invasive Species in the Flathead Basin	))))	NOTICE OF PUBLIC HEARINGS ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On February 6, 2018, at 2:00 p.m., the Department of Fish, Wildlife and Parks (department) will hold a public hearing at the Fish, Wildlife and Parks Region 1 Office, 490 North Meridian Road, Kalispell, Montana, to consider the proposed adoption of the above-stated rule.

On February 6, 2018, at 2:00 p.m., the department will hold a public hearing at the Fish, Wildlife and Parks Region 2 Office, 3201 Spurgin Rd, Missoula, Montana, to consider the proposed adoption of the above-stated rule.

2. The department 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 January 26, 2018, to advise us of the nature of the accommodation that you need. Please contact Kaedy Gangstad, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail kgangstad@mt.gov.

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

<u>NEW RULE I PILOT PROGRAM FOR FLATHEAD BASIN</u> (1) Vessels and equipment traveling into the Flathead Basin that have been used on waters outside of the Flathead Basin must be inspected at a department inspection station prior to launching within the Flathead Basin.

(2) Emergency response vehicles and equipment engaging in emergency response activities are exempt.

(3) Violation of this rule is subject to penalty under 80-7-1014, MCA.

(4) This rule expires June 30, 2019, pursuant to 80-7-1027, MCA.

AUTH: 80-7-1007; 80-7-1010, 80-7-1027, MCA
IMP: 80-7-1027, MCA

REASON: 80-7-1027, MCA, creates a pilot program for addressing aquatic invasive species (AIS) issues in the Flathead Basin. FWP has been working with concerned citizens and groups in attempting to implement rules for this pilot program. In addition, the Confederated Salish and Kootenai Tribes (CSKT) have requested that FWP create rules to add inspection requirements for watercraft entering the

Flathead Basin. The intent of the new rule is to add an additional layer of protection in the Flathead Basin to help prevent the transport and introduction of AIS.

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: Tom Woolf, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; or e-mail Thomas.Woolf@mt.gov, and must be received no later than February 9, 2018.

5. Kaedy Gangstad or another person 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 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, or may be made by completing the request form at any rules hearing held by the department.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was notified via e-mail and telephone on December 13, 2017.

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

/s/ Aimee Hawkaluk
Aimee Hawkaluk
Rule Reviewer

/s/ Martha Williams
Martha Williams
Director
Department of Fish, Wildlife and Parks

Certified to the Secretary of State January 2, 2018.

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

In the matter of the amendment of ARM 24.16.102, 24.16.211, 24.16.1010, 24.16.1508, 24.16.7514, 24.16.7517, 24.16.7520, 24.16.7521, and 24.16.7527 and repeal of ARM 24.16.2301, 24.16.6501, 24.16.6701, and 24.16.7547 all relating to payment of wages, minimum wage, and overtime	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On February 6, 2018, at 9:00 a.m., the Department of Labor and Industry will hold a public hearing in Conference Room A & B, 1805 Prospect, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Labor and Industry 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 Labor & Industry no later than 5:00 p.m. on January 31, 2018, to advise us of the nature of the accommodation that you need. Please contact Amber Carpenter, Department of Labor & Industry, PO Box 201503, Helena, Montana, 59624; telephone (406) 444-1376; fax (406) 444-7071; TDD/Montana Relay Service/etc (406) 444-0532, or e-mail acarpenter@mt.gov.

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

24.16.102 ~~GENERAL TERMS USED~~ DEFINITIONS (1) "Administrator" means the administrator of the Employment Relations Division, Montana Department of Labor and Industry. The commissioner of Labor and Industry has delegated to the administrator the functions vested in ~~him~~ the commissioner.

(2) "Amusement or recreational area" means a location that is characterized as being, or immediately adjacent to, a destination location such as a national park, ski area, or vacation resort area.

(3) "Amusement or recreational establishment" means businesses with locations at an amusement or recreational area, such as the concessionaires at amusement parks, resorts, and ski areas. The term does not include food services or hospitality establishments located in the area, other than direct concessionaires of the primary amusement or recreational area operator.

(4) ~~(2)~~ "Division" means the Employment Relations Division of the Montana Department of Labor and Industry.

(5) "Establishment" refers to a distinct physical place of business rather than to an entire business or enterprise which may include several separate places of business.

(6) "Independent contractor" means an individual working under an independent contractor exemption certificate provided for in 39-71-417, MCA.

(7) "Nonprofit" means a nonprofit corporation as defined in Title 35, chapter 2, MCA.

(8) "Organized camp" means a camp which:

(a) provides a sustained experience with a creative recreational and educational opportunity in a group living setting in the outdoors; and

(b) uses trained leadership and the resources of the natural surroundings to contribute to each camper's mental, physical, social, and spiritual growth.

(9) "Religious or educational conference center" is a meeting center providing for religious, educational and leadership growth experiences for youth or adults.

(10) "Seasonal" means seven months or less.

(11) "Student" means an individual who is attending an accredited school, college or university and is employed on a part-time basis.

AUTH: 39-3-202, 39-3-403, 39-71-417, MCA
IMP: 39-3-201, 39-3-401, ~~et seq.,~~ 39-3-404, 39-3-405, 39-3-406, 39-71-417, MCA

REASON: Reasonable necessity exists to modify this rule and implementation citation to implement modifications in statute as to seasonal camps, as well as to facilitate the repeal of ARM 24.16.6501, ARM, which was written in an archaic and non-conforming style. Reasonable necessity exists to define "independent contractor" so that the definition is in line with departmental policy and programs and to ensure compliance with and utilization of the independent contractor exemption certificate program. This definition is additionally necessary to conform with proposed modifications to ARM 24.16.7520.

24.16.211 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES ~~(1) As used in this rule, including those materials incorporated by reference, the following definitions apply:~~

~~(a) "Act" means the minimum wage and overtime laws, as found at Title 39, chapter 3, part 4, MCA.~~

~~(b) "Administrator" means the administrator of the employment relations division of the department.~~

~~(c) "Commissioner" means the commission of labor and industry.~~

~~(d) "Department" means the Department of Labor and Industry"~~

(2) and (3) remain the same but are renumbered (1) and (2).

~~(4) Section 39-3-406, MCA, does not recognize a minimum wage or overtime exemption for certain computer employees, as described in 29 CFR part 541, subpart E. Accordingly, the references to exemptions for computer employees that are contained in the following rules do not apply in Montana:~~

~~(a) 29 CFR 541.600;~~

~~(b) 29 CFR 541.702;~~
~~(c) 29 CFR 541.705;~~
~~(d) 29 CFR 541.708; and~~
~~(e) 29 CFR 541.710.~~

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

(b) An electronic copy of the regulations incorporated by reference is available ~~via the internet by following the links at the following web sites:~~ at

~~(i) http://erd.dli.mt.gov/~~ http://erd.dli.mt.gov/labor-standards/wage-and-hour-payment-act (Montana Department of Labor and Industry web site)~~.; and~~

~~(ii) http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=48d6ee3b99d3b3a97b1bf189e1757786&rgn=div5&view=text&node=29:3.1.1.1.22&idno=29#29:3.1.1.1.22.2 (National Archives and Records Administration web site).~~

AUTH: 39-3-403, MCA
IMP: 39-3-401, 39-3-406, 39-3-408, MCA

REASON: Reasonable necessity exists to eliminate (1) to enhance clarity and reduce length of the administrative rules. Several of these definitions are duplicated in ARM 24.16.102, and others are duplicative of statute. Reasonable necessity exists to strike current (4) due to the amendment of 39-3-406(1)(j), MCA, to include the exemption previously unrecognized. That exemption was added to the code in House Bill 226 during the 2013 legislative session. Reasonable necessity exists to modify (5) to fix broken web links and to provide better information to the public as to where information regarding these laws can be found.

24.16.1010 TRAVEL TIME (1) through (5) remain the same.

(6) ~~Travel away from home community.~~ Travel that keeps an employee away from home overnight is travel away from home. Travel away from home is clearly worktime when it cuts across the employee's workday. The employee is simply substituting travel for other duties. The time is not only hours worked on regular working days during normal working hours but also during the corresponding hours on nonworking days. Thus, if an employee regularly works from 9 a.m. to 5 p.m. from Monday through Friday the travel time during these hours is worktime on Saturday and Sundays as well as on the other days. Regular meal period time is not counted. ~~As an enforcement policy the Divisions will not consider as worktime that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.~~

(7) and (8) remain the same.

AUTH: 39-3-403, MCA
IMP: 39-3-404, 39-3-405, MCA

REASON: Reasonable necessity exists to strike the sentence within (6) to ensure compliance with the statutory requirement that employees be paid where they are "suffered or permitted" to work. Because there is benefit to an employer when an employee travels for work, travel time must be compensated when away from the

home community. This change is in line with current enforcement practices of the department. Reasonable necessity exists to strike the catchphrase for (6) because it is archaic and no longer complies with applicable rule drafting form.

24.16.1508 TIPS OR ~~GRATUITIES~~ SERVICE CHARGES ~~(1) Tips are the employees to keep and may not be used by the employer to make up any part of the employees wage.~~

~~(2)~~(1) ~~General characteristics of tips.~~ A tip is a sum presented by a customer as a gift or gratuity in recognition of some service performed ~~for him~~. It is to be distinguished from payment of a charge, if any, made for the service. Whether a tip is to be given, and its amount, are matters determined solely by the customer, and generally ~~he~~ the customer has the right to determine who shall be the recipient of ~~his~~ the gratuity.

~~(3)~~(a) ~~Payments which constitute tips.~~ In addition to cash sums presented by customers which an employee keeps ~~as his own~~, tips received by an employee include, amounts paid by bank check or other negotiable instrument payable at par and amounts transferred by the employer to the employee pursuant to directions from credit customers who designate amounts to be added to their bills as tips.

(b) Tips are the employees' to keep and may not be used by the employer to make up any part of the employees' wage.

(c) Tips may be distributed pursuant to a valid tip pool agreement. A tip pool agreement for the purpose of distribution of tips is valid only where voluntarily entered into by employees without the involvement of management. Employees must first determine whether to enter into a tip pool agreement, and if so, the details of that agreement. Where a valid tip pool agreement has been created, management may enforce the agreement.

(2) A service charge includes any arbitrary fixed charge added to the customer's bill by an employer in lieu of a tip, no matter what it is labelled (i.e., service charge, setup fee, house fee, service fee, labor charge, etc.).

(a) Absent a valid tip pool agreement, a service charge must be distributed equally among nonmanagement employees involved in food preparation or service, or a related service. Equal distribution must be among those workers who performed services during the particular shift or event where the service charge was earned and must be distributed on a pro rata basis.

(b) A valid tip pool agreement may be created by management for the distribution of a service charge. The tip pool agreement is valid for the purpose of distribution of service charges so long as it distributes all service charge monies to nonmanagement employees.

(c) A service charge may not be utilized to make up any part of an employees' wage.

(3) Where tips or service charges are charged on a credit card and the employer must pay the credit card company a percentage on each sale, the employer may pay the employee the tip, less that percentage. The employer must keep records of all such deductions.

AUTH: 39-3-202, 39-3-403, MCA
IMP: 39-3-201, 39-3-402, MCA

REASON: There is reasonable necessity to modify this rule to provide for clarification as to the distinctions between service charges and tips, and to acknowledge the distinction and limitations on tip pools for the purpose of tips versus tip pools for the purpose of service charges. The contours of this rule, particularly with regard to voluntariness, are further intended to ensure compliance with *Oregon Rest. & Lodging Ass'n v. Perez*, 2016 U.S. App. LEXIS 3119, which determined that tip pool agreements imposed by management were invalid pursuant to the Fair Labor Standards Act, and accompanying federal administrative rules. It must be noted that voluntariness of a tip pool for the sharing of tips does not require the elimination and re-creation of a new tip pool with each new employee of an entity. Instead, a pre-existing tip pool could continue with documentation that new employees have been permitted to opt-in or opt-out of the pre-existing pool. Further, employees may come together to modify or eliminate tip pool agreements for distribution of tips as they choose.

Reasonable necessity exists to create (3) to clarify existing enforcement practices, consistent with federal interpretation of credit card transaction fees, that the employer is permitted to deduct from tips and service charges the same percentage as the transaction fee. As stated in U.S. Department of Labor Fact Sheet #15, "For example, where a credit card company charges an employer 3 percent on all sales charged to its credit service, the employer may pay the tipped employee 97 percent of the tips without violating the FLSA." Reasonable necessity exists to update the authorizing and implementing statutes to clarify that these rules apply to both minimum wage and overtime statutes as well as payment of wages statutes.

24.16.7514 COMPUTATION OF TIME PERIODS (1) remains the same.

(2) For the purpose of these rules, an item sent to the department ~~is timely if it is either postmarked or~~ must be received by the department ~~by~~ not later than the last day of the time period.

(3) remains the same.

AUTH: 39-3-202, 39-3-403, MCA
IMP: 39-3-202, 39-3-403, MCA

REASON: Reasonable necessity exists to modify (2) to ensure conformity between departmental programs as to timely filings, and to ensure a date certain for the filing of documents with the department.

24.16.7517 ~~FACSIMILE~~ ELECTRONIC FILINGS (1) Any document required or allowed to be filed with the department may be filed by electronic mail or by means of a telephonic facsimile communication device (fax).

(2) An electronic mail (e-mail) filing must be by way of a Portable Document Format (.pdf) attachment to an e-mail; the submitted document will not be accepted where it is transmitted solely in the body of an e-mail.

~~(2)~~ (3) Filings with the department by electronic mail or facsimile are subject to the following conditions:

(a) a filing must conform with all applicable rules, except that only one copy of a document need be filed by electronic mail or facsimile even when multiple copies otherwise would be required;

(b) remains the same.

(c) ~~The original document and any copies must be received by the department within five days of the facsimile transmittal or the filing will not be recognized as timely.~~ it is the responsibility of the filing party to ensure that electronic mail or facsimile filed documents are received by the department. The failure, malfunction, or unavailability of electronic filing equipment does not excuse a party from the requirements of timely filing.

~~(3) The failure, malfunction, or unavailability of facsimile equipment does not excuse a party from the requirements of timely filing.~~

AUTH: 39-3-202, 39-3-403, MCA
IMP: 39-3-202, 39-3-211, 39-3-403, 39-3-407, MCA

REASON: Reasonable necessity exists to modify this rule to permit more modern filing practices, and to reduce the necessity for the filing of paper copies of documents. Reasonable necessity exists to update implementation statutes to more accurately reflect the statutes which are implemented through the promulgation of this rule.

24.16.7520 PROCEDURE FOR ISSUING WAGE CLAIM DETERMINATIONS REGARDING EMPLOYMENT STATUS OF INDEPENDENT CONTRACTOR (1) remains the same.

(2) To be considered an independent contractor for wage claim purposes, the individual must hold and be working under an independent contractor exemption certificate pursuant to 39-71-417, MCA, where such is required. When an individual is not required to hold an independent contractor exemption certificate, ~~The~~ the test for determining whether an individual is acting as an independent contractor for wage claim purposes is that found at ARM 24.35.202.

(3) An individual required to hold and work under an independent contractor exemption certificate pursuant to 39-71-417, MCA, who does not is an employee for wage claim purposes.

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

AUTH: 39-3-202, 39-3-403, 39-71-417, MCA
IMP: 39-3-201, 39-3-402, 39-71-417, MCA

REASON: Reasonable necessity exists to modify this rule to conform the wage and hour programs to the provisions creating the independent contractor central unit and the statutory obligations of independent contractors to hold and work under an independent contractor exemption certificate. See 39-71-417 and 39-71-418, MCA. Based on the authority of the department to interpret its statutes, in particular those listed above generally defining independent contractors, this rule stems from the department's interpretation of these laws. In addition, this change permits employers the benefits of a determination before the start of work as the working

status of those it hires—whether the worker holds an ICEC or not is dispositive as to the worker's status. This determination has been dispositive for many years for purposes of workers' compensation and unemployment insurance. However, absent defined clarity and adoption of the ICEC as dispositive for independent contractor purposes for the Wage Payment Act and the Minimum Wage and Overtime Act, litigation around the common law AB test has been required. This modification simplifies and streamlines the worker status determination. Reasonable necessity exists to update the authorization and implementing statutes to reflect these changes.

24.16.7521 FILING A CLAIM (1) through (3) remain the same.

(4) Wage claim forms can be obtained from the Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, either in person, by telephone, online, or by mail. The street address of the Labor Standards Bureau is 1805 Prospect Ave, Helena, Montana. The mailing address is P.O. Box ~~1728~~ 201503, Helena, Montana 59620-1503 ~~59624-1728~~. The telephone number is (406) 444-5600. The web address is http://erd.dli.mt.gov/labor-standards/wage-and-hour-payment-act/filing-a-wage-claim.

(5) remains the same.

AUTH: 39-3-202, 39-3-403, MCA
IMP: 39-3-211, 39-3-407, MCA

REASON: Reasonable necessity exists to update this rule to reflect the current mailing address for the Labor Standards Bureau as well as to provide notice of online access to claim filing forms. Reasonable necessity exists to update the implementation statute to be accurate as to the types of claims which may be filed pursuant to these rules—specifically including minimum wage and overtime claims.

24.16.7527 EMPLOYER RESPONSE TO CLAIM (1) and (2) remain the same.

(3) To be timely, the employer's written response must be ~~postmarked or~~ delivered to the department by the date specified by the department. Upon timely request, and for good cause shown, the department may allow additional time for response.

(4) In the event the employer's response contains an allegation that the wage claimant is an independent contractor, a partner, part of a joint venture, or any other employment status other than that of employee, the employment status issue will be referred to the department's Independent Contractor Central Unit for a decision pursuant to ARM 24.16.7520 ~~24.35.202~~.

(5) remains the same.

AUTH: 39-3-202, 39-3-403, MCA
IMP: 39-3-209, 39-3-210, 39-3-407, MCA

REASON: Reasonable necessity exists to modify (3) to ensure conformity with the proposed amendment to ARM 24.16.7514 regarding the timeliness of filings and

submissions to the department, and to ensure a date certain can be specified. Reasonable necessity exists to modify (4) to ensure conformity with the proposed amendments to ARM 24.16.520 regarding worker status determinations.

4. The department proposes to repeal the following rules:

24.16.2301 EMPLOYMENT OF LEARNERS

AUTH: 39-3-403, MCA
IMP: 39-3-406, MCA

REASON: Reasonable necessity exists to repeal this rule due to the standard rule reviews by the department. This rule is rarely utilized, duplicative of statute, and written in a non-conforming style. As such, in the interests of simplifying, limiting, and clarifying the administrative rules of Montana, the department proposes its repeal.

24.16.6501 SEASONAL AMUSEMENT OR RECREATIONAL

AUTH: 39-3-403, MCA
IMP: 39-3-404, 39-3-405, 39-3-406, MCA

REASON: Reasonable necessity exists to repeal this rule due to statutory amendments made in Senate Bill 270 during the 2015 session which altered the meaning of numerous of the terms defined herein. The rule was further presented in an outdated format. Those definitions which remain necessary to the interpretation of statute are proposed to be included in ARM 24.16.102.

