

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 3

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the amendment of ARM)
2.67.303 pertaining to rates for county)
legal advertising)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On March 1, 2018, at 10:00 a.m., the Board of County Printing will hold a public hearing in Room 105 of the Old Livestock Building at 1310 E. Locky, Helena, Montana, to consider the proposed amendment of 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 February 22, 2018, to advise us of the nature of the accommodation that you need. Please contact Angie Gifford, Department of Administration, 1310 E. Locky Avenue, P.O. Box 200110, Helena, Montana 59620-1101; telephone (406) 444-0115; fax (406) 444-3039; Montana Relay Service 711; or e-mail agifford@mt.gov.

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

2.67.303 OFFICIAL MAXIMUM PRICES AND PRINTING STANDARDS

(1) Rates for county legal advertising may not ~~be more than \$12~~ exceed \$13 for the first folio insertion and ~~not more than \$10~~ \$11 for each subsequent insertion.
(2) through (5)(c) remain the same.

AUTH: 18-7-404, MCA
IMP: 18-7-411, MCA

STATEMENT OF REASONABLE NECESSITY: The board finds it necessary to propose increases to the current county legal advertising rates because, based on an analysis by the Montana Newspaper Association, production-related costs have increased approximately 10 percent since the rates were last raised in 2013. The proposed rates will help defray the increased costs to local newspapers. The remaining changes are proposed to simplify the rule language.

The rate increases will affect all Montana counties. There is no reasonable way to estimate the fiscal impact on counties because the number of advertisements a county places varies in any year.

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 Angie Gifford, Department of Administration, 1310 E. Locky Avenue,

P.O. Box 200110, Helena, Montana 59620-1101; telephone (406) 444-0115; or e-mail agifford@mt.gov; and must be received no later than 5:00 p.m., March 9, 2018.

5. Angie Gifford, Department of Administration, has been designated to preside over and conduct this hearing.

6. The Board of County Printing 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 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 board 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 board.

7. An electronic copy of this proposal notice is available through the Board of County Printing web site at <http://countyprinting.mt.gov/>. 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.

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

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

By: /s/ Roger Wagner
Roger Wagner, Chair
Board of County Printing

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

Certified to the Secretary of State January 30, 2018.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.17.127, pertaining to) PROPOSED AMENDMENT
classification of workers for heavy)
construction services on public works)
projects)

TO: All Concerned Persons

1. On March 2, 2018, at 1:30 p.m., the Department of Labor and Industry (department) will hold a public hearing in the second floor conference room (conference rooms A and B), 1805 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on February 23, 2018, to advise us of the nature of the accommodation that you need. Please contact the Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 201503, Helena, MT 59620-1503; telephone (406) 444-1741; fax (406) 444-7071; TDD (406) 444-0532; or e-mail MSmith3@mt.gov.

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

24.17.127 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

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

(g) The current heavy construction services rates are contained in the 2018 revised version of the "Montana Prevailing Wage Rates for Heavy Construction Services" publication.

(h) through (3) remain the same.

AUTH: 2-4-307, 18-2-409, 18-2-431, MCA

IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-406, 18-2-411, 18-2-412, 18-2-413, 18-2-414, 18-2-415, 18-2-422, 18-2-431, MCA

REASON: There is reasonable necessity to update the "Montana Prevailing Wage Rates for Heavy Construction Services" publication following the area practice survey recently conducted by the department. The survey was conducted in order to determine the proper classification of work on water or wastewater treatment facilities. The proper classification of work performed is that classification found to be prevailing in local area practice. Specifically, the survey was used to determine whether the prevailing classification was pipefitters versus pipelayers (laborers), when the work involved joining large diameter (12" or larger) pipe with bolted flange

connections, without added cutting, grinding, welding, or other fabrication of the pipe. In particular, work done at a location which would later be inside of a building was considered work inside a building structure for purposes of the classification. The department surveyed employers and applied the general guidance set out in the U.S. Department of Labor Prevailing Wage Resource Book to determine local area practice of those worker classifications. The survey included projects within the last three years and included the entire state, because there is only one district for purposes of heavy construction. The survey showed that the prevailing classification is pipefitter for this type of work. The department is incorporating the results of the survey into the publication's notes concerning classification of work.

4. A copy of the proposed revised 2018 publication is available and can be accessed online at: <http://erd.dli.mt.gov/labor-standards>.

5. A printed version of the proposed revised 2018 publication is also available by contacting Mike Smith at the address and e-mail listed in paragraph 2 of this notice.

6. 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: Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 1503, Helena, MT 59620-1503; fax (406) 444-7071; or e-mailed to MSmith3@mt.gov, and must be received no later than 5:00 p.m., March 9, 2018.

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

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

mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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 proposed amendment applies to the class of businesses that are plumbing, heating, or mechanical contractors that engage in heavy construction work. The department has determined, through its area practice survey that of that class, those establishments which constitute a small business (as defined in 2-4-102, MCA) will not be significantly or directly affected by the proposed amendment.

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

/s/ Mark Cadwallader
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State January 30, 2018.

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

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through IV, the amendment of	)	PROPOSED ADOPTION,
ARM 24.33.121, 24.33.131,	)	AMENDMENT, AND REPEAL
24.33.142, 24.33.151, 24.35.101,)	
24.35.111, 24.35.117, 24.35.121,)	
24.35.131, 24.35.202, 24.35.205, and)	
24.35.206, and the repeal of ARM)	
24.33.101, 24.35.141, and 24.35.207)	
pertaining to Construction Contractor)	
Registration and the Independent)	
Contractor Central Unit)	

TO: All Concerned Persons

1. On March 1, 2018, at 1:30 p.m., the Department of Labor and Industry will hold a public hearing in 2nd floor Conference Room A & B, 1805 Prospect Ave, Helena, Montana, to consider the proposed adoption, 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 the Department of Labor and Industry no later than 5:00 p.m. on February 22, 2018, to advise us of the nature of the accommodation that you need. Please contact Tracy Gonzalez, Department of Labor and Industry, P.O. Box 8011, Helena, Montana, 59624; telephone (406) 444-9585; fax (406) 444-3465; or e-mail tgonzalez@mt.gov.

3. General Statement of Reasonable Necessity: The proposed adoption, amendment, and repeal of those rules stated herein are reasonably necessary as part of the general obligation of the department periodically to review administrative rules under its purview, pursuant to 2-4-314, MCA, as well as to shorten, simplify, and clarify existing rules. The department endeavors continually to improve its administrative processes, shorten investigative timeframes, and provide simplicity for members of the public who utilize these rules.

Of particular note is the proposed adoption of four new rules. First, New Rule I exists to restate and provide clarity regarding the departmental interpretation of the Independent Contractor Exemption Certificate (ICEC) law, which has been affirmed by the Workers' Compensation Court. Specifically, the rule states that the holding of an ICEC conclusively determines a worker as an independent contractor; conversely, where a worker is required to hold an ICEC and does not, the worker is conclusively an employee.

Second, New Rules II and III recodify into separate rules specific provisions of ARM 24.35.111. That is, the new rules maintain the requirements of ARM 24.35.111, but place them in a new location. This modification is intended to simplify the rules which exist and state the requirements for ICEC applications, affidavits