24.16.6701 EMPLOYMENT OF STUDENT-LEARNERS

AUTH: 39-3-403, MCA
IMP: 39-3-406, MCA

REASON: Reasonable necessity exists to repeal this rule due to standard rule reviews by the department. This rule is rarely utilized, duplicative of statute, and written in a non-conforming style. As such, in the interests of simplifying, limiting, and clarifying the administrative rules of Montana, the department proposes its repeal.

24.16.7547 APPEAL OF FORMAL HEARING

AUTH: 39-3-202, 39-3-403, MCA
IMP: 39-3-216, MCA

REASON: Reasonable necessity exists to repeal this rule because, upon periodic review of the wage and hour rules, this rule is not utilized and is duplicative of the

language and requirements of statute. Therefore, in the interest of clarifying and simplifying the administrative rules, it should be repealed.

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: Amber Carpenter, Department of Labor and Industry, P.O. Box 201503, Helena, Montana, 59624; telephone (406) 444-1376; fax (406) 444-7071; TDD/Montana Relay Service (406) 444-0532, or e-mail acarpenter@mt.gov, and must be received no later than 5:00 p.m., February 12, 2018.

6. The Office of Administrative Hearings, Department of Labor and Industry, 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. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted by telephone on December 1, 2017.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the proposed amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses. The rule modifications proposed are clarifications and simplifications of currently existing rules. To the extent of more substantive modification, such as regarding independent contractor requirements, the rules simplify and clarify existing law and eliminate the need for potentially costly and lengthy post-hoc determination of worker status.

/s/ Mark Cadwallader
Mark Cadwallader
Rule Reviewer

/s/ Galen Hollenbaugh
Galen Hollenbaugh
Commissioner
Department of Labor & Industry

Certified to the Secretary of State January 2, 2018.

BEFORE THE BOARD OF ALTERNATIVE HEALTH CARE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.111.301 definitions, 24.111.401 fees, 24.111.407 nonroutine applications, 24.111.511 naturopathic physician natural substance formulary list, 24.111.602 direct-entry midwife apprenticeship requirements, 24.111.603 direct-entry midwife protocol standard list required for application, 24.111.604 licensing by examination, 24.111.605 licensure of out-of-state applicants, 24.111.611 conditions which require physician consultation or transfer of care, and 24.111.2103 midwives continuing education requirements	))))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On February 6, 2018, at 9:00 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment 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 Alternative Health Care (board) no later than 5:00 p.m., on January 30, 2018, to advise us of the nature of the accommodation that you need. Please contact Rhonda Morgan, Board of Alternative Health Care, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2320; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdahc@mt.gov (board's e-mail).

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

24.111.301 DEFINITIONS (1) and (2) remain the same.

(3) "Home birth" means an anticipated or actual birth whereby the woman in labor is advised, attended, and assisted by a licensed direct-entry midwife or a Level III-B apprentice direct-entry midwife.

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

AUTH: 37-1-131, 37-27-105, MCA

IMP: 37-1-131, 37-27-205, 37-27-311, 37-27-320, MCA

REASON: Section 37-27-311(2)(d), MCA, requires licensed direct-entry midwives to obtain written informed consent from prospective clients, which includes providing a description of the possible risks of "home birth," primarily those conditions that may arise during delivery. After board legal counsel noticed that the term is not defined in board statute or rule, the board determined it is reasonably necessary to add (3) and define "home birth."

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.111.401 FEES (1) through (1)(g) remain the same.

~~(h) midwife examination 800~~

(i) through (k) remain the same but are renumbered (h) through (j).

~~(l) midwife exam proctor only fee 150~~

(3) remains the same.

(4) The midwife examination fee is set by the examination administrator and is paid by the applicant directly to the examination administrator.

(4) remains the same but is renumbered (5).

AUTH: 37-1-134, 37-26-201, 37-27-105, MCA

IMP: 37-1-134, 37-1-141, 37-26-201, 37-26-403, 37-27-203, 37-27-205, 37-27-210, MCA

REASON: The board is amending this rule to remove the specific midwife examination and proctor fees which were previously collected by the board. The board-approved midwife examination authority, North American Registry of Midwives (NARM), determines the examination fees and now also collects the total exam fee, including any proctor fees, directly from applicants. Because these fees were always passed through to NARM, their elimination will not affect board revenue.

24.111.407 NONROUTINE APPLICATIONS (1) All applications for direct-entry midwife licensure and direct-entry midwife apprentice Level III-A and Level III-B licensure must be considered nonroutine in nature and will be reviewed and approved by the board prior to issuance of the license.

(2) An application for direct-entry midwife apprentice Level I or Level II licensure will be considered nonroutine in nature and will be reviewed and approved by the board prior to issuance of the license if the applicant:

(a) has a prior felony conviction of any nature. Any disposition in a criminal case other than acquittal will be deemed a "conviction" for purposes of this rule without regard to the nature of the plea or whether the applicant received a suspended or deferred sentence;

(b) has had two or more alcohol-related convictions over any period of time or has had one alcohol-related conviction within the past five years;

(c) has had any occupational or professional licenses disciplined or has voluntarily surrendered any occupational or professional license in another state or jurisdiction;

(d) has a pending or completed legal or disciplinary action involving licensure in this state, another state, or jurisdiction;

(e) has a supervisor or proposed supervisor who has had an occupational or professional license disciplined or voluntarily surrendered in this state or another jurisdiction; or

(f) has presented an application with any substantive irregularity deemed by department staff to warrant board review and approval prior to issuance of the license.

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

AUTH: 37-1-131, 37-26-201, 37-27-105, MCA
IMP: 37-1-101, 37-1-131, 37-26-401, 37-26-402, 37-26-403, 37-26-405, 37-27-201, 37-27-203, 37-27-205, MCA

REASON: The board determined it is reasonably necessary to amend this rule and further implement 37-1-101, MCA, which states the department shall process routine licensure applications on behalf of the professional and occupational licensing boards. The board adopted this rule in 2007 to define those nonroutine applications requiring board review and approval, which included all applications for direct-entry midwife and direct-entry midwife apprentice licensure. Following suggestions by the executive officer and department licensing staff, the board is amending this rule now to identify additional criteria that will allow department staff to review and approve certain applications for Level I and Level II direct-entry midwife apprentices. Applications for Level III apprentices and direct-entry midwife licensure will still require board review and approval prior to issuance.

Because 37-27-205(1)(a), MCA, requires direct supervision of Level I and Level II apprentices by licensed direct-entry midwives, certified nurse-midwives, licensed physicians, or licensed naturopathic physicians who are certified in naturopathic childbirth attendance, the board concluded that public safety and health is adequately protected. The board determined the amendments will provide licensing staff the necessary clarification and guidance on differentiating between routine and nonroutine applications, and not unnecessarily delay licensure. These amendments will further streamline application processing by reducing the number of applications that need board review before issuance.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.111.511 NATUROPATHIC PHYSICIAN NATURAL SUBSTANCE FORMULARY LIST (1) through (5)(u) remain the same.

(v) tramadol;

(v) and (w) remain the same but are renumbered (w) and (x).

(6) through (10) remain the same.

(a) adrenal~~;~~:

(i) through (13)(a) remain the same.

(b) anticoagulants:

(i) heparin; and

(ii) warfarin;

(b) through (f) remain the same but are renumbered (c) through (g).
~~(g) heparin;~~
(h) through (17) remain the same.

AUTH: 37-1-131, 37-26-201, MCA
IMP: 37-1-131, 37-26-301, MCA

REASON: Pursuant to 37-26-301, MCA, naturopathic physicians are authorized to prescribe natural substances, including pharmaceuticals derived from natural substances, in treating their patients. This rule provides a nonexclusive list of examples that may be prescribed by naturopathic physicians, serves as a resource for pharmacists, and facilitates patients' ability to fill prescriptions written by naturopathic physicians.

On September 11, 2015, the formulary committee, established by 37-26-301, MCA, considered information provided by the University of Montana Drug Information Service, Skaggs School of Pharmacy, that tramadol has been discovered in extracts of the root of the *Nauclea latifolia* plant in Africa. Accordingly, tramadol has a natural origin even though the tramadol available by prescription is a synthetic derivative of codeine. Codeine also has a natural origin and is listed in the formulary at ARM 24.111.511(5)(d). On January 22, 2016, the board reviewed and approved the formulary committee's recommendation and is now amending this rule to add tramadol to the formulary regarding botanical extracts and their derivatives.

On October 13, 2017, the formulary committee considered information provided by Sarah Hogue, R. Ph., and a member of the formulary committee, that warfarin is a derivation of dicoumarol which was discovered after cows died from eating moldy sweet clover. The formulary committee, noting that the formulary list already contained the anticoagulant heparin at (13)(g), recommended adding warfarin and suggested that heparin and warfarin be shown together under (13) as anticoagulants. Following the board's review and approval of the formulary committee's recommendation on October 13, 2017, the board is amending this rule to add warfarin and place heparin and warfarin together as anticoagulants.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.111.602 DIRECT-ENTRY MIDWIFE APPRENTICESHIP REQUIREMENTS (1) through (4)(b) remain the same.
(c) complete Level I skills checklist; and
(d) submit a positive evaluation of skills and educational progress form and written verification by supervisor of completion of Level I~~; and~~
~~(e) obtain approval from the board to proceed to Level II~~.
(5) remains the same.
(a) attend ten births as primary birth attendant. Five of the ten births, as primary birth attendant in Level II, must be supervised by a licensed direct-entry midwife. The births must be verified by:
(i) signed birth certificates~~,~~;
(ii) signed affidavits from the birthing mothers~~,~~; or

(iii) documented records from the person who supervised the births to include ~~all of the following:~~

~~(i)~~ prenatal records~~;~~,

~~(ii)~~ birth records~~;~~, and

~~(iii)~~ postpartum records~~.~~;

(b) through (6) remain the same.

(a) complete 15 continuous-care births as the primary attendant~~.~~:

(i) Eight of the 15 continuous-care births in Level III must be supervised by a Montana-licensed direct-entry midwife. The births must be verified by:

(A) signed birth certificates~~;~~,

(B) signed affidavits from the birthing mothers~~;~~, or

(C) documented records from the person who supervised the births to include ~~all of the following:~~

~~(i)~~ prenatal records~~;~~,

~~(ii)~~ birth records~~;~~, and

~~(iii)~~ postpartum records~~.~~;

~~(b) provide documentation of each~~

(ii) Five of the 15 continuous-care births ~~as defined in 37-27-103, MCA, which~~ must include ~~at least five~~ prenatal exams, one of which must have been performed before the beginning of the 28th week of gestation, as determined by last menstrual period or sonogram, and include one postpartum exam~~.~~;

(iii) Ten of the 15 continuous-care births must have been performed under the personal supervision of a qualified supervisor;

(iv) At least one of the 15 continuous-care births must include a postpartum exam;

(c) through (f) remain the same but are renumbered (b) through (e).

(7) through (7)(b) remain the same.

(i) verification of completion of ten directly supervised continuous-care births~~,~~ ~~as required by ARM 24.111.604~~ which include five prenatal exams, one of which must have been performed before the beginning of the 28th week of gestation, as determined by last menstrual period or sonogram, and include one postpartum exam;

(ii) through (8) remain the same.

(a) The 25 births and 15 continuous-care births shall be evidenced by:

(i) the signed birth certificate as primary birth attendant~~,~~;

(ii) an affidavit from the birth mother~~,~~; or

(iii) documented records from the person who supervised the births to include ~~all of the following:~~

~~(i)~~ prenatal records~~;~~,

~~(ii)~~ birth records~~;~~, and

~~(iii)~~ postpartum records.

(b) remains the same.

(9) To be approved by the board as a supervisor of a direct-entry midwife apprentice, each supervisor applicant must submit an application on a form provided by the department and shall:

(a) hold a current, unencumbered Montana license as a direct-entry midwife, a certified nurse midwife, a licensed naturopathic physician who is certified for the

specialty practice of naturopathic childbirth attendance, or a physician as defined in 37-3-102, MCA.:

~~(i) A licensed direct-entry midwife supervisor shall have 20 postlicensure continuous care births as primary attendant before becoming a supervisor for Level II and III apprentices, except for those licensees who have successfully passed the first licensing exam administered by the board.~~

(ii) remains the same but is renumbered (i).

(ii) A licensed direct-entry midwife who has completed 20 postlicensure continuous-care births as primary attendant may apply to supervise Level II and III apprentices;

(b) through (10) remain the same.

~~(11) The supervision requirements set forth in (5)(a), (6)(a), and (8) shall not apply to licensees who were licensed as Level II and Level III apprentices on or before April 13, 2012.~~

AUTH: 37-1-131, 37-27-105, MCA
IMP: 37-1-131, 37-27-105, 37-27-201, 37-27-205, 37-27-321, MCA

REASON: The board is striking (4)(e) to no longer require board approval before a direct-entry midwife apprentice Level I can move to Level II. This amendment is consistent with proposed amendments to ARM 24.111.407 to allow department staff to review and approve routine applications for Level I and Level II apprentices. No other qualifications for completing a Level I apprenticeship are changing.

The board is amending this rule throughout to reorganize and renumber the provisions for verifying direct-entry midwife apprenticeship births. The reorganization will not change the apprentice experience requirements, but will address questions by improving readability.

The board is adding (6)(a)(iv) and amending (7)(b)(i) to relocate the direct-entry midwife apprenticeship experience requirements from ARM 24.111.604, the licensing by examination rule. Moving these provisions does not change any apprentice Level III requirements, but puts them in a single location.

The board is amending (9) to align with current application procedures by clarifying that midwife supervisor applicants must submit an application form. The board is also reorganizing (9)(a)(i) and (ii) to address questions and more clearly set forth the qualifications for a licensed direct-entry midwife to supervise Level II and Level III apprentices. The qualifications are not changing.

The board is deleting (11) to remove the supervision exemptions for Level II and Level III apprentices licensed before April 13, 2012, as there are no longer any of these apprentices.

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.111.603 DIRECT-ENTRY MIDWIFE PROTOCOL STANDARD LIST REQUIRED FOR APPLICATION (1) through (4)(i) remain the same.

(j) newborn critical congenital heart disease screening using pulse oximetry;

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

AUTH: 37-1-131, 37-27-105, MCA
IMP: 37-1-131, 37-27-201, MCA

REASON: The board determined it is reasonably necessary to amend this rule and add newborn congenital heart disease screening using pulse oximetry (CCHD) to the newborn protocol standards for licensed direct-entry midwives.

The Department of Public Health and Human Services (DPHHS) adopted administrative rules regarding screenings for infants and requiring the registrars of births to cause certain screenings to be completed or affirmatively waived by an infant's parents. See ARM 37.57.307 and 50-15-221, MCA. Licensed direct-entry midwives are birth registrars for infants born to their clients outside of a health care facility pursuant to 50-15-221, MCA, and therefore, they are subject to the DPHHS protocol for infant CCHD. This amendment is reasonably necessary to align this rule with the DPHHS rule and include all the required infant screening protocols in (4).

Implementation citations are being amended to accurately reflect all statutes implemented through the rule.

24.111.604 LICENSING BY EXAMINATION (1) Applicants for direct-entry midwifery licensure by examination shall submit a completed application with the proper fees and supporting documents~~, at least 90 days prior to the examination date,~~ to the board office. Applications for licensure by examination shall expire one year from the date of receipt of the application. An applicant who, for any reason, fails or neglects to take the examination within the year shall be required to file another application and submit another application fee. Supporting documents shall include:

(a) written documentation of good moral character consisting of three letters of reference, at least one of which must be from a licensed direct-entry midwife; and

~~(b) a copy of a certified transcript sent directly from a high school, showing evidence the applicant has graduated from the school;~~

~~(c) a GED or other high school equivalency program certificate of completion; or~~

~~(d)~~ (b) any other documents, affidavits, and certificates required by 37-27-201 or 37-27-203, MCA, whichever is applicable, and board rules~~;~~

~~(i) documentation of each of the 15 continuous care births as defined in 37-27-103, MCA, must include at least five prenatal exams, one of which must have been performed before the beginning of the 28th week of gestation, as determined by last menstrual period or sonogram, and include one postpartum exam. Ten of the 15 continuous care births must have been performed under the direct supervision of a qualified supervisor~~.

(2) and (3) remain the same.

AUTH: 37-27-105, MCA
IMP: 37-27-201, 37-27-202, 37-27-203, MCA

REASON: The board is amending (1) to remove the unnecessary requirement to submit direct-entry midwife license applications and fees to the board at least 90 days prior to the examination date. In the current process, once the board approves

an applicant to sit for the examination, the department notifies the applicant and the board-approved testing authority (NARM), and the applicant contacts NARM to schedule an examination.

The board is striking (1)(b) and (c) as proof of completion of high school or a GED is required under 37-27-201(1), MCA.

The board is striking (1)(d)(i) regarding an applicant's required proof of 15 continuous-care births and relocating the provisions to ARM 24.111.602, the rule on direct-entry midwife apprentice requirements.

24.111.605 LICENSURE OF OUT-OF-STATE APPLICANTS (1) remains the same.

(a) The candidate holds a current, valid, and unrestricted license to practice as a direct-entry midwife in another state or jurisdiction, which was issued under standards equivalent to or greater than current standards in this state as established in 37-27-201 or 37-27-203, MCA, and the administrative rules. 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 shall supply ~~a copy of a high school diploma or its equivalent, plus verification in the form of~~ certified transcripts sent directly from an institute of higher education, or certificates of completion from other courses of study, indicating the candidate has successfully completed educational requirements in pregnancy and natural childbirth, approved by the board as per ARM 24.111.601;

(c) remains the same.

(d) Candidates who were licensed without sitting for the NARM examination shall supply proof of successful completion of a qualifications examination (acceptable to the board) administered by the licensing authority of the state or jurisdiction granting the license~~.~~;

(e) and (f) remain the same.

(2) Out-of-state applicants for direct-entry midwife licensure who do not meet the experience qualifications in (1)(a) and 37-27-201 or 37-27-203, MCA, whichever is applicable at the time of application, through an apprenticeship or other supervisory setting, but who participated as the primary birth attendant at 25 births, 15 of which included continuous care, may be approved by the board to enter directly into direct-entry midwife apprenticeship license Level III-B.

(a) The applicant must submit for board review and approval: a proposed supervisor agreement; a formal outline of the indirect supervision communication; and proof of the 25 births including 15 continuous-care births.

(i) The 25 births and 15 continuous-care births shall be evidenced by:

(A) the signed birth certificate as primary birth attendant;

(B) an affidavit from the birth mother; or

(C) documented records from the person who supervised the births to include prenatal records, birth records, and postpartum records.

(ii) Documentation of each of the 15 continuous-care births as defined in 37-27-103, MCA, must include at least five prenatal exams, one of which must have been performed before the beginning of the 28th week of gestation, as determined by last menstrual period or sonogram, and include one postpartum exam.

(iii) Ten of the 15 continuous-care births must have been performed under the direct supervision of a qualified supervisor.

(b) To complete Level III-B, at least eight continuous-care births must be supervised by a Montana-licensed direct-entry midwife.

AUTH: 37-1-131, 37-27-105, MCA
IMP: 37-1-304, 37-27-201, 37-27-202, 37-27-203, MCA

REASON: Following a thorough review of the board statutes and rules, and to align with and further facilitate the department's standardized application procedure, the board's executive officer suggested the board clarify the requirements for out-of-state midwife applicants. The board determined it is reasonably necessary to amend this rule to clearly set forth the licensure standards for out-of-state applicants, remove unnecessary and duplicated provisions, and address questions from licensing staff.

The board is amending (1)(a) to reference the statutory provisions for direct-entry midwife applicants who are licensed in other states or jurisdictions. The board is amending (1)(b) as proof of completion of high school or a GED is specified in 37-27-201(1), MCA.

The board is adding (2) to set forth standards for those out-of-state applicants not qualified for direct-entry midwife licensure to apply for direct-entry midwife Level III-B apprentice licensure. After receiving a few out-of-state applications with standards not substantially equivalent to Montana's, the board concluded that some applicants may qualify for licensure as a Level III-B apprentice, and would not need to begin a brand-new apprenticeship at Level I. The board determined it is reasonably necessary to establish these standards in rule to assist applicants and licensing staff.

Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.111.611 CONDITIONS WHICH REQUIRE PHYSICIAN CONSULTATION OR TRANSFER OF CARE (1) through (1)(b)(iv) remain the same.

(v) ~~thick~~ meconium stained fluid with delivery not imminent;

(vi) through (c) remain the same.

AUTH: 37-27-105, MCA
IMP 37-27-105, MCA

REASON: The board is amending this rule to remove the requirement that meconium must be "thick" to require that licensed direct-entry midwives consult and/or transfer care to a physician. The board determined that any discernible meconium staining in the fluid when delivery is not imminent indicates a serious risk to the infant of meconium aspiration, and is amending the rule to further protect the health and safety of the infant.

24.111.2103 MIDWIVES CONTINUING EDUCATION REQUIREMENTS

(1) Midwives must obtain 14 continuing education credits each renewal period except~~,~~ as provided in ~~(8)~~ (7). One hour of education (excluding breaks) equals one continuing education credit.

(2) through (8) remain the same.

AUTH: 37-1-131, 37-1-319, ~~37-27-105,~~ MCA
IMP: 37-1-131, 37-1-141, 37-1-306, MCA

REASON: The board is amending (1) to correct an error. The CE exemption for licensed direct-entry midwives renewing a Montana license for the first time is at (7), not (8). Authority citations are being amended to accurately reflect all statutes implemented through the rule.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Alternative Health Care, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdahc@mt.gov, and must be received no later than 5:00 p.m., February 9, 2018.

5. An electronic copy of this notice of public hearing is available at althealth.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

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

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

8. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.111.301, 24.111.401, 24.111.407, 24.111.511, 24.111.602, 24.111.603, 24.111.604, 24.111.605, 24.111.611, and 24.111.2103 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Alternative Health Care, 301 South Park Avenue, P.O. Box

200513, Helena, Montana 59620-0513; telephone (406) 841-2320; facsimile (406) 841-2305; or to dlibsdahc@mt.gov.

9. Rhonda Morgan, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF ALTERNATIVE HEALTH CARE
NANCY PATTERSON, ND
PRESIDING OFFICER

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 2, 2018.

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

In the matter of the amendment of ARM 24.126.401 fees, 24.126.402 fee abatement, 24.126.501 applications, 24.126.502 military training or experience, 24.126.504 license by examination, 24.126.507 temporary permit, 24.126.510 license by endorsement, 24.126.511 display of license, 24.126.701 inactive status and conversion to active status, 24.126.704 intern and preceptor registration, 24.126.910 impairment evaluator standards, 24.126.2103 continuing education requirements, and 24.126.2105 approved continuing education	)))))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On February 2, 2018, at 10:00 a.m., a public hearing will be held in the Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment 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 Chiropractors (board) no later than 5:00 p.m., on January 26, 2018, to advise us of the nature of the accommodation that you need. Please contact Dennis Clark, Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdchi@mt.gov (board's e-mail).

3. GENERAL REASONABLE NECESSITY STATEMENT: Following an in-depth review of the board's statutes and administrative rules, the board is proposing revisions throughout the rules. Some of the proposed amendments are technical in nature, such as renumbering or amending punctuation within certain rules following amendment and to comply with ARM formatting requirements. Other changes update language and processes to current online application and renewal procedures, delete unnecessary or redundant sections, and amend rules and catchphrases for accuracy, consistency, simplicity, better organization, and ease of use.

Authority and implementation citations are also being amended to accurately reflect all statutes implemented through a rule and provide the complete sources of the board's rulemaking authority. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.126.401 FEE SCHEDULE

(1) through (5) remain the same.

~~(6) Application fee for student/interns 100~~

~~(7) Application fee for practitioners proposing to serve as preceptors 100~~

(8) and (9) remain the same but are renumbered (6) and (7).

AUTH: 37-1-134, 37-12-201, MCA
IMP: 37-1-134, 37-1-141, 37-12-201, 37-12-302, 37-12-304, MCA

REASON: Following a determination that the board lacks the statutory authority to issue licenses to interns, the board is amending this rule to conform with the provisions of 37-12-201, MCA, which require the board to have rules to register interns and preceptors. These amendments also align with changes proposed to ARM 24.126.704 in this notice.

The board estimates that the fee changes will affect approximately 14 individuals and result in a $1,400 decrease in annual revenue.

24.126.402 FEE ABATEMENT (1) The Board of Chiropractors adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

~~(2) A copy of ARM 24.101.301 is available by contacting the Board of Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, MT 59620-0513.~~

AUTH: 37-1-131, MCA
IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: It is reasonably necessary to strike the board's mailing address from this rule as the board's full contact information, and a link to the official board rules, are readily available on the board web site.

24.126.501 APPLICATIONS ~~(1) Pursuant to the requirements of 37-12-302, MCA, an application for original license, renewal, examination, temporary permit, or conversion of an inactive license must be made on a form provided by the department and completed and signed by the applicant.~~

~~(2) The application must be accompanied by the appropriate fee(s) and contain sufficient evidence that the applicant possesses the qualifications set forth in Title 37, chapter 12, MCA, and rules promulgated thereunder.~~

~~(3)~~ (1) Applications not completed within one year of submission will be closed and the applicant ~~will have to~~ must reapply.

~~(4)~~ (2) The department shall notify the applicant ~~in writing~~ of the results of its evaluation of the application.

~~(5) All requests for reasonable accommodations under the Americans with Disabilities Act of 1990, 42 USC 12101, et seq., must be made on forms provided by the board and submitted within a reasonable time prior to the date on which the reasonable accommodation is requested.~~

~~(6) The following must accompany an application:~~

~~(a) official transcripts sent directly from the appropriate educational institution, including the applicant's chiropractic college which is accredited by the Council on Chiropractic Education (CCE) or another accrediting body that is in good standing with the Council on Chiropractic Education International (CCEI);~~

~~(b) a certified copy of the national board examination results sent directly from the National Board of Chiropractic Examiners (NBCE) of Parts I and II, Part III, Part IV, and physiotherapy;~~

~~(c) verification of licensure sent directly from any state in which the applicant has held or holds a license;~~

~~(d) a copy of a self-query of the National Practitioners' Databank (NPDB) and the Healthcare Integrity Databank (HIPDB); and~~

~~(e) affidavits regarding the applicant's good moral character from two persons not related to the applicant.~~

AUTH: 37-1-131, 37-12-201, MCA
IMP: 37-1-131, 37-12-302, 37-12-304, MCA

REASON: The board determined it is reasonably necessary to amend this rule by relocating all specific licensure requirements to ARM 24.126.504 and 24.126.510. Following amendment, this rule will contain only basic provisions regarding the standardized application process.

The board is amending (2) to allow various methods of contacting applicants regarding their applications and further facilitate online licensure processes.

24.126.502 MILITARY TRAINING OR EXPERIENCE (1) and (2) remain the same.

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

(a) a copy of the applicant's military discharge document (DD 214 or other discharge documentation);

(b) through (4) remain the same.

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

REASON: It has come to the department's attention that certain military personnel (Reservists and National Guardsmen who have never been activated) in fact do not receive a DD 214 form upon their discharge from the military. Because the current rule may be interpreted to absolutely require a DD 214 from all applicants who wish to submit evidence of relevant military training, service, or education as part of the licensure process, the department is suggesting the board amend the rule to allow consideration of other evidence of military discharge in addition to or in lieu of a DD 214 form.

24.126.504 LICENSE BY EXAMINATION ~~REQUIREMENTS~~ (1) ~~The board accepts as its approved method of examination the NBCE examination, including Parts I and II, Part III, Part IV, and physiotherapy. In addition, the applicant must pass the state jurisprudence examination with a minimum score of 75 percent.~~ Applicants for chiropractic licensure by examination must apply on forms provided by the department, accompanied by the appropriate fee per ARM 24.126.401, and submit the following:

(a) official transcripts sent directly from the educational institution to demonstrate the applicant achieved:

(i) a minimum of a bachelor's degree from an accredited college or university; and

(ii) graduation from a chiropractic college accredited by the Council on Chiropractic Education (CCE) or another accrediting body in good standing with the Council on Chiropractic Education International (CCEI);

(b) results of the national board examination (Part I, II, III, and IV, and physiotherapy) sent directly from the National Board of Chiropractic Examiners (NBCE);

(c) verification of licensure sent directly from all states in which the applicant has held or holds a license; and

(d) an original, unopened self-query of the National Practitioner Databank (NPDB).

(2) Applicants must also pass the state jurisprudence examination with a minimum score of 75 percent.

AUTH: 37-1-131, 37-12-201, MCA
IMP: 37-1-131, 37-12-304, MCA

REASON: The board is amending this rule and ARM 24.126.510 to clearly set forth the specific requirements for Montana chiropractor licensure by examination and endorsement. These requirements are being relocated from ARM 24.126.501 and reorganized for clarity and ease of use within these two rules.

While the licensure requirements are not new, the board will no longer require affidavits to demonstrate applicants' good moral character. The board concluded that this is adequately proven through an applicant's NPDB self-query and the answers to legal and disciplinary questions on the application.

24.126.507 TEMPORARY PERMIT (1) through (3) remain the same.

(4) A ~~notarized~~ statement consenting to the above conditions shall be signed by both the supervising licensed chiropractor and the applicant, and filed with the department.

(5) remains the same.

AUTH: 37-1-131, 37-1-319, ~~37-12-201,~~ MCA
IMP: 37-1-131, 37-1-319, 37-1-305, MCA

REASON: The board is amending this rule to remove the requirement for a notarized statement to align with standardized department licensure procedures and further facilitate the online application process.

24.126.510 LICENSE BY ENDORSEMENT (1) ~~In order to receive a license by endorsement, license applicants shall provide proof of equal licensure requirements from the state where the license applicant holds a current, active license. In instances where the applicant cannot demonstrate equal credentials, the applicant may obtain a license upon successful passage of the SPEC examination administered by the NBCE. All applications by endorsement are reviewed by the board on a case-by-case basis.~~ The board will issue a chiropractic license to applicants licensed in another state upon determining that the other state's license standards are substantially equal to or greater than Montana's.

(2) Applicants for chiropractic licensure by endorsement must apply on forms provided by the department, accompanied by the appropriate fee, and submit the following:

(a) official transcripts sent directly from the educational institution to demonstrate the applicant achieved:

(i) a minimum of a bachelor's degree from an accredited college or university; and

(ii) graduation from a chiropractic college accredited by the Council on Chiropractic Education (CCE) or another accrediting body in good standing with the Council on Chiropractic Education International (CCEI);

(b) results of the national board examination (Part I, II, III, and IV, and physiotherapy) sent directly from the National Board of Chiropractic Examiners (NBCE);

(c) verification of licensure sent directly from all states in which the applicant has held or holds a license; and

(d) an original, unopened self-query of the National Practitioner Databank (NPDB).

(3) Endorsement applications with inequivalent standards will be reviewed by the board.

(4) If the board determines the license standards are not substantially equivalent, the board may require successful passage of the SPEC examination administered by the NBCE for licensure.

(5) All applicants must also pass the state jurisprudence examination with a minimum score of 75 percent.

AUTH: 37-1-131, ~~37-12-201,~~ MCA

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

REASON: To address applicant questions and confusion among licensing staff, the board is amending and reorganizing this rule to clearly set forth the requirements for licensure by endorsement as allowed by 37-1-304, MCA.

The board is also adding (3) to no longer require board review of every endorsement application prior to license issuance. While the board previously considered all endorsement applications as nonroutine, these amendments will provide licensing staff the necessary clarification and board guidance to determine whether another state's license standards are substantially equivalent to Montana's. Following amendment, the board will only review those applications determined to have inequivalent standards. This will further streamline application processing by reducing the number of applications that need board review before issuance.

The board is also adding (5) to address confusion and clarify that all applicants, including those by endorsement, are required to pass the state jurisprudence examination.

24.126.511 DISPLAY OF LICENSE (1) ~~The form of license is to be made and approved by the department and signed by the applicant pursuant to 37-1-104, MCA.~~

~~(2) All persons engaged in the practice of chiropractic must display their license in a conspicuous place for members of the public to view.~~ Licensees shall display or present proof of current licensure upon request of department personnel or members of the public.

~~(3) Licenses must not be defaced or altered for display requirements.~~

~~(4) Licensees shall immediately notify the department of lost, damaged, or destroyed licenses and obtain a duplicate license by submitting a written request and the appropriate fee to the department.~~

AUTH: 37-1-131, 37-12-201, MCA
IMP: ~~37-1-104,~~ 37-1-131, 37-12-201, MCA

REASON: To recognize current practice situations as well as licensees' ability to print licenses when necessary, the board is amending this rule to ensure adequate display and proof of licensure.

24.126.701 INACTIVE STATUS AND CONVERSION TO ACTIVE STATUS

(1) ~~A licensed chiropractor who wishes to retain a license but who will not be practicing chiropractic in Montana,~~ Licensees may obtain an inactive status chiropractic license upon submission of an application. ~~An individual licensed~~ While on inactive status, chiropractors may not practice chiropractic in Montana ~~during the period in which the licensee remains on inactive status~~.

(2) ~~An individual licensed on inactive status may~~ To convert ~~the inactive status license~~ to active status, inactive licensees must submit ~~by submission of~~ an ~~appropriate~~ application, ~~payment of~~ pay the required renewal fee ~~for the year in question~~, and provide evidence that:

(a) ~~any and~~ all ~~chiropractor~~ chiropractic licenses currently held in other jurisdictions are unrestricted with no pending discipline, and ~~evidence of one~~ proof of ~~the following~~ either:

~~(a)~~ (i) ~~during each year of inactive status in this state,~~ having practiced full-time (no less than 1500 hours ~~per~~ each year on inactive status) ~~practice of chiropractic~~ under a chiropractic license in good standing in another state that requires ~~completion of~~ continuing education substantially equivalent to that required ~~under these rules and fulfillment of those requirements~~ in Montana; or

~~(b)~~ (ii) ~~proof of~~ completion of ~~13~~ 12 hours of approved continuing education in the year preceding ~~activation~~ the conversion.

AUTH: 37-1-131, 37-1-319, ~~37-12-201,~~ MCA
IMP: 37-1-131, 37-1-319, MCA

REASON: In addition to reworking and reorganizing for clarity, the board is amending (2)(a)(ii) to reduce the number of required CE hours when converting from inactive to active status licensure. This change will align with amendments proposed to the CE rules in this notice.

24.126.704 ~~INTERNS AND PRECEPTORS~~ INTERN AND PRECEPTOR REGISTRATION (1) Prior to acting as a preceptor to interns, licensees must register all interns with the board. ~~Interns will only be allowed to practice under the direction and supervision of a licensed chiropractor (the "preceptor") in the state of Montana.~~

~~(2) Prior to acting as an intern, a pregraduate student or postgraduate must apply to the board, and in so doing, must provide the following:~~

~~(a) a completed application on a form provided by the department;~~

~~(b) current transcripts from the chiropractic college attended;~~

~~(c) a letter from the chiropractic college the student is attending that lists the student's date of matriculation and expected graduation date or a copy of a diploma;~~

~~(d) proof of passage of the jurisprudence exam with a minimum score of 75 percent; and~~

~~(e) a signed conditions statement from the sponsoring preceptor and the intern.~~

~~(3) Interns may not sign insurance claims, workers' compensation claims, Medicare claims, birth or death certificates, or other documents that require the signature of a licensed chiropractor.~~

~~(4) Interns shall follow the laws and rules of the board, the same as if they were licensed as a chiropractor.~~

~~(5) Before acting as a preceptor, a chiropractor must meet the following requirements:~~

~~(a) must be in good standing with the board; and~~

~~(b) must have a minimum of five years of practice in the state of Montana.~~

~~(6) A preceptor must comply with the following guidelines:~~

~~(a) provide malpractice insurance, if coverage over and above that which is provided by the chiropractic college is required;~~

~~(b) maintain a presence within the practice environment at all times when an intern is seeing patients;~~

~~(c) comply with the guidelines on involving an intern in the care of patients of the field doctor as required by the chiropractic college; and~~

~~(d) include a designation that the pregraduate or postgraduate intern is an "intern" on any type of advertisement. This designation must appear with the name of the licensed preceptor supervising the intern.~~

~~(7) An intern license is valid for 12 consecutive months and is nonrenewable.~~

AUTH: ~~37-1-131,~~ 37-12-201, MCA
IMP: 37-12-201, MCA

REASON: Following a determination that the board lacks the statutory authority to issue licenses to interns, the board is amending this rule to align with the provisions of 37-12-201, MCA, which require the board to have rules to register interns and preceptors. Noting that Montana statutes do not require a postgraduate internship to qualify for licensure as a chiropractor, the board is amending (1) to require any licensed chiropractor to register all supervised interns prior to acting as a preceptor in Montana.

24.126.910 IMPAIRMENT EVALUATOR ~~CONTINUING EDUCATION RENEWAL - DENIAL – REVOCATION~~ STANDARDS (1) A minimum of four hours of specialized continuing education (CE) relevant to impairment evaluation shall be ~~taken~~ obtained every four years.

(a) These hours shall be in addition to the ~~continuing education requirement~~ CE required for ~~a renewed~~ the underlying chiropractic license.

(b) CE approved by the board must directly relate to impairment evaluation and shall be affiliated with national, regional, or state chiropractic associations, state licensing boards, academies, colleges of chiropractic, or education approved by the Federation of Chiropractic Licensure Board (FCLB) Providers of Approved Continuing Education (PACE).

~~(b)~~ (c) ~~A~~ The department shall conduct a random audit of impairment evaluator certificate holders ~~shall be conducted~~ every four years to verify compliance ~~of~~ with the ~~continuing education requirement~~ requirements.

(c) remains the same but is renumbered (d).

~~(d)~~ (e) Any impairment evaluator seeking a hardship waiver from ~~their continuing education~~ the CE requirements shall apply to the board, in writing, as soon as possible after the hardship is identified and prior to the end of the period for completing the continuing education.

(i) Specific details of the hardship must be included.

(ii) The board must ~~make a finding~~ find that a hardship exists.

(iii) The waiver may be absolute or conditional.

(2) Persistent deviation from generally accepted standards for impairment evaluation ~~is~~ may be grounds for disciplinary action, which may include revocation of the impairment evaluator certificate.

(3) ~~An impairment evaluator~~ Impairment evaluators must comply with ARM 24.29.1415. ~~These rules can be obtained by contacting the Department of Labor~~

~~and Industry Workers' Compensation Regulation Bureau~~ This rule is available at www.mtrules.org.

(4) remains the same.

AUTH: 37-1-131, ~~37-1-136,~~ 37-1-319, 37-12-201, MCA
IMP: 37-1-131, 37-1-306, 37-1-319, 37-12-201, MCA

REASON: The board is amending this rule for better organization, clarity, and ease of use for the reader. Additionally, the board is amending (1)(b) to address questions from the department audit unit and clarify the standards for acceptable impairment evaluation CE. These standards mirror those for the underlying chiropractic CE in ARM 24.126.2105.

24.126.2103 CONTINUING EDUCATION REQUIREMENTS (1) Beginning with the ~~2012~~ 2018 renewal, every active licensee shall affirm ~~that they have completed~~ an understanding of the duty to complete a minimum of ~~13~~ 12 hours of board-approved continuing education (CE) during each renewal period as defined in ARM 24.101.413. ~~All active licensees shall affirm on all subsequent renewal applications that they have attended and successfully completed a minimum of 13 hours of board-approved continuing education in the period preceding the application for renewal.~~

(a) Of the ~~13~~ 12 hours, no more than two hours can be in the subject area of philosophy and/or practice management. ~~In addition, the board will require each licensee to demonstrate successful completion of a professional boundary and ethics continuing education course.~~

~~(b)~~ (2) ~~Of the 13 hours, one hour must be obtained in professional boundaries or ethics. The board will only grant credit for a maximum of one hour in professional boundaries or ethics.~~ Licensees shall complete four hours of CE in professional boundaries and ethics every four-year reporting period. These hours shall be in addition to and not count toward the 12 hours of CE required each year.

~~(2)~~ (3) ~~New licensees to Montana have from the date of their original licensure in Montana until the end of their first full renewal period to complete their first 13 hours of continuing education, and shall affirm on their second renewal application that they have attended and successfully completed a minimum of 13 hours of board-approved continuing education during that period.~~ New licensees shall:

(a) complete 12 hours of CE between the date of original Montana licensure and the end of the first full renewal period; and

(b) affirm their understanding of the requirement on the second renewal application.

~~(3)~~ (4) Licensees transferring from inactive to active shall abide by the continuing education requirements ~~outlined in~~ of ARM 24.126.701.

~~(4)~~ (5) An annual random audit of ten percent of active licensees will be conducted to verify compliance ~~of~~ with the ~~continuing education~~ CE requirements.

~~(5)~~ (6) Clock hours of ~~continuing education~~ CE cannot be accumulated and carried over from one renewal period to the next ~~renewal period~~.

~~(6)~~ (7) ~~It shall be necessary for those~~ Licensees attending the Montana Chiropractic Association educational meetings ~~to~~ must register with the secretary of the association each day of attendance to receive ~~continuing education~~ CE credit.

~~(7)~~ (8) A three-month extension will be provided for all licensees who fail to meet the ~~continuing education~~ CE requirements as a result of an audit. Failure to meet this extension may result in disciplinary action.

~~(8)~~ (9) Any licensee seeking a hardship waiver from their ~~continuing education~~ CE requirements shall apply to the board, in writing, as soon as possible after the hardship is identified and prior to the close of licensure for that period.

(a) Specific details of the hardship must be included.

(b) The board must ~~make a finding~~ find that a hardship exists.

(c) The waiver may be absolute or conditional.

AUTH: 37-1-131, 37-1-319, MCA
IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, MCA

REASON: The board is amending this rule for better organization, clarity, ease of use, and to align with current renewal application content. Additionally, following board discussion, the board decided it is reasonably necessary to amend the CE requirements to 12 hours annually and four hours of additional CE in ethics and boundaries every four years. While licensees must currently obtain one hour in ethics and boundaries each year, the board concluded that reporting in four-year cycles will better align with CE opportunities and simplify the process for licensees.

24.126.2105 APPROVED CONTINUING EDUCATION (1) Continuing education (CE) approved by the board must directly relate to the practice of chiropractic and shall be affiliated with national, regional, or state chiropractic associations, state licensing boards, academies, colleges of chiropractic, or education approved by the Federation of Chiropractic Licensure Board (FCLB) Providers of Approved Continuing Education (PACE).

(2) From the date of their original licensure in Montana until the end of the first full renewal period, new licensees can fulfill the ~~continuing education~~ CE requirement by attending one session of the "new doc seminar" in lieu of the ~~13~~ 12-hour ~~continuing education~~ CE requirement.

(3) remains the same.

(4) All Internet courses must meet the same guidelines for ~~continuing education~~ CE approval.

(5) remains the same.

AUTH: 37-1-131, 37-1-319, MCA
IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, MCA

REASON: The board is amending this rule to align with the proposed amendments to the other CE rules in this notice.

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 Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdchi@mt.gov, and must be received no later than 5:00 p.m., February 9, 2018.

6. An electronic copy of this notice of public hearing is available at www.chiropractor.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site 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 Chiropractors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdchi@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, do not apply.

9. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.126.401, 24.126.402, 24.126.501, 24.126.502, 24.126.504, 24.126.507, 24.126.510, 24.126.511, 24.126.701, 24.126.704, 24.126.910, 24.126.2103, and 24.126.2105 will not significantly and directly impact small businesses.

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

10. Dennis Clark, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF CHIROPRACTORS
AMY PEZO, DC, PRESIDENT

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 2, 2018.

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

In the matter of the amendment of ARM 24.207.504 pertaining to qualifying and continuing education requirements	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On February 12, 2018, the Board of Real Estate Appraisers (board) proposes to amend the above-stated rule.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., on January 26, 2018, to advise us of the nature of the accommodation that you need. Please contact Sharon Peterson, Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2375; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdrea@mt.gov (board's e-mail).

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

24.207.504 QUALIFYING AND CONTINUING EDUCATION REQUIREMENTS (1) through (11) remain the same.

(12) Distance education (online) may ~~only~~ total ~~up to 50~~ 100 percent of qualifying education requirements for each level of licensure.

(13) through (15) remain the same.

AUTH: 37-1-131, 37-1-319, 37-54-105, MCA
IMP: 37-1-131, 37-1-306, 37-54-105, 37-54-202, MCA

REASON: The board has noted that entry into the appraiser profession can be complicated or even prohibited by the requirement that applicants do half of the qualifying education at live, in-person courses. The board is amending (12) to simplify and ease entry into all levels of the real estate appraiser profession by allowing all qualifying education to be completed online. This is done in response to stated concerns at the federal and state levels that it is too difficult to get into the appraiser profession. Due to consistency and high quality among all methods of qualifying education, the board concluded that this change will ensure continued protection of the public.

4. Concerned persons may submit their data, views, or arguments concerning the proposed amendment in writing to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdrea@mt.gov, and must be received no later than 5:00 p.m., February 9, 2018.

5. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the board at the above address no later than 5:00 p.m., February 9, 2018.

6. If the board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed rules; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2 persons based on 19 license applicants in 2017.

7. An electronic copy of this notice of public hearing is available at www.realestateappraiser.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

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

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

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.207.504 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box

200513, Helena, Montana 59620-0513; telephone (406) 841-2375; facsimile (406) 841-2305; or to dlibsdrea@mt.gov.

BOARD OF REAL ESTATE APPRAISERS
THOMAS STEVENS, CERTIFIED
GENERAL APPRAISER
PRESIDING OFFICER

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

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 2, 2018.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.2.401 department of livestock animal health division fees	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on January 12, 2018, to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

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

32.2.401 DEPARTMENT OF LIVESTOCK ANIMAL HEALTH DIVISION FEES (1) through (4)(e) remain the same.

(f) SV-7GF - alternative livestock cvi book ~~35.00~~ 20.00

(g) through (l) remain the same.

AUTH: 81-2-102, MCA
IMP: 81-1-102, 81-2-502, 81-2-704, MCA

REASON: The Department of Livestock is proposing a fee decrease for the SV-7GF alternative livestock cvi book from $35.00 to $20.00. The program redesigned the original SV-7GF cvi book to individual forms in bundles of 25 certificates and is now having these forms printed by the State of Montana. The estimated decrease of $15.00 is shown in the table below:

	Old SV-7GF book (25 certificates)	**New pkg (25 certificates)**
Print Services cost per book	$26.87 (minimum of 40 books)	$11.65 (no minimum)
In-House Processing cost	$08.32	$08.35 (increase of $.03 for card stock page for veterinarian to track certificates
Total Fee	**$35.19 (rounded to $35.00)**	**$20.00**

4. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., February 9, 2018.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m., February 9, 2018.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those who could possibly be directly affected has been determined to be 14 based on 42 licensed alternative livestock facilities in the program and 102 licensed veterinarians who are alternative livestock certified in the state of Montana.

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 4 above 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, 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 rule will not significantly and directly impact small businesses.

/s/ *Michael S. Honeycutt*
Michael S. Honeycutt
Board of Livestock
Department of Livestock

BY: /s/ *Cinda Young-Eichenfels*
Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State January 2, 2018.

BEFORE THE BOARD OF MILK CONTROL
AND THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 32.24.450 milk control assessments	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On March 16, 2018, the Board of Milk Control (board) and the Department of Livestock (department) propose to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on February 2, 2018 to advise us of the nature of the accommodation that you need. Please contact the Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: MDOLcomments@mt.gov.

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

32.24.450 MILK CONTROL ASSESSMENTS (1) Pursuant to 81-23-202, MCA, the following assessments are levied upon the Act licensees of this department for the purpose of securing funds to administer and enforce the Act.

(a) A fee of $0.06 ~~$0.05~~ per hundredweight, with no assessment for fees less than $5.00 per month, on the total volume of all milk subject to the Act produced and sold by a producer-distributor.

(b) A fee of $0.03 ~~$0.025~~ per hundredweight, with no assessment for fees less than $5.00 per month, on the total volume of all milk subject to the Act sold by a producer.

(c) A fee of $0.03 ~~$0.025~~ per hundredweight, with no assessment for fees less than $5.00 per month, on the total volume of milk subject to the Act sold by a distributor, excepting that which is sold to another distributor. If the distributor is foreign, the assessment must be paid either by the foreign distributor or by the import jobber.

(2) The fee assessed in (1) must be paid before the 25th day of each month for milk sold in the preceding month.

(3) As an aid to the efficient collection of license fees and assessments, each pool handler must deduct from payments due such producers (ARM 32.24.515) any license fees and administrative assessments due the department from such producers under 81-23-105, MCA, and 81-23-202, MCA. The pool handler must

remit such fees and assessments to the department together with a statement of individual producer assessment payments. Assessments under 81-23-202(2), MCA, must be reported and paid monthly, as provided by 81-23-202(5), MCA. Assessments under 81-23-105, MCA, and ARM 32.24.460 must be separately reported and paid monthly.

(4) Each distributor who comes under the jurisdiction of the Act, and of this rule by virtue of distributing milk within the state, either in bulk or packaged form, must file with the bureau on forms supplied by the bureau, on or before the 25th day of each month, a report of sales of such milk during the preceding month.

(a) A jobber is not required to file sales reports with the bureau to the extent that milk or dairy products sold by the jobber were reported by the distributor that supplied the jobber and to the extent that the distributor that supplied the jobber filed sales reports and paid the distributor milk control assessment described in (1)(c).

(5) Each producer-distributor must file with the bureau on forms supplied by the bureau, on or before the 25th day of each month, a report of the receipt and sales of milk during the preceding month. The report of sales must show sales by classes of utilization. The producer-distributor must maintain records of operations as required by the bureau and present them for audit by the bureau when requested.

(6) To calculate the amount of fees levied on the sale of manufactured dairy products for the assessment described in (1), the following milk equivalent conversion factors must be used:

(a) Milk equivalent conversion factors, pounds of milk per gallon of product:

(i) Homogenized whole milk: 7.94 lbs milk per gallon of product;

(ii) Homogenized 2% milk: 7.10 lbs milk per gallon of product;

(iii) Homogenized 1% milk: 6.40 lbs milk per gallon of product;

(iv) Homogenized skim milk: 6.07 lbs milk per gallon of product;

(v) Flavored whole milk: 8.13 lbs milk per gallon of product;

(vi) Flavored 2% milk: 7.24 lbs milk per gallon of product;

(vii) Flavored 1% milk: 6.54 lbs milk per gallon of product;

(viii) Flavored skim milk: 6.18 lbs milk per gallon of product;

(ix) Buttermilk: 6.87 lbs milk per gallon of product;

(x) Egg Nog: 9.82 lbs milk per gallon of product;

(xi) Half and Half (10.5% - 18% milkfat): 12.53 lbs milk per gallon of product;

(xii) Creamers: 12.53 lbs milk per gallon of product;

(xiii) Light Cream (18% - 30% milkfat): 17.60 lbs milk per gallon of product;

(xiv) Light Whipping Cream (30 – 36% butterfat): 25.50 lbs milk per gallon of product;

(xv) Heavy Whipping Cream (>36% butterfat): 29.41 lbs milk per gallon of product;

(xvi) Aerosol Whip: 17.44 lbs milk per gallon of product;

(xvii) Ice cream: 7.23 lbs milk per gallon of product;

(xviii) Ice milk / sherbet: 0.96 lbs milk per gallon of product;

(xix) Frozen yogurt: 5.40 lbs milk per gallon of product;

(xx) Frozen dairy novelties: 6.05 lbs milk per gallon of product;

(xxi) Ice cream mix: 14.75 lbs milk per gallon of product;

(xxii) Shake mix / yogurt mix: 11.80 lbs milk per gallon of product;

(b) Milk equivalent conversion factors, pounds of milk per pound of product:

(i) Cottage Cheese: 1.61 lbs milk per pound of product;
(ii) Cottage Cheese (low fat or no fat): 1.41 lbs milk per pound of product;
(iii) Dry Curd Cottage Cheese: 1.61 lbs milk per pound of product;
(iv) Sour Cream and similar dips and dressings: 1.91 lbs milk per pound of product;
(v) Non-fat sour cream: 0.51 lbs milk per pound of product;
(vi) Yogurt: 0.92 lbs milk per pound of product;
(vii) Kefir: 0.92 lbs milk per pound of product;
(viii) Butter: 6.51 lbs milk per pound of product;
(ix) Cream cheese: 3.61 lbs milk per pound of product; and
(x) Hard cheese: 4.90 lbs milk per pound of product.

AUTH: 81-23-102, 81-23-104, 81-23-202, MCA
IMP: 81-1-102, 81-23-103, 81-23-202, MCA

REASON: The board proposes to amend the above-stated rule:

- to implement 81-23-202(3), MCA, as amended by the 2017 Montana Legislature with House Bill 377, which provides for the Board of Milk Control adopting rules to identify the milk hundredweight equivalent conversion factor used for calculating the amount of fees levied on manufactured dairy products;
- to raise sufficient revenue to provide for the administration of Title 81, chapter 23, MCA, as proposed for Fiscal Year 2019; and
- to ensure assessments are commensurate with the costs as required by 81-1-102(2), MCA, while maintaining a reasonable cash balance in the related special revenue fund to ensure solvency.

The proposed amendments to ARM 32.24.450 would affect approximately 128 businesses licensed by the Milk Control Bureau.

Compared to the factors currently in use, the proposed milk equivalent conversion factors would reduce milk control assessment revenue by approximately $64,000, using current assessment rates.

The proposed assessment rates would increase milk control assessment revenue by approximately $44,000.

Adoption of the proposed milk equivalent conversion factors and proposed assessment rates would result in a cumulative decrease in milk control assessment revenue of $20,000 in fiscal year 2019.

4. The department intends to adopt the proposed amendment effective July 1, 2018.

5. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to the Executive Officer, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing

to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., February 9, 2018.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as in 5 above. The written request for hearing must be received no later than 5:00 p.m., February 9, 2018.

7. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 13, based upon there being approximately 128 businesses licensed by the Milk Control Bureau that are currently operating.

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

9. The bill sponsor contact requirements of 2-4-302, MCA, do apply and have been fulfilled. The primary bill sponsor, Representative Alan Redfield, was contacted by telephone at 406-220-1427 and e-mail at Rep.Alan.Redfield@mt.gov on December 4, 2017.

10. 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/ W. Scott Mitchell
W. Scott Mitchell
Chair
Board of Milk Control

/s/ Michael S. Honeycutt
Michael S. Honeycutt
Executive Officer
Board of Livestock
Department of Livestock

/s/ Cinda Young-Eichenfels
Cinda Young-Eichenfels
Rule Reviewer

Certified to the Secretary of State January 2, 2018.

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

In the matter of the amendment of ARM 37.27.905, 37.85.104, 37.85.105, 37.85.106, 37.85.406, 37.86.105, 37.86.205, 37.86.506, 37.86.1006, 37.86.1807, 37.86.2002, 37.86.2102, 37.86.2803, 37.86.2918, 37.86.3001, 37.86.3025, 37.86.3902, 37.86.3906, 37.87.903, 37.87.1226, 37.87.1401, 37.88.206, 37.88.306, 37.88.606, and repeal of ARM 37.86.3031, 37.86.3033, 37.86.3035, 37.86.3037, pertaining to Medicaid rate, service, and benefit changes	))))))))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On February 1, 2018, at 1:00 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 and repeal of the above-stated rules.

Participation in the hearing is also available via Webex teleconferencing by registering as an attendee prior to the hearing at the following internet address: https://hhsmt.webex.com/hhsmt/onstage/g.php?MTID=e4cc5e6fbbf7773a5c95c4df753320b6e.

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 22, 2018, 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:

<u>37.27.905 MEDICAID SUBSTANCE USE DISORDER SERVICES: REIMBURSEMENT</u> (1) through (3) remain the same.

<u>(4) The allowable non-Medicaid substance use disorder procedure billing codes and department fee schedules are available at the department's website</u>

located at http://medicaidprovider.mt.gov/ and incorporated by reference at ARM 37.85.104.

(5) The allowable Medicaid substance use disorder reimbursement rate for case management services for members with substance use disorder is stated in the department's fee schedule provided in ARM 37.85.106.

AUTH: 53-6-113, 53-24-204, 53-24-208, 53-24-209, MCA
IMP: 53-6-101, 53-24-204, 53-24-208, 53-24-209, MCA

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) and (b) remain the same.

(c) Youth respite care services, as provided in ARM 37.87.2203, is effective ~~January 1, 2018~~ March 1, 2018.

(d) Substance use disorder services provider reimbursement, as provided in ARM ~~37.27.908~~ 37.27.905, is effective ~~January 1, 2018~~ March 1, 2018.

(2) remains the same.

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) remains the same.

(b) Fee schedules are effective ~~January 1, 2018~~ March 1, 2018. The conversion factor for physician services is $36.53. The conversion factor for allied services is $24.29. The conversion factor for mental health services is $24.07. The conversion factor for anesthesia services is $28.87.

(c) through (j) remain the same.

(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 ~~January 1, 2018~~ March 1, 2018; and

(ii) the Montana Medicaid APR-DRG relative weight values, average national length of stay (ALOS), outlier thresholds, and APR grouper version 34 are contained in the APR-DRG Table of Weights and Thresholds effective ~~January 1, 2018~~ March 1, 2018. The department adopts and incorporates by reference the APR-DRG Table of Weights and Thresholds effective ~~January 1, 2018~~ March 1, 2018.

(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 ~~81 Federal Register 219, page 79562~~ 82 Federal Register 217, effective ~~January 1, 2017~~ January 1, 2018, and reviewed annually by CMS as required in 42 CFR 419.5 (2016) as updated by the department;

(ii) the conversion factor for outpatient services on or after ~~January 1, 2018~~ March 1, 2018 is ~~$54.95~~ $49.46;

(iii) and (c) remain the same.

(d) The Relative Values for Dentists, as provided in ARM 37.86.1004, reference published in 2017 resulting in a dental conversion factor of $32.77 and fee schedule is effective ~~January 1, 2018~~ March 1, 2018.

(e) The dental services covered procedures, the Dental and Denturist Program Provider Manual, as provided in ARM 37.86.1006, is effective ~~July 1, 2016~~ March 1, 2018.

(f) through (j) remain the same.

(k) Montana Medicaid adopts and incorporates by reference the Region D Supplier Manual, effective January 1, 2018, 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, 2018. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM 37.86.1807, is effective ~~January 1, 2018~~ March 1, 2018.

(l) through (u) remain the same.

(v) The Targeted Case Management for Children and Youth with Special Health Care Needs fee schedule, as provided in ARM 37.86.3910, is effective ~~January 1, 2018~~ March 1, 2018.

(w) through (4) remain the same.

(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) and (b) remain the same.

(c) Substance use disorder services reimbursement, as provided in ARM ~~37.27.908~~ 37.27.905, is effective ~~January 1, 2018~~ March 1, 2018.

(6) The department adopts and incorporates by reference, the fee schedule for the following programs within the Developmental Services Division, on the date stated: 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, 2018~~ March 1, 2018.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-402, MCA

37.85.106 MEDICAID BEHAVIORAL HEALTH TARGETED CASE MANAGEMENT FEE SCHEDULE (1) remains the same.

(2) The Department of Public Health and Human Services (department) adopts and incorporates by reference the Medicaid Behavioral Health Targeted

Case Management Fee Schedule effective January 1, 2018, for the following programs within the Developmental Services Division (DSD) and the Addictive and Mental Disorders Division (AMDD):

(a) remains the same.

(b) Targeted Case Management Services for Substance Use Disorders (SUD), as provided in ARM ~~37.86.4010~~ 37.27.905; and

(c) and (3) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-402, MCA

37.85.406 BILLING, REIMBURSEMENT, CLAIMS PROCESSING, AND PAYMENT (1) through (20) remain the same.

(21) ~~The method of determining payment rates for provider based entities will be the same as for other professional and facility providers except as otherwise provided in ARM 37.86.3031 and 37.86.3037.~~ Montana Medicaid does not reimburse for the facility component of a Provider Based entity service.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-131, 53-6-149, MCA

37.86.105 PHYSICIAN SERVICES, REIMBURSEMENT/GENERAL REQUIREMENTS AND MODIFIERS (1) through (7) remain the same.

~~(8) Reimbursement and claim completion instructions for Medicaid designated provider based entities are found in ARM 37.86.3031, 37.86.3033, 37.86.3035, and 37.86.3037.~~

(9) through (12) remain the same, but are renumbered (8) through (11).

AUTH: 53-6-101, 53-6-113, MCA
IMP: 53-6-101, 53-6-113, MCA

37.86.205 MID-LEVEL PRACTITIONER SERVICES, REQUIREMENTS AND REIMBURSEMENT (1) through (7) remain the same.

~~(8) Reimbursement and claim completion instructions for Medicaid designated provider based entities are found in ARM 37.86.3031 and 37.86.3037.~~

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

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

37.86.506 PODIATRY SERVICES, REIMBURSEMENT (1) remains the same.

~~(2) Reimbursement and claim completion instructions for Medicaid designated provider based entities are found in ARM 37.86.3031 and 37.86.3037.~~

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, 53-6-111, 53-6-131, 53-6-141, MCA

37.86.1006 DENTAL SERVICES, COVERED PROCEDURES (1) through (4) remain the same.

(5) Covered services for adults age 21 and over include:

(a) and (b) remain the same.

(c) basic restorative services ~~including prefabricated crowns~~; and

(d) extractions~~; and~~ .

~~(e) porcelain fused to base metal crowns with prior authorization, limited to two per person per year, total. For second molars base metal crowns only.~~

(6) remains the same.

~~(7) Full maxillary and full mandibular dentures are a Medicaid covered service. Coverage is limited to one set of dentures every ten years. Only one lifetime exception to the ten-year time period is allowed per person if one of the following exceptions is authorized by the department:~~

~~(a) The dentures are no longer serviceable and cannot be relined or rebased.~~

~~(b) The dentures are lost, stolen, or damaged beyond repair.~~

~~(8) Maxillary partial dentures and mandibular partial dentures are a Medicaid covered service. Coverage is limited to one set of partial dentures every five years. Only one lifetime exception to the five-year limit is allowed per person if one of the following exceptions is authorized by the department:~~

~~(a) The partial dentures are no longer serviceable and cannot be relined or rebased.~~

~~(b) The partial dentures are lost, stolen, or damaged beyond repair.~~

~~(9) The limits on coverage of denture replacement may be exceeded when the department determines that the existing dentures are causing the person serious physical health problems.~~

~~(a) The dentist or denturist must indicate "replacement dentures" on the request for prior authorization of replacement dentures and document the medical necessity for the replacement.~~

~~(10) Coverage of all denture services is subject to the following requirements and limitations:~~

~~(a) A denturist may provide initial immediate full prosthesis and initial immediate partial prosthesis only when prescribed in writing by a dentist. The prescription must be signed and dated within 90 days and must be maintained in the patient file.~~

~~(b) Requests for full prosthesis must show the approximate date of the most recent extractions, and/or the age and type of the present prosthesis.~~

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

~~(12)~~ (8) Full band ~~orthodontia~~ comprehensive orthodontic or interceptive orthodontic treatment for persons ~~21~~ 20 and younger who have ~~malocclusion caused by traumatic injury or needed as part of treatment for a medical condition with orthodontic implications are covered in the department's Dental and Denturist Program Provider Manual.~~ one of the following handicapping conditions, indicated with an 'X' on the HLD score sheet:

(a) cleft palate;

(b) deep impinging overbite;

(c) anterior impaction; or

(d) who score a 30 or higher without a handicapping condition (as listed above) on the Handicapping Labio-Lingual Form (HLD Index).

~~(13)~~ (9) Unless otherwise provided by these rules, interceptive orthodontia is limited to children 12 years of age or younger with one or more of the following conditions:

(a) posterior unilateral crossbite ~~with shift~~;

(b) bilateral crossbite;

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

~~(14)~~ (10) All ~~full band~~ orthodontia treatment plans ~~for cleft lip/palate, congenital anomalies, cases related to malocclusion caused by traumatic injury and cases related to interceptive orthodontia~~ must receive prior authorization from the department's designated peer reviewer to determine individual eligibility for such orthodontia services.

(15) through (17) remain the same, but are renumbered (11) through (13).

~~(18)~~ (14) ~~Porcelain/ceramic crowns, noble metal crowns, and bridges~~ All crowns and bridges are not covered benefits of the Medicaid program for individuals age 21 and over.

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

37.86.1807 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, FEE SCHEDULE (1) and (2) remain the same.

(3) The department's DMEPOS Fee Schedule for items other than those billed under generic or miscellaneous codes as described in (1) will include fees set and maintained according to the following methodology:

(a) remains the same.

(b) 100% of the Medicaid allowable fee established by the department if there is no Medicare region D allowable fee established; or

~~(b)~~ (c) Except as provided in (4), for all items for which no Medicare or Medicaid allowable fee is available, the department's fee schedule amount will be 72.8% of the provider's usual and customary charge.

(i) For purposes of (3)~~(b)~~(c) and (4), the amount of the provider's usual and customary charge may not exceed the reasonable charge usually and customarily charged by the provider to all payers.

(A) through (4) remain the same.

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

37.86.2002 OPTOMETRIC SERVICES, REQUIREMENTS (1) and (2) remain the same.

(3) A Medicaid member under 21 years of age is limited to one eye examination for determination of refractive state per 365-day period. A Medicaid member 21 years of age or older is limited to one eye examination for determination of refractive state per 730-day period unless one of the following circumstances exist:

(a) and (b) remain the same.

AUTH: 53-6-113, MCA
IMP: 53-6-101, 53-6-141, MCA

37.86.2102 EYEGLASSES, SERVICES, REQUIREMENTS AND RESTRICTIONS (1) through (3) remain the same.

~~(4) A member is limited to one pair of eyeglasses per 365-day period unless additional pairs are necessary due to any of the following circumstances:~~

(4) A member under 21 years of age is limited to one pair of eyeglasses per 365-day period and a member 21 years of age or older is limited to one pair of eyeglasses every 730-day period.

(5) A member may receive additional lenses in the following circumstances:

(a) through (f) remain the same.

(g) a minimum of a 3 degree change in axis of any cylinder greater than 3.00 diopters; or

(h) any 1 prism diopter or more change in lateral prism~~; or~~.

~~(i) the inability of the member to wear bifocals because of a diagnosed medical condition.~~

~~(5) In the circumstances described in (4)(a) through (i), the member may be allowed two pairs of single vision eyeglasses every 365-day period.~~

(6) and (7) remain the same.

(8) If a member is unable to wear bifocals because of a diagnosed medical condition and a provider requests an exception:

(a) a member under 21 years of age may be allowed two pairs of single vision eyeglasses every 365-day period; and

(b) a member 21 years of age and older may be allowed two pairs of single vision eyeglasses every 730-day period.

~~(8)~~ (9) Contact lenses may be provided only if medically necessary.

(a) The limits stated in ~~(4)~~ (5) and ~~(5)~~ (6) apply to contacts.

(b) remains the same.

AUTH: 53-6-113, MCA
IMP: 53-6-101, 53-6-141, MCA

37.86.2803 ALL HOSPITAL REIMBURSEMENT, COST REPORTING

(1) remains the same.

(2) All hospitals reimbursed under ARM 37.86.2806, 37.86.2905, 37.86.2907, 37.86.2912, 37.86.2916, 37.86.2918, 37.86.2920, 37.86.2924, 37.86.2925, 37.86.2928, 37.86.2943, 37.86.2947, 37.86.3005, 37.86.3006, 37.86.3007, 37.86.3009, 37.86.3014, 37.86.3016, 37.86.3018, 37.86.3020, 37.86.3022, 37.86.3025, ~~37.86.3037,~~ or 37.86.3109 must submit, as provided in (3), an annual Medicare cost report in which costs have been allocated to the Medicaid program as they relate to charges. The facility shall maintain appropriate accounting records which will enable the facility to fully complete the cost report.

(3) All hospitals reimbursed under ARM 37.86.2806, 37.86.2905, 37.86.2907, 37.86.2912, 37.86.2916, 37.86.2918, 37.86.2920, 37.86.2924, 37.86.2925,

37.86.2928, 37.86.2943, 37.86.2947, 37.86.3005, 37.86.3006, 37.86.3007, 37.86.3009, 37.86.3014, 37.86.3016, 37.86.3018, 37.86.3020, 37.86.3022, 37.86.3025, ~~37.86.3037,~~ or 37.86.3109 must file the cost report with the Montana Medicare intermediary and the department on or before the last day of the fifth calendar month following the close of the period covered by the report. For fiscal periods ending on a day other than the last day of the month, cost reports are due 150 days after the last day of the cost reporting period.

(a) remains the same.

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

37.86.2918 INPATIENT HOSPITAL READMISSIONS, PARTIAL ELIGIBILITY, OUTPATIENT BUNDLING, AND TRANSFERS FOR PROSPECTIVE PAYMENT SYSTEM (PPS) FACILITIES (1) and (2) remain the same.

(3) Outpatient hospital services, including ~~provider-based entity hospital outpatient services,~~ emergency room services~~,~~ and diagnostics services (including clinical diagnostic laboratory tests) that are provided by an entity owned or operated by the hospital and occur the day of or the day before the inpatient hospital admission are deemed to be inpatient services and must be bundled into the inpatient claim.

(4) remains the same.

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

37.86.3001 OUTPATIENT HOSPITAL SERVICES, DEFINITIONS

(1) through (19) remain the same.

(20) "Provider-based entity" means a provider that is either created by, or acquired by, a main provider for purposes of furnishing health care services under the name, ownership, and administrative and financial control of the main provider as in 42 CFR 413.65. ~~Both professional and facility (hospital outpatient department) providers are included together under this definition. For purposes of provider-based entity billing, a professional is a physician, podiatrist, mid-level, licensed clinical social worker, licensed professional counselor, or a licensed psychologist.~~

(21) through (23) 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

37.86.3025 OUTPATIENT HOSPITAL SERVICES, REIMBURSEMENT FOR SERVICES NOT PAID UNDER THE AMBULATORY PAYMENT CLASSIFICATION SYSTEM (1) through (3) remain the same.

(4) Professional services~~, except as in ARM 37.86.3031 and 37.86.3037,~~ must bill separately on a professional billing form according to applicable rules governing billing for professional services.

(5) and (6) 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

37.86.3902 TARGETED CASE MANAGEMENT SERVICES FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS, ELIGIBILITY (1) A child is eligible for targeted case management services for children and youth with special health care needs if the child meets all of the following:

(a) ~~the child~~ is receiving Medicaid or is presumptively eligible for Medicaid;

(b) ~~the child:~~

~~(i)~~ is birth through 18 years of age;

~~(ii) is diagnosed with special health care needs or at risk for chronic physical, developmental, behavioral, or emotional conditions; and~~

~~(iii) requires health and related services of a type or amount beyond that required by children of the same age; or~~

~~(c) the child is born to a woman who received targeted case management services as a high risk pregnant woman.~~

(c) has one or more of the following physical health conditions that is expected to last at least 12 months:

(i) is infected with the human immunodeficiency virus (HIV), as determined by a positive HIV antibody or antigen test, or who has a diagnosis of HIV disease or AIDS;

(ii) has been diagnosed with a congenital heart condition;

(iii) has been diagnosed with a neurological disorder or brain injury;

(iv) has been diagnosed with a condition that requires use of a ventilator;

(v) has been diagnosed with a condition that causes paraplegia or quadriplegia; or

(vi) has been diagnosed with another chronic physical health condition that causes difficulty performing activities of daily living; and

(d) is at high risk for medical compromise due to one of the following:

(i) failure to take advantage of necessary health care services;

(ii) noncompliance with their prescribed medication regime;

(iii) an inability to coordinate multiple medical, social, and other services; or

(iv) a lack of community support system to assist in appropriate follow-up care at home.

(2) and (3) remain the same.

AUTH: 53-6-113, MCA
IMP: 53-6-101, MCA

37.86.3906 TARGETED CASE MANAGEMENT SERVICES FOR CHILDREN AND YOUTH WITH SPECIAL HEALTH CARE NEEDS, PROVIDER REQUIREMENTS (1) and (2) remain the same.

(3) A targeted case management provider must use an interdisciplinary team that includes members from the professions of nursing~~,~~ and social work~~, and nutrition~~.

(a) The professional requirements are the following:

(i) and (A) remain the same.

(B) a certified nurse practitioner; and

(ii) through (B) remain the same.

(C) bachelor's in social work (BSW) with two years' experience in community social services or public health~~; and~~.

~~(iii) nutrition services must be provided by a registered dietitian who is licensed as a nutritionist in Montana and has one-year experience in public health or maternal-child health.~~

(b) through (8) remain the same.

AUTH: 53-6-113, MCA
IMP: 53-6-101, MCA

37.87.903 MEDICAID MENTAL HEALTH SERVICES FOR YOUTH, AUTHORIZATION REQUIREMENTS (1) and (2) remain the same.

(3) Youth are not required to have a serious emotional disturbance to receive the following outpatient therapy services:

(a) the first ~~24~~ 10 sessions of individual, family, or both outpatient therapies per state fiscal year. Group outpatient therapy is not included in the ~~24~~ 10-session limit; and

(b) remains the same.

(4) through (6) remain the same.

(7) In addition to the requirements contained in rule, the department has developed and published a provider manual entitled Children's Mental Health Bureau, Medicaid Services Provider Manual (Manual), dated ~~August 6, 2016~~ March 1, 2018, for the purpose of implementing requirements for utilization management. The department adopts and incorporates by reference the Children's Mental Health Bureau, Medicaid Services Provider Manual, dated ~~August 6, 2016~~ March 1, 2018. A copy of the manual may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Developmental Services Division, Children's Mental Health Bureau, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 or at http://dphhs.mt.gov/dsd/CMB/Manuals.aspx.

(8) and (9) remain the same.

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

37.87.1226 OUT-OF-STATE PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, REIMBURSEMENT (1) Reimbursement for the out-of-state Psychiatric Residential Treatment Facility (PRTF) is established in the department's Medicaid fee schedule, as adopted in ARM 37.85.105. The maximum daily rate paid to an out-of-state PRTF facility is equal to 133% of the in-state PRTF rate. The in-state PRTF rate is published in the Medicaid Mental Health Youth Under 18 Fee Schedule referenced at ARM 37.85.105.

(2) through (4) remain the same.

AUTH: 53-6-101, MCA

IMP: 53-6-113, MCA

37.87.1401 HOME SUPPORT SERVICES AND THERAPEUTIC FOSTER CARE, SERVICES REIMBURSEMENT (1) and (2) remain the same.

(3) HSS and TFC providers are reimbursed a daily ~~or patient day~~ rate. ~~Patient day means a whole 24-hour period that a youth is present and receiving HSS or TFC services. Even though a youth may not be present for a whole 24-hour period, the day of admission is a patient day. The day of discharge is not a patient day.~~ To receive the daily rate, the provider must have contact as described in ARM 37.87.1410(6). The department will not reimburse the daily rate for any telephone contacts that exceed the number of face-to-face contacts reimbursed for in a four-week period. Reimbursement is limited to one contact per day.

(4) remains the same.

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

37.88.206 LICENSED CLINICAL SOCIAL WORK SERVICES, REIMBURSEMENT (1) and (2) remain the same.

~~(3) Reimbursement and claim completion instructions for Medicaid designated provider based entities are found in ARM 37.86.3031 and 37.86.3037.~~

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-6-101, 53-6-113, 53-21-202, 53-21-701, 53-21-702, MCA

37.88.306 LICENSED PROFESSIONAL COUNSELOR SERVICES, REIMBURSEMENT (1) and (2) remain the same.

~~(3) Reimbursement and claim completion instructions for Medicaid designated provider based entities are found in ARM 37.86.3031 and 37.86.3037.~~

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-6-101, 53-6-113, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

37.88.606 LICENSED PSYCHOLOGIST SERVICES, REIMBURSEMENT

(1) and (2) remain the same.

~~(3) Reimbursement and claim completion instructions for Medicaid designated provider based entities are found in ARM 37.86.3031 and 37.86.3037.~~

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-6-101, 53-6-113, 53-21-202, 53-21-701, 53-21-702, MCA

4. The department proposes to repeal the following rules:

37.86.3031 PROVIDER BASED ENTITY SERVICES, GENERAL Found on page 37-20525 of the Administrative Rules of Montana.

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

37.86.3033 PROVIDER-BASED ENTITY SERVICES, RECIPIENT ACCESS AND NOTIFICATION Found on page 37-20526 of the Administrative Rules of Montana.

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

37.86.3035 PROVIDER BASED ENTITY SERVICES, COMPLIANCE, AND PENALTIES Found on page 37-20527 of the Administrative Rules of Montana.

AUTH: 53-6-101, 53-6-113, MCA
IMP: 53-6-101, MCA

37.86.3037 PROVIDER-BASED ENTITY SERVICES, REIMBURSEMENT Found on page 37-20528 of the Administrative Rules of Montana.

AUTH: 53-6-101, 53-6-113, MCA
IMP: 53-6-101, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) administers the Montana Medicaid and non-Medicaid programs to provide health care to Montana's qualified low income, elderly and disabled residents. Medicaid is a public assistance program paid for with state and federal funds appropriated to pay health care providers for the covered medical services they deliver to Medicaid members. Non-Medicaid programs are funded primarily with state funds or grants. The legislature delegates authority to the department to set the reimbursement rates Montana pays providers for covered services.

In November of 2017, the governor called a special session to address the variances in revenue and high fire season expenditures. The governor and the legislature worked together to reach a compromise to bring the budget into balance. That compromise included a number of proposed spending reductions and a reduction to the DPHHS budget of $49 million general fund dollars.

Medicaid rates and services are stated in administrative rule. The rule amendments in this notice of proposed rulemaking are to implement the necessary spending reductions. The rule amendments in this notice of proposed rulemaking are proposed to implement the mandatory spending reductions under 17-7-140, MCA. The proposed rule amendments include program eliminations and reductions in

rates and services. In proposing the rates of reimbursement in this rule notice, the department primarily considered the availability of appropriated funds, as provided in 53-6-113(3), MCA. In considering service reductions proposed in this rule notice, the department considered the factors set forth in 53-6-101, MCA as follows:

a. protecting those persons who are most vulnerable and most in need, as defined by a combination of economic, social, and medical circumstances;

b. giving preference to the elimination or restoration of an entire Medicaid program or service, rather than sacrifice or augment the quality of care for several programs or services through dilution of funding; and

c. giving priority to services that employ the science of prevention to reduce disability and illness, services that treat life-threatening conditions, and services that support independent or assisted living, including pain management, to reduce the need for acute inpatient or residential care.

These rules apply to services for all people and eligibility categories for Montana Medicaid, including the Montana Medicaid Health and Economic Livelihood Partnership (HELP) Program that serves the Medicaid Expansion population.

The following summaries describe in detail the proposed rule amendments to be made:

ARM 37.27.905(4) and (5)

The department proposes to add (4) and (5) to refer to ARM 37.85.104, which is the non-Medicaid substance use disorder reimbursement rates, and ARM 37.85.106, which is the Medicaid substance use disorder reimbursement rates, for targeted case management. When this rule was promulgated as New Rule IV in MAR Notice No. 37-736, the department forgot to include cross-references to those rules.

ARM 37.85.104(1)(c)

Although the department proposes no changes to youth respite care services, the date for this fee schedule must be amended to March 1, 2018, because the department is proposing changes in other parts of that fee schedule and the date will be changed. See below, at ARM 37.85.105(6).

ARM 37.85.104(1)(d)

The Addictive and Mental Disorders Division (AMDD) proposes to change the citation to the rule referred to in this subsection to accurately cite the correct rule, ARM 37.27.905. Also, AMDD proposes to update the Substance Use Disorder Non-Medicaid Fee Schedule. The fee schedule will be effective March 1, 2018. The reason for updating the fee schedule is to change reimbursement methodology from the Healthcare Common Procedure Coding System (HCPC) to the national standard

Current Procedural Terminology (CPT) codes. The change from HCPC codes to CPT codes will align service requirements and reimbursement methodology for substance use disorder treatment providers with other behavioral health professionals, including mental health professionals. The change affects three codes: assessment, individual therapy, and group therapy.

In addition, the rule referred to in this subsection has been corrected to refer to ARM 37.27.905. This change corrects a reference to a rule that was repealed in MAR Notice No. 37-736.

ARM 37.85.105(2)(b)

The department proposes to update the physician fee schedule to eliminate reimbursement for the provider based facility component billed under revenue code 510. The change is intended to reimburse provider based entities in the same manner as other professional service providers, none of whom receive reimbursement for a facility component.

ARM 37.85.105(3)(a)

The department proposes to update fee schedules referenced here to decrease the base rates for general hospitals. This reduction does not apply to the base rates for Center of Excellence hospitals to ensure members have continued access to services that are not available in Montana.

ARM 37.85.105(3)(b)

The department proposes to update the reference from 81 Federal Register 219, effective January 1, 2017, to 82 Federal Register 217, effective January 1, 2018. This change is necessary to reflect the latest available Federal Register from the Centers for Medicare and Medicaid Services (CMS). This adoption allows providers to submit claims using the most recent codes and fees available; otherwise, the provider may need to bill Medicaid using different codes than other major payers, such as Medicare, resulting in administrative inefficiencies. In addition, the department is proposing a reduction of the outpatient conversion factor that is used for outpatient services.

ARM 37.85.105(3)(d) and (e)

The department proposes to update the fee schedules for dental services to reduce or eliminate coverage of high cost, extensive dental procedures, and dentures for adults. The department will continue to provide preventive and diagnostic dental services, along with a basic restorative package. These changes result in a required update to the effective date of the fee schedule to March 1, 2018. The department proposes to update the Dental and Denturist Program Provider Manual, to reflect changes outlined in ARM 37.86.1006.

ARM 37.85.105(3)(k)

The department proposes to adopt a new fee schedule, effective March 1, 2018, which implements a reduction in the reimbursement rate for incontinence supplies. A full explanation of the proposed reduction in incontinence supplies reimbursement can be found later in this notice, in the explanation for ARM 37.86.1807.

ARM 37.85.105(3)(v)

The department proposes to adopt a new fee schedule, effective March 1, 2018, which reduces the reimbursement rate of Targeted Case Management for Children and Youth with Special Health Care Needs. The proposed reimbursement rate will match the reimbursement rate for Targeted Case Management for High Risk Pregnant Women.

ARM 37.85.105(5)(c)

The department proposes to change the citation to the rule referred to in this subsection to accurately cite the correct rule, ARM 37.27.905. The change corrects a citation to the wrong rule, which was repealed in MAR Notice No. 37-736. Also, the department proposes to revise the substance use disorder Medicaid Provider Fee Schedule to reflect the change from HCPC to CPT reimbursement codes, which will be effective March 1, 2018. See explanation above for ARM 37.85.104(1)(d).

ARM 37.85.105(6)

The department proposes to adopt an updated Youth Mental Health Services Fee Schedule, which is amended to impose a cap on the daily rate for out-of-state psychiatric residential treatment facilities (PRTFs) at 133% of the in-state PRTF rate. This limit is necessary because some out-of-state providers have a usual and customary charge that is considerably higher than other out-of-state providers and higher than the daily rate paid to in-state PRTF facilities. The department can better control costs by imposing a cap on the out-of-state PRTF rate. Also, the department proposes to lower the number of outpatient psychotherapy sessions that a youth who does not have a severe emotional disturbance (SED) may receive, without prior authorization, from 24 to 10 sessions. After the tenth outpatient session, a youth must meet SED criteria for additional outpatient sessions to be deemed medically necessary. The department proposes to update the fee schedule date from January 1, 2018, to March 1, 2018.

ARM 37.85.106(2)(b)

The department proposes to correct this rule citation to ARM 37.27.905, which was promulgated in MAR Notice No. 37-736, and which correctly refers to the TCM fee schedule for Medicaid members with a substance use disorder. The current citation is incorrect.

ARM 37.85.406(21)

As explained above in ARM 37.85.105(2)(b), the department proposes to eliminate the allowance for reimbursement of facility charges for provider based entity services, and striking this language will effectuate that change for provider based reimbursement. This change is intended to reimburse provider based entities in the same manner as other professional service providers, none of whom receive reimbursement for a facility component. For clarity, the rule will explicitly state that Montana Medicaid does not reimburse for the facility component of provider based entity services.

ARM 37.86.105(8), 37.86.205(8), 37.86.506(2)

Because the department intends to eliminate the allowance for facility charges for provider based entities (see explanation above and at ARM 37.85.105(2)(b)), the department proposes to remove language that directs providers to provider based reimbursement and billing practices.

ARM 37.86.1006

The department proposes to reduce dental coverage of high cost, extensive dental procedures and dentures for the adult Medicaid population. The department would continue to provide preventive and diagnostic dental services along with a basic restorative package to prevent a cost shift to higher levels of care.

The medical necessity criteria for members under the age of 21 to receive comprehensive orthodontia benefits is being redefined. Program eligibility is defined by the numeric results of the Handicapping Labio-Lingual Deviation (HLD) scoring index and would change from 25 to 30. Those members who present with one of the three handicapping conditions, indicated with an 'X' will remain eligible. Those members 12 and younger who present with a crossbite; unilateral, bilateral, or anterior, will qualify for interceptive orthodontia services.

ARM 37.86.1807

The department proposes to add a new subsection to reflect that when Medicare does not establish an allowable fee, the department will pay durable medical equipment (DME) items at 100% of the fee that is established by the department.

The department has determined that it is currently overpaying for incontinence supplies. In a comparison of Montana's average reimbursement to the average reimbursement rate of 15 other states that have a set fee schedule rate, Montana's overall reimbursement rate is higher than all states except Indiana. Idaho and Wyoming both use a specific fee-for-service rate for the same services as Montana, and those states reimburse at an average rate of 25.68% less than Montana.

From this comparison, it was determined that Montana Medicaid should change to a set rate fee schedule for incontinence supplies and to use an average of the Idaho and Wyoming fee schedules, as these states are very similar in their rural nature to Montana. These new fees will be included in the March 1, 2018 fee schedule.

ARM 37.86.2002

The department proposes change the optometric services benefit to limit Medicaid members who are 21 years of age or older to one eye exam every two years. Currently, members may receive an eye exam once per year. The change will not affect Medicaid members under the age of 21, who will continue to be eligible for an eye exam once per year.

ARM 37.86.2102

The department proposes to change the eyeglasses benefit to limit Medicaid members who are 21 years of age or older to one pair of eyeglasses every two years unless any one of the stated conditions is present. Currently, members may receive one pair of eyeglasses every year. The change would not affect Medicaid members under the age of 21, who will continue to be eligible for one pair of eyeglasses every year. Although the proposal contemplates limiting new eyeglasses for members age 21 and older, the change would allow them to receive replacement lenses in certain specified circumstances. Section (8) has been reworded for clarity.

ARM 37.86.2803(2) and (3)

The department proposes to remove references to ARM 37.86.3037 because it is proposed to be repealed in this rule notice.

ARM 37.86.2918(3)

With the elimination of facility component reimbursement, the department proposes to remove the reference to provider based clinics within the language that explains what is considered bundled in an inpatient claim.

ARM 37.86.3001(20)

The department is proposing to update the definition of provider based clinics to remove the explanation of professional services. With the elimination of facility component reimbursement, provider based entities are reimbursed in the same manner as any other provider billing professional services, based on their enrolled provider type and services billed.

ARM 37.86.3025(4)

The department is proposing to remove reference to ARM 37.86.3031 and 37.86.3037 because they are proposed to be repealed in this rule notice.

ARM 37.86.3902 and 37.86.3906

The department proposes to limit Targeted Case Management for Children and Youth with Special Health Care Needs by establishing specific criteria to receive the service, including having one of six specified physical health conditions and demonstrating high risk for medical compromise. Under the proposed language, in order to qualify for TCM, a child must receive Medicaid or is presumptively eligible for Medicaid, is age 18 or under, has one or more of the conditions set forth in ARM 37.86.3902(1)(c), and is high risk for medical compromise due to one of the following conditions in ARM 37.86.3902(1)(d). This change is intended to reduce expenditures in this service by targeting its availability to high risk children and youth with specific conditions. The department also proposes to remove the requirement of a dietician as part of the case management team.

ARM 37.87.903

The department proposes to amend the Children's Mental Health Bureau Medicaid Services Provider Manual and update the effective date from August 6, 2016, to March 1, 2018, to reflect the following changes. First, the department proposes to reduce the number of outpatient psychotherapy sessions that youth who do not have a severe emotional disturbance (SED) may receive without prior authorization, from 24 to 10 sessions. After the tenth outpatient session, a youth must meet SED criteria for additional outpatient sessions to be deemed medically necessary. The department proposes to update the fee schedule date from January 1, 2018, to March 1, 2018. Second, the department proposes to decrease the review interval for prior authorization for Therapeutic Group Home (TGH) placement by reducing the initial stay period to 120 days. Third, in order to manage costs and avoid paying for services not medically necessary, the department proposes to add utilization review for genetics testing for youth prescribed medications for a mental health diagnosis. All of these changes are intended to contain costs.

ARM 37.87.1226

As explained above for ARM 37.85.105(6), the department proposes to impose a cap on the daily rate for out-of-state PRTFs at 133% of the in-state PRTF rate. This limit is necessary because some out-of-state providers have a usual and customary charge that is considerably higher than other out-of-state providers and higher than the daily rate paid to in-state PRTF facilities. The department can better control costs by imposing a cap on the out-of-state PRTF rate.

ARM 37.87.1401

The department proposes to restructure Medicaid Home Support Services (HSS) and Therapeutic Foster Care (TFC) to allow reimbursement of the daily rate only on

days a service was delivered. Currently HSS/TFC providers can bill a daily rate even if no contact was made with the family within the 24-hour period so long as they conduct the minimum number of contacts required by ARM 37.87.1410(6). This change will permit HSS/TFC reimbursement only on days in which a contact actually occurs.

ARM 37.88.206(3), 37.88.306(3), 37.88.606(3)

The department is proposing to remove language that directs providers to provider based reimbursement and billing practices to reflect the elimination of reimbursement for facility charges for provider based entities.

ARM 37.86.3031, 37.86.3033, 37.86.3035, 37.86.3037

As previously explained above in ARM 37.85.105(2)(b), with the elimination of reimbursement for facility charges for provider based entities, these rules are being repealed as they are not necessary when provider based entities are no longer reimbursed differently than other professional service providers.

Fiscal Impact

The following tables display the provider groups affected, the number of providers by type, and the fiscal impact for SFY 2018 and SFY 2019 for the proposed amendments.

ARM 37.85.105

Provider Type	SFY2018 State Funds Impact	SFY2018 Federal Funds Impact	SFY2018 All Funds Impact	Enrolled Provider Count
Outpatient Hospital	($1,074,330)	($1,972,897)	($3,047,227)	315
Inpatient Hospital	($752,444)	($1,426,027)	($2,178,471)	376
Dental	($778,839)	($1,476,050)	($2,254,889)	584
Denturist	($250,251)	($474,275)	($724,526)	19
Targeted Case Management – Children and Youth with Special Health Care Needs	($59,632)	($113,014)	($172,646)	15
Durable Medical Equipment	($125,839)	($238,489)	($364,328)	443

Provider Type	SFY2019 State Funds Impact	SFY2019 Federal Funds Impact	SFY2019 All Funds Impact	Enrolled Provider Count
Outpatient Hospital	($1,745,309)	($3,212,947)	($4,958,256)	315
Inpatient Hospital	($1,313,550)	($2,489,432)	($3,802,982)	376
Dental	($1,557,677)	($2,952,099)	($4,509,776)	584
Denturist	($500,502)	($948,549)	($1,449,051)	19
Targeted Case Management – Children and Youth with Special Health Care Needs	($138,457)	($262,403)	($400,860)	15
Durable Medical Equipment	($251,678)	($476,979)	($728,657)	443

ARM 37.85.406; 37.86.105; 37.86.205; 37.86.2918; 37.86.3001; 37.86.4401; 37.86.4412; 37.88.206; 37.88.306; 37.88.606; 37.86.3025; and 37.86.2803; 37.86.3031; 37.86.3033; 37.86.3035; and 37.86.3037

Provider Type	SFY2018 State Funds Impact	SFY2018 Federal Funds Impact	SFY2018 All Funds Impact	Enrolled Provider count
Hospital – outpatient	($679,210)	($1,287,234)	($1,966,444)	11
Critical Access Hospital	($53,492)	($101,378)	(154,870)	10

Provider Type	SFY2019 State Funds Impact	SFY2019 Federal Funds Impact	SFY2019 All Funds Impact	Enrolled Provider count
Hospital – outpatient	($1,358,419)	($2,574,468)	($3,932,887)	11
Critical Access Hospital	($106,985)	($202,757)	($309,742)	10

ARM 37.86.2002 and 37.86.2102

Provider Type	SFY2018 State Funds Impact	SFY2018 Federal Funds Impact	SFY2018 All Funds Impact	Enrolled Provider count
Optometrists	($81,867)	($155,154)	($237,021)	228

Provider Type	SFY2019 State Funds Impact	SFY2019 Federal Funds Impact	SFY2019 All Funds Impact	Enrolled Provider count
Optometrists	($163,734)	($310,308)	($474,042)	228

ARM 37.85.104 and 37.85.105

The following table reflects the proposal to update three SUD treatment procedure codes and the reimbursement of these codes to align with like services and requirements performed by other behavioral health professionals. Two procedure codes changes will result in a decrease in reimbursement to providers. One procedure code change will result in an increase in reimbursement to providers. The changes are reflected below:

Old Code /New Code	SUD schedule 1/1/2018	RBRVS 1/1/2018	Change	# billed per year (CY2016)	Total Change
H0001 /90791 Assessment	$ 282.50	$89.71	(-$192.79)	803	(-$154,810.37)
H0004 /90837 Individual	$ 16.99 /15 min	$87.06 / 1 hour	+ $19.01	25,920* (6933.25)	$132,425.08
H2035 /90853 Group	$24.27 /1 hour	$17.55 /event	(-$30.99) Based on 2 hour group	58,242* (22,957)	(-$711,437.43)
Total					(-$733,822.73)

*The number in parentheses is the converted units for the CPT Codes

ARM 37.85.105(6), 37.87.903, 37.87.1226, 37.87.1401

The cap on rates for out-of-state Psychiatric Residential Treatment Facility (PRTF) will impact about 15 children per month in four out-of-state PRTFs. The department's cost savings associated with out-of-state PRTF's are calculated below:

Out of State PRTF	FY2018	FY 2019
State Funds	(55,864)	(223,457)
Federal Funds	(112,886)	(451,543)
Total Funds	(168,750)	(675,000)

The department's cost savings for changes to outpatient limits for youth without SED are calculated below:

Out-Patient	FY2018	FY 2019
State Funds	(10,272)	(41,091)

Federal Funds	(29,077)	(83,909)
Total Funds	(39,349)	(125,000)

The department's cost savings for changes to genetic testing are calculated below:

Genetics Testing	FY2018	FY 2019
State Funds	(97,145)	(194,290)
Federal Funds	(209,892)	(419,784)
Total Funds	(307,037)	(614,074)

Decreasing the prior authorization review interval for TGH will impact medium/high acuity children needing group home services. Number of kids receiving group home care in state fiscal year (SFY) 2017 was 688. There are 11 in-state and two out-of-state youth group home providers.

Cost savings for TGH are calculated below:

Therapeutic Group Home	FY2018	FY 2019
State Funds	(24,623)	(49,246)
Federal Funds	(49,752)	(99,504)
Total Funds	(74,375)	(148,750)

Restructuring Home Support Services (HSS) and Therapeutic Foster Care (TFC) will impact about 1,596 youth in a state fiscal year. There are 13 mental health centers that provide HSS.

Cost savings for HSS and TFC are calculated below:

Category	FY2018	FY 2019
State Funds	(46,762)	(187,049)
Federal Funds	(93,638)	(561,600)
Total Funds	(140,400)	(748,649)

6. The department intends the proposed rule amendments to be applied effective March 1, 2018.

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 9, 2018.

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

11. Pursuant to 2-4-111, MCA, the department has determined that the amendment and repeal of the above-stated rules may significantly and directly impact small businesses.

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rates or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Brenda K. Elias
Brenda K. Elias, Attorney
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State January 2, 2018.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.21.3703, 2.21.3707, 2.21.3708, 2.21.3711, 2.21.3719, 2.21.3721, 2.21.3723, and 2.21.3726, and the repeal of ARM 2.21.3709 pertaining to the Recruitment and Selection Policy	)))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On August 18, 2017, the Department of Administration published MAR Notice No. 2-21-557 regarding a public hearing on the proposed amendment and repeal of the above-stated rules at page 1309 of the 2017 Montana Administrative Register, Issue No. 16.

2. The department has amended ARM 2.21.3703, 2.21.3707, 2.21.3708, 2.21.3711, 2.21.3719, 2.21.3721, and 2.21.3726 as proposed.

3. The department has repealed ARM 2.21.3709 as proposed.

4. The department has amended ARM 2.21.3723 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

2.21.3723 INTENTIONAL MISREPRESENTATION (1) The employment process (online and traditional application) includes a notice that information applicants provide is subject to verification. ~~Willful misstatements of qualifications~~ Intentional misrepresentation of facts about an applicant's qualifications, employment history, or other application information may:

(a) exclude an applicant from further consideration for a position; or ~~may~~

(b) result in discharge from employment.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

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

COMMENT #1: MEA-MFT provided the following comment:

> The "Statement of Reasonable Necessity" for ARM 2.21.3723 states that the proposed new language "changes are to make the rule more concise." The proposed language for ARM 2.21.3723 does the exact opposite. The proposal will eliminate the clearly established and legally-defined words

"intentionally misrepresented facts" and replace this language with the vague and ambiguous words, "willful misstatement of qualifications." This proposal, if implemented, will dramatically lower the bar for terminating employees on the basis of their statements made during the application process.

An "intentional misrepresentation" (the current language) is an established and well-defined legal concept. In general, the elements of an intentional misrepresentation are similar to the elements of fraud and require proof of: (1) someone intentionally misrepresenting, (2) a fact, (3) that is material, (4) that was intended to induce reliance and (5) that does induce reasonable reliance, and (6) that causes proximate harm.

What might constitute a "willful misstatement" (the proposed language) is ambiguous. A "willful misstatement" is not a well-defined legal concept, particularly under Montana law. Without a clear, unambiguous definition of a "willful misstatement of qualifications," this policy is vague and open to a wide-variety of interpretations. In practice, this policy will be impossible to exercise in a fair and uniform manner.

The typical amplification, elaboration, or occasional exaggerations by applicants in the job application process will rarely rise to the level of an "intentional misrepresentation." Under this proposal, that same sort of amplification, exaggeration or elaboration, however, could easily be deemed a "willful misstatement" by management and could form the basis for an employee's termination at any point in their career. Please reject this proposal as this new language will give management an unfair and unlimited latitude for terminating employees on the basis of any misstatement, however slight, made during the application process.

RESPONSE #1: While the department does not fully agree with MEA-MFT's and MPEA's comments regarding the phrase "willful misstatement," it will finalize the rule using the phrase "intentional misrepresentation" rather than "willful misstatement."

COMMENT #2: The department received a comment from the Montana Public Employees Association to advise the association concurs with MEA-MFT's comment.

RESPONSE #2: The department thanks the Montana Public Employees Association for its comment and has revised the rule as shown above.

By: /s/ John Lewis
John Lewis, Director
Department of Administration

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

Certified to the Secretary of State January 2, 2018.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.21.6608, 2.21.6612, and 2.21.6613 pertaining to the Employee Records Management Policy	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On August 18, 2017, the Department of Administration published MAR Notice No. 2-21-563 regarding a public hearing on the proposed amendment of the above-stated rules at page 1316 of the 2017 Montana Administrative Register, Issue Number 16. On September 8, 2017, the Department of Administration published an amended MAR Notice No. 2-21-563 rescheduling the public hearing and revising the proposed amendment of ARM 2.21.6612 at page 1443 of the 2017 Montana Administrative Register, Issue Number 17.

2. The department has amended ARM 2.21.6608 and 2.21.6613 as proposed.

3. The department has amended ARM 2.21.6612 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

2.21.6612 RECORDS THAT CONSTITUTE EMPLOYEE PERSONNEL RECORDS (1) through (1)(h) remain as proposed.

(i) background check information, including criminal and~~,~~ credit~~, and reference~~ checks, and employment verification;

(j) through (2) remain as proposed.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

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

COMMENT #1: The department received a recommendation for ARM 2.21.6612 that reference checks remain with the recruiting documentation rather than in the employee's personnel file to maintain consistency with the recruiting documentation and reduce the need to open an employee's personnel file when a recruitment is in question.

The commenter agrees that the proposal to maintain background check information, including criminal and credit checks and employment verification in the employee's

personnel file is appropriate, as this information contains personally identifiable information.

RESPONSE #1: The department agrees with the commenter and has changed ARM 2.21.6612 to remove reference check information from the Employee Personnel Record.

By: /s/ John Lewis
John Lewis, Director
Department of Administration

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

Certified to the Secretary of State January 2, 2018.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through XIV pertaining to Wind Generation Facility Decommissioning and Bonding	))))	NOTICE OF ADOPTION (ENERGY)

TO: All Concerned Persons

1. On November 9, 2017, the Department of Environmental Quality published MAR Notice No. 17-394 regarding a notice of proposed amendment of the above-stated rules at page 1995, 2017 Montana Administrative Register, Issue Number 21.

2. The department has adopted New Rule V (17.86.107), New Rule VI (17.86.110), New Rule IX (17.86.115), New Rule X (17.86.116), New Rule XI (17.86.117), New Rule XII (17.86.120), New Rule XIII (17.86.121), and New Rule XIV (17.86.122) exactly as proposed. The department has adopted New Rule I (17.86.101), New Rule II (17.86.102), New Rule III (17.86.105), New Rule IV (17.86.106), New Rule VII (17.86.111), and New Rule VIII (17.86.112) as proposed, but with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (17.86.101) DEFINITIONS In this subchapter, the following definitions apply:

(1) "Abandon" or "abandonment" means generating 10 percent or less of the ~~cumulative nameplate capacity of the facility's turbines~~ monthly maximum generation potential, as determined by the facility's nameplate capacity, each month for 12 consecutive months.

(2) through (8) remain as proposed.

(9) "Owns a 10 percent or greater share of the wind generation facility" means ~~at commencement of commercial operation and thereafter,~~ having ownership of 10 percent or greater in capital stock of the corporation that owns the facility or having a 10 percent or greater ownership interest in a partnership, or limited liability corporation that owns the facility:

(i) for a facility that commenced commercial operation on or before May 3, 2017, on May 3, 2017, and thereafter; and

(ii) for a facility that commenced commercial operation after May 3, 2017, at commencement of commercial operation and thereafter.

(10) and (11) remain as proposed.

(12) "Significant investment" means a capital ~~equipment~~ investment in property associated with a wind generation facility that the owner has demonstrated to the department will extend the useful life of the wind generation facility by more than 5 years ~~of 50 percent or greater of the initial capital equipment investment~~. The equipment project must be completed in three years or less. Should a facility remove all wind turbines and existing pads and install new wind turbines on new pads, the facility is a new facility and not a repurposed facility.

(13) and (14) remain as proposed.

NEW RULE II (17.86.102) OWNER RESPONSIBILITIES (1) through (3) remain as proposed.

(4) The owner of a wind generation facility that commenced commercial operation on or before July 1, 2018, shall submit in writing the following to the department on or before July 1, 2018., ~~although the~~ The department may, but is not required to, review these initial decommissioning plans and information for completeness ~~or set a bond amount at this time~~:

(a) the date that the facility commenced commercial operation; ~~and~~

(b) a decommissioning plan in accordance with the requirements of ARM 17.86.105.;

(c) identification of the landowner or landowners on which the wind generation facility is located; and

(d) if the landowner or landowners identified pursuant to (4)(c) are not governmental entities whether the landowner or landowners have an ownership interest in the wind generation facility and, if so, a detailed description of the interests.

(5) The owner of a facility that commences commercial operation after July 1, 2018, shall submit to the department the information required in ~~(2)~~ (4) within six months of commencing commercial operation. The department may, but is not required to, review these initial submissions for completeness.~~, or set bond amounts at this time.~~

(6) remains as proposed.

(7) The owner shall allow access in a timely manner and accompany the department for an inspection of the facility to verify the adequacy of a new or updated decommissioning plan for purposes of determining the bond amount. The department shall propose in writing, the scope and schedule of any such inspection at least two weeks in advance of the inspection. Department representatives shall comply with site safety and general access restrictions while at the facility.

NEW RULE III (17.86.105) DECOMMISSIONING PLAN (1) A decommissioning plan must include:

(a) remains as proposed.

(b) as-built plans, including general structural and electrical information, relative to the calculation of the bond for all facilities and all disturbances associated with the facility. The as-built plans must include an affidavit signed by an owner or any person authorized to act on the owner's behalf attesting to the completeness and accuracy of the as-built plans or be certified by a professional engineer that the as-built plans are complete and accurate. The department may allow redaction, the filing of a less detailed plan, or treatment of all or a portion of the plan as confidential information if the owner demonstrates to the department's satisfaction that the information or plan may be protected pursuant to 2-6-1003, MCA;

(c) any agreement(s) signed by all landowners and facility owners providing for alternative reclamation or the non-removal of buildings, cabling, electrical components, roads or any associated facilities. The agreement may be specific to decommissioning or it may be a more general agreement with specific provision relating to decommissioning. A general agreement may contain redactions to

protect information that is not necessary for the department's review;

(d) a description of the manner in which the facility will be decommissioned and a proposed decommissioning schedule, which, except as provided in (1)(c), must include:

(i) dismantling and removal of all overhead electrical transmission lines and structures, transformers, buildings, and all other ancillary equipment and debris from operation of the facility that is not associated with interconnecting the wind generation facility into the electric grid;

(ii) remains as proposed.

(iii) removal of wind turbine foundations and other concrete foundations and slabs to a minimum depth of ~~48~~ 36 inches below natural grade or ~~deeper~~ an alternative depth as approved by the department if ~~required~~ appropriate for the post operation land use;

(iv) reclamation of the facility site to the approximate original surface topography that existed prior to the start of the construction of the facility with grading, topsoil application over the disturbed areas at a depth similar to that in existence prior to the disturbance, ~~and~~ reseeding, and revegetation to achieve the same utility as the surrounding area at the time of decommissioning to prevent adverse hydrological effects;

(v) remains as proposed.

(vi) removal and grading of all access roads to pre-construction or natural grade as appropriate;

(e) and (f) remain as proposed.

NEW RULE IV (17.86.106) DETERMINATION OF BOND AMOUNT (1) and (2) remain as proposed.

(3) In determining the amount of a bond required in accordance with ARM 17.86.107, the department shall provide the owner with a preliminary bond determination, consult with the owner, and consider:

(a) through (4) remain as proposed.

NEW RULE VII (17.86.111) REPLACEMENT OF BOND (1) If the owner transfers ownership to a successor owner, the department shall release the bond posted by the owner in accordance with this rule within 90 calendar days ~~if the successor owner posts a bond with the department in an amount equal to, or greater than, the bond posted by the incumbent owner~~. The successor owner shall, within 90 days of the transfer, provide a bond that meets the requirements of this subchapter.

(2) The owner must receive approval from the department prior to replacing any bond. The department shall approve a replacement bond if it meets the requirements of this subchapter.

NEW RULE VIII (17.86.112) ADJUSTMENT OF BOND AMOUNT (1) Once every five years an owner may request a reduction of the required bond amount upon submission of evidence to the department proving that decommissioning work, reclamation, or other circumstances will reduce the maximum estimated cost to the department to complete decommissioning and therefore warrant a reduction of the

bond amount. Prior to denying the request in whole or in part, the department shall consult with the owner.

(2) The department shall review each decommissioning plan and bond amount every five years. The department may increase the amount of the bond if the facility has expanded or the cost to decommission a facility otherwise increases. The department shall notify the owner of any proposed bond increase and provide the owner an opportunity for an informal conference on the proposal. If the department determines that the bond amount must be increased, it shall provide the owner with a written justification for the increase. The owner shall increase the bond within 90 days of receiving the department's revised bond amount.

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

COMMENT NO. 1: The department is urged to adopt rules for bonding and reclamation that are equivalent to rules that apply to oil wells, open cut mines, etc.

RESPONSE: The bonding rules are patterned after bonding rules for mine reclamation that are adopted pursuant to Title 82, chapter 4, MCA, including opencut mine bonds.

COMMENT NO. 2: If bond amounts are increased, it should be subject to appeal, and following a conference with the stakeholders. Most of the proposed rules do not include the opportunity for collaborative discussion before final determination of the initial and future increased bond amounts and the rules are silent regarding appeal rights.

RESPONSE: To ensure that the owner has an opportunity to present information to the department prior to establishment of the bond amount, the department has amended New Rule IV to provide that the department must consult with the owner prior to setting a bond amount. New Rule VIII already provides the owner with the right to an informal conference prior to adjusting the bond amount. With regard to appeal, the statute provides for appeals to the Board of Environmental Review only for the assessment of penalties for failure to post bond with the department. However, under case law of the Montana Supreme Court, an owner has the right to challenge the department's bond calculation in district court. See *Johansen v. State*, 288 Mont. 39, 955 P.2d 653 (1998).

COMMENT NO. 3: There should be assurance that these rules provide an adequate framework and financial resources to support the decommissioning and remediation of commercial wind farm sites with no financial burden to the state.

RESPONSE: Bonding of wind generation facilities, to the extent required by 75-26-304, MCA, is required by the proposed rules to be set at a sufficient amount to cover decommissioning and remediation costs incurred by the state if the owner fails to conduct decommissioning itself. However, if a facility is abandoned at a time when 75-26-304, MCA does not require bonding, there would be no financial resources for the state to conduct decommissioning and remediation on either public or private lands. The department does not have authority to require bonding at a time that it is not required by the statute. No bonding is required until the 15th or

16th year following commencement of commercial operation, as applicable, and no bonding is required during the first five years after being repurposed.

COMMENT NO. 4: New Rule VI should be clearer about the department's authority to levy penalties for failure to submit a decommissioning plan or non-compliance with any part of the rules. As a benefit to stakeholders, the rules should specify or reference standard operating procedures for levying penalties when not explicitly stated within the rule.

RESPONSE: Under 75-26-309(9), MCA, penalties may be assessed only for failure to provide a bond on time. The department does not have statutory authority to assess penalties for failure to submit a decommissioning plan or non-compliance with any other parts of the rule. Title 75, chapter 26, part 3, MCA does not provide any additional operating procedures for assessment of penalties.

COMMENT NO. 5: There should be clarification of the definition of the term "abandon" in New Rule I(1). It is unclear how many megawatt hours per month would constitute the threshold to trigger abandonment.

RESPONSE: The department agrees. The rule has been modified to provide that a facility is to determine its monthly potential power capacity output based on the nameplate capacity of each turbine at the facility and the total hours in each month. If 10 percent or less of each month's potential power is produced, the month qualifies as a month towards abandonment. Twelve consecutive months at or below 10 percent of the facility's turbine power potential meets the definition for abandonment. The proposed changes provide additional clarity on when a facility is abandoned and do not substantively change the intent of the previously proposed definition.

COMMENT NO. 6: The department received both supportive and opposing comments about retaining the requirement in New Rule I(9) that 10 percent ownership must be established at the commencement of commercial operation and be retained through the operating life of the project. Supporters believe that the department has the authority to establish this requirement and said this specification brings clarity to the 10 percent ownership exemption, preventing ambiguity and confusion. Opponents believe it is up to the legislature to impose an additional requirement such that 10 percent ownership shall be from the time commercial operation commences and the department does not have this authority.

RESPONSE: Section 75-26-304(8)(b), MCA, the statute implemented by this provision, became effective May 3, 2017, and provides that an owner is exempt from the bonding requirement if the landowner "owns" a 10 percent or greater share of the facility. Furthermore, the statute provides that the 10 percent ownership is to be "determined by the department." Finally, the proposed rule language is overbroad for its stated purpose, which was to prevent a facility owner from contending that it is exempt from the bonding and decommissioning requirements by transferring 10 percent ownership of the facility. For example, the proposed rule language would apply to a transfer made in 2010, years before the legislature enacted the bonding requirement. For these reasons, the department has modified the rule as applied to facilities operating as of May 3, 2017, to require 10 percent landowner interest

commencing on the effective date of the statute, May 3, 2017.

COMMENT NO. 7: The inclusion in New Rule I(9) of partnerships or limited liability corporations as possible financial vehicles for attaining 10 percent ownership widens the possibility that this exemption could be assessed at a low barrier to entry. To follow the spirit of the statute, DEQ should strive to limit exemptions and place higher barriers to assessing exemptions. Therefore, caution is urged against the inclusion of these or other financial vehicles that may widen the possibility for a low barrier to accessing this exemption.

RESPONSE: The proposed definition accommodates different ownership structures that may exist for a wind generation facility. The ownership requirements apply to facilities owned by those types of entities.

COMMENT NO. 8: In the proposed definition of "significant investment" in New Rule I(12), a facility should be considered a new facility when an owner removes at least 75 percent of the wind turbines. The proposed rule requires that all of the wind turbines and existing pads be removed and replaced with new pads and turbines to be considered a new facility.

RESPONSE: A wind generation facility that is considered a new facility has 15 or 16 years from the commencement of commercial operation to submit a bond. Reducing the threshold to replacement of 75 percent of turbines to qualify as a new facility would cause incongruity at an existing wind facility where some turbines would be bonded at one date and other turbines would be bonded at a later date. The requirement for bonding is based on commencement of commercial operation of the entire facility, not just a portion of it. Therefore, a facility should be considered new when all of the turbines and pads are replaced. The department has not amended the rule to address this comment. For additional clarity, it should be understood that under New Rule VIII if a facility owner expands operation at an existing facility, the expanded operation is to be incorporated in the subsequent decommissioning plan update and become bonded during the next bond amount review cycle.

COMMENT NO. 9: The definition of "significant investment" in New Rule I(12) should be changed to account for decreasing costs of wind turbines that would cause the costs of repurposing the facility to be well below 50 percent of capital investment threshold required for significant investment.

RESPONSE: The department agrees that the rules should account for changing equipment costs to determine whether a significant investment has been made in an existing wind generation facility. Therefore, the department has amended the definition to provide a general standard to determine significant investment rather than a specific percentage of capital investment. The legislature clearly stated that for a facility to be considered repurposed, it requires an extension of its useful life by more than five years. The definition has been amended accordingly.

COMMENT NO. 10: In New Rule II(1), the owner of a wind generation facility should have to notify DEQ if the owner has a terminated power purchase

agreement, if the owner has agreed to expand the wind generation facility and if the owner has signed a new or modified power purchase agreement. This would help the department stay informed about conditions that may trigger decommissioning.

RESPONSE: The department believes that notification related to wind generation facility power purchase agreements and expansions is not information that is necessary in order for the department to implement these rules. To accommodate utility-owned facilities that do not operate with power purchase agreements, the rules are designed to meet the statutory decommissioning and bonding requirements with these notifications required in New Rule II(2).

COMMENT NO. 11: For completion of decommissioning, there should be a backstop in New Rule II(1) that forces the completion of activity. We suggest that an extension may be granted for a maximum of 24 months. After this, no further extensions may be granted.

RESPONSE: The rule requires completion of decommissioning within 24 months and provides for an extension only if an owner demonstrates good cause for an extension. The goal of this rule is to ensure proper decommissioning occurs in a timely manner (24 months) while allowing reasonable extensions where full decommissioning cannot be achieved in that time frame. Examples of a good cause for an extension could be weather and road concerns for bringing contractors and equipment to the facility, or demonstration of a financial commitment to repurpose a facility following a catastrophic failure that resulted in reaching an abandonment designation. The rule has not been modified.

COMMENT NO. 12: Although the department should not have to approve the initial decommissioning plan that is submitted at the commenced commercial operation, it makes sense to provide in New Rule II(4) and (5) that the department would review these plans for basic completeness to determine if there is (as an example) an as-built plan submitted that is signed by the appropriate person.

RESPONSE: The department appreciates this comment and similar comments made by other commenters. Under the rule language, the department is not required to review initial decommissioning plans. However, the department will endeavor to ensure compliance with decommissioning plan requirements are met in a timely manner. The rule has been amended to provide that the department may review initial decommissioning plans for completeness. To assist the department in determining whether to perform this review, the department has inserted in New Rule II(4) a requirement to provide information to determine whether the facility would be exempt from bonding under New Rule V(4)(b).

COMMENT NO. 13: It is assumed that, in New Rule II(6), if a plan has deficiencies, that it goes back and forth between the agency and owner to address those deficiencies until there is agreement that the plan is adequate. It is also assumed that this review could lead to DEQ's outright rejection of the plan if it remains deficient. If not, the ability for the agency to reject a plan should be explicit.

RESPONSE: A decommissioning plan found deficient is not an approved plan and owners of facilities are required to address all deficiencies prior to a plan being acceptable for use to set a bond amount. The rule as written provides a clear

framework for this process.

COMMENT NO. 14: The advance notice to the owner of a proposed site inspection should be provided in writing.

RESPONSE: The department is sensitive to the concern that an advanced site inspection notice be provided to owners in writing and that amendment has been made New Rule II(7).

COMMENT NO. 15: Specific decommissioning standards in New Rule III(1)(d) should be entirely deleted.

RESPONSE: The department's intent in New Rule III(1) was to establish clear, consistent, and reasonable expectations for decommissioning and restoration that achieve the decommissioning/reclamation requirements in 75-26-301(2), MCA. The department believes there is value in New Rule III(1)(d) to wind generation facilities by clarifying to facilities what their decommissioning plans must include. The department hopes these rules will minimize the department's receipt of incomplete or deficient decommissioning plans. Furthermore, the department anticipates this rule will reduce the amount of time it takes between the department receiving a decommissioning plan and the department determining a bond amount. For these reasons, the department is retaining New Rule III(1).

COMMENT NO. 16: There are concerns that a requirement to file as-built plans, including general structural and electrical information, in New Rule III(1)(b) will make those plans public records and accessible to the public under Montana's right to know laws. Such information could pose security risks at wind generation facilities. The department is encouraged to include in these rules a process to withhold the as-built plans for the security of these facilities, as per 2-6-1003, MCA, or allow for redacted plans or plans with lesser detail to avoid any security risks.

RESPONSE: The department has amended the rule to provide authority to allow redaction, a less detailed plan, or withholding of the plan if the owner demonstrates to the department’s satisfaction that the requirements of 2-6-1003(2), MCA are met.

COMMENT NO. 17: Concerns exist in regard to the requirement in New Rule III(1)(c) requiring the decommissioning plan to include landowner/facility owner agreements and the confidentiality of information within some of those agreements. These concerns are: a) the reference to "any agreements" is too broad; b) the rule should expressly allow redaction of terms unrelated to decommissioning; c) the proposed rule needs to specifically provide for i) relevant affidavits signed by landowners, ii) redacted versions of relevant landowner agreements, or iii) separate confidentiality agreements between the owner and the department that provide for specific and binding protection of confidential commercial information that may be present within submitted landowner agreements.

RESPONSE: The department appreciates the comments and has changed the rule to address all concerns except for separate confidentiality agreements between the owner and the department. Owner confidentiality can be accomplished through redacted landowner agreements or a separate landowner agreement

specific to New Rule III(1)(c). While the department provides for the submittal of any signed landowner agreements that support alternative decommissioning and restoration plans from those in the rule, submittal of other landowner agreements is not required. The department will take the landowner agreements into consideration during the review of the decommissioning plan. The rule has been amended to clarify that only agreements with landowners pertaining to the non-removal of buildings, cabling, electrical components roads or any associated facilities and reclamation activities need be submitted to support the decommissioning plan.

COMMENT NO. 18: The term "associated facilities" must be defined to indicate it does not include turbine towers.

RESPONSE: It is not necessary to include a definition of associated facility to address the commenter's concern. The term "associated facilities" is used once in the rules. It is used in New Rule III(1)(c) to indicate that associated facilities may be subject to a non-removal agreement. However, both 75-26-301(2)(a), MCA, and New Rule III(1)(a) clearly require the removal of above ground wind turbine towers.

COMMENT NO. 19: The decommissioning of a wind generation facility should not include the decommissioning of substation and transmission facilities built to interconnect with wind generation facility to the electrical grid. The definition of "wind generation facility" in 75-26-301(7), MCA includes equipment used to generate electricity and does not include equipment used to connect the generating facility to the grid.

RESPONSE: The department recognizes this concern and has modified New Rule III(1)(d)(i) to clarify that decommissioning requirements do not apply to substations and transmission facilities connecting the wind generation facility with electric grid.

COMMENT NO. 20: Post-decommissioning land use is expected to return to primarily agriculture. Farming operations to prepare the surface topsoil for productive agricultural uses do not extend more than 12 inches below the land surface. The requirement in New Rule III(1)(d)(ii) to remove underground cables and/or conduit to a depth of 24 inches is excessive and will create additional linear disturbance to the surface lands during decommissioning that is onerous and unnecessary and often take many years for native grasslands and pasture to be restored and reclaimed.

RESPONSE: The department acknowledges that agricultural practices often extend to only 12 inches below the land surface. However, the department is requiring removal of underground cables and conduit to a depth of 24 inches to ensure that farm implements do not disturb these cables and conduits long after the facility has ceased operation. Land shifting from geologic activity and winter frost heave could cause underground cables and conduit to become a problem for future agricultural activities if remaining cables and conduit are less than 24 inches below the land surface. In addition, pursuant to New Rule III(1)(c), the landowner agreement can specify the non-removal of underground cables. For these reasons the department has not changed the requirement.

COMMENT NO. 21: The minimum depth of four feet for foundation removal in New Rule III(1)(d)(iii) is considerably deeper than a farmer's ground would ever be cultivated or used for any agricultural purposes. There is concern because as the depth to remove concrete increases both the impact of foundation removal and the costs of removal increases. Two commenters asked that either the depth be reduced to three feet or in the alternative that the rule be revised to allow a shallower depth if appropriate for post-operation land use. Another commenter requested removal of any specified depth and encouraged the depth be considered based on the post-decommissioning land use.

RESPONSE: The department recognizes that post-decommissioning land use may change from that occurring at the time of decommissioning. Future land uses can continuously change. Giving consideration to agricultural practices, the department has changed the minimum depth to which wind turbine foundation concrete must be removed to 36 inches and is giving facilities the option to propose an alternative depth on a case-by-case basis. Farm implements do not reach to a depth of 36 inches, but plant roots may reach this depth. A landowner always has the option to require deeper levels of concrete foundation removal if the landowner is concerned about future lower crop production in areas above the remaining foundations.

COMMENT NO. 22: The reseeding requirement in New Rule III(1)(d)(iv) needs to be enhanced. Although reseeding is an important first step in a reclamation project, it can fail and reestablishment of vegetation is the most important standard of reclamation. There needs to be a reasonable requirement that vegetation be reestablished before a bond can be released.

RESPONSE: The department agrees. The intent of this rule is to provide for successful revegetation of the site, and the rule has been amended to require successful revegetation.

COMMENT NO. 23: The requirement in New Rule III(1)(d)(vi) for removal and grading of access roads should be clarified provide that grading is to preconstruction condition or natural grade as appropriate.

RESPONSE: The department agrees and has amended the rule as suggested.

COMMENT NO. 24: New Rule IV(1) should be amended to require the department to supply owners with the department's estimated costs by a certain deadline prior to finalization of the bond and those costs should be based on acceptable estimating handbooks.

RESPONSE: The department has modified the rule to provide that the department must provide the proposed bond amount to and consult with the owner. New Rule IV(2)(a) already requires the use of acceptable handbooks and publications or other documented cost estimating handbooks or guides.

COMMENT NO. 25: Bond cost associated with the management and maintenance of the facility upon owner insolvency or abandonment should be limited to no more than 30 days.

RESPONSE: The department appreciates this comment but management and maintenance prior to and during decommissioning is generally not calculated in days. Management costs, as specified in various industry handbooks, is in reference to the project and is generally a percentage of the overall cost of work. Maintenance costs are generally accrued after the project is completed. These costs are generally minimal; however, some amount is needed for things like the possibility of vegetative failure, erosion, or road maintenance until the reclamation is stable. The suggested change has not been made.

COMMENT NO. 26: Alternatives for New Rule V should be considered to avoid the situation where an owner currently has a bond held by a private landowner and, with adoption of the rules, would then be required to post another bond with the state.

RESPONSE: Section 75-26-304(8)(a), MCA exempts the owner from the bonding requirement if the owner has provided a bond to certain governmental entities, but it does not exempt an owner who has provided bond to a private landowner. Therefore, the department does not have authority to adopt the proposed modification.

COMMENT NO. 27: In order to make the requirements of New Rule V(4) clear, it could be modified to state: "An owner of a wind generation facility is exempt from the requirements of MCA 75-26-301 (6) if:". This would make clear that a decommissioning plan must be created and submitted to the department regardless of achieving the 10 percent ownership exemption.

RESPONSE: The definition of "repurposed" in 75-26-301(6), MCA, is not applicable to the bonding exemptions in New Rule V(4), which addresses exemptions from bonding when a facility is already bonded with another governmental agency and the situation of the landowner owning 10 percent or greater share of the facility. Exemptions from bonding while repurposed are handled in New Rule V(3) and do not need to be duplicated in New Rule V(4).

New Rule II(4) and (5) already requires all facilities of 25 megawatts or greater to submit a decommissioning plan regardless of whether a facility is exempt from bonding. The proposed amendment is not necessary.

COMMENT NO. 28: Further specification is needed in New Rule V(4) regarding how the 10 percent ownership exemption is achieved in the case of a single facility having multiple landowners. The rule should provide that the exemption is available if all or a majority of landowners have approved its use and have approved the decommissioning plan.

RESPONSE: The proposed modification assumes that the exemption would apply even though some landowners do not own 10 percent of the facility. However, the department interprets 75-26-304(8)(b), MCA, to apply the exemption only if the entire facility is on land owned by the same landowner or landowners and that all landowners own a 10 percent share. The 10 percent share could be owned jointly or each landowner could own a 10 percent share. Therefore, the proposed modification has not been made.

COMMENT NO. 29: The prohibition in New Rule VII(1) on releasing the bond only after the successor submits its bond goes beyond the terms of 75-26-304(10), MCA.

RESPONSE: Section 75-26-304(10), MCA provides that the department shall release the predecessor bond no later than 90 days after transfer of the property. Given this clear mandatory language, the department agrees and the rule has been amended accordingly. The requirement of 75-26-304(10), MCA for the transferee to provide substitute bond within 90 days has been added.

COMMENT NO. 30: New Rule VII(2) should be amended to provide that department approval of the owner replacing any bond should not be unreasonably withheld.

RESPONSE: The rule has been amended to require the department to approve the replacement bond if it meets the requirements of the rules.

COMMENT NO. 31: New Rule VIII(1) should be amended to require that a decision on an application to reduce bond be made only after a conference with the owner and be subject to appeal by the owner if the reduction is denied or substantially reduced.

RESPONSE: The rule has been amended to require the department to consult with the owner before it denies the request in whole or in part. With regard to appeal, Title 75, chapter 26, part 3, MCA provides for appeals to the Board of Environmental Review only for the assessment of penalties for failure to post bond with the department. However, under case law of the Montana Supreme Court, an owner has the right to challenge the department's bond calculation in district court. See *Johansen v. State*, 228 Mont. 39, 955 P.2d 653 (1998).

COMMENT NO. 32: The department should be required to provide substantial and adequate justification for a decision that a bond amount must be increased pursuant to New Rule VIII(2) and that decision should be subject to appeal.

RESPONSE: In addition, the department has added a requirement that the department must prepare a written justification for the increase. With regard to appeal, see response to Comment No. 31.

COMMENT NO. 33: New Rule IX needs to be modified to include New Rules XI and XII (letters of credit and certificates of deposit).

RESPONSE: Letters of credit and certificates of deposit are forms of collateral bonds.

COMMENT NO. 34: The requirement in New Rule XI(1)(d) is not generally acceptable to most banks issuing letters of credit. The onus appears to be put on the issuing bank vs. the beneficiary in the event a letter of credit is still required but is not in place. No bank will take the responsibility to see if a department has not notified them of anything. Rather it should be upon notification only (as is the essence and spirit of a letter of credit). In addition, banks cannot logistically make letter of credit funds immediately available upon request as indicated in the rule.

RESPONSE: The department acknowledges that some banks may not agree to issue a letter of credit that meets this requirement. However, this requirement is necessary to ensure that the bond does not expire without a draw due to an oversight by the department. This requirement is applicable to letters of credit submitted as bond for hard rock mines. See ARM 17.24.146(1)(d). Furthermore, the department's bond forms for coal mines and gravel mines contain this provision. The department has received and is currently holding letters of credit that contain this provision.

COMMENT NO. 35: It makes sense to allow incremental bonding, based on phased repurposing and other circumstances.

RESPONSE: Provisions to allow for incremental bonding, based on phased repurposing, have not been added. The department appreciates the comment but feels a phased approach would unnecessarily complicate the bond calculation. In addition, the proposed rules better protect the State of Montana because an owner will need to wait until completion of the whole repurposing project before its bond is returned instead of releasing portions of the bond as different repurposing phases are completed. The department does not anticipate any other circumstances where the State of Montana would be well served by the incremental phasing in of bonding.

COMMENT NO. 36: New Rule XIV(3) should be amended to provide that commencement of decommissioning could be extended to begin 120 to 180 days after abandonment to allow greater flexibility for facility owners.

RESPONSE: Several commenters suggested alternative time frames for when decommissioning should begin after a facility is considered abandoned. A facility that meets the definition of abandonment will have had 12 months of marginal to no operation. Between the 12 months of marginal to no operation and the additional 90 days of lead time, there should be enough time to schedule contracts to begin decommissioning activities. If a facility has good reason that it cannot commence decommissioning activities for more than 90 days after abandonment, the facility has the option to request a longer lead time in an alternative written plan as allowed for in the rule. The department will consider each alternative written plan on a case-by-case basis. The plan must be approved by the department before a facility is assured of an alternate timeline.

COMMENT NO. 37: The department received both supportive and opposing comments regarding keeping the requirement in New Rule XIV(6) to file a map with the clerk and recorder. One commenter indicated that the filing of a map of remaining wind turbine foundations with the county recorder is unnecessary. Any remaining wind turbine foundation is simply another large rock below ground. There is no other map required of all the large rocks within a site boundary.

RESPONSE: The department appreciates both sets of comments and understands that natural features of similar or greater magnitude are likely to be unknown and not disclosed to property owners. The department considers information about locations of remaining wind turbine foundations necessary for current and future landowners to determine what existing structures may be below the ground. Filing this information with the county recorder will provide

documentation in one location that is accessible by future landowners. Facilities often are just leasing property and there would not be a record of the land use through a standard title search of the property. If a new wind facility is developed on the site, this map will provide documentation that will help the new wind facility owner and the department to determine an appropriate bond amount.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ John F. North By: */s/ Tom Livers*
JOHN F. NORTH TOM LIVERS
Rule Reviewer Director

Certified to the Secretary of State, January 2, 2018.

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

In the matter of the amendment of ARM 37.70.305, 37.70.401, 37.70.402, 37.70.406, 37.70.408, 37.70.601, and 37.70.607 pertaining to Low Income Energy Assistance Program (LIEAP)	))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 24, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-823 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2173 of the 2017 Montana Administrative Register, Issue Number 22.

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

3. No comments or testimony were received.

4. The department intends to apply these rule amendments retroactively to October 1, 2017. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

/s/ Barbara Banchero
Barbara Banchero, Attorney
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State January 2, 2018.

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.

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

- 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 an online 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, 2017. This table includes those rules adopted during the period June 30, 2017, through September 30, 2017, 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, 2017, this table, and the table of contents of this issue of the Register.

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 2017 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

ADMINISTRATION, Department of, Title 2

New Rule	Due Date of Annual Financial Statement for Escrow Licensee, p. 623, 1141
New Rule	Definition of "Alter" for Mortgage Licensees, p. 965, 1516
New Rules	Public Safety Answering Point Certification, Funding, and Monitoring, p. 2363
2.21.3703	and other rules - Recruitment and Selection Policy, p. 1309
2.21.6608	and other rules - Employee Records Management Policy, p. 1316, 1443
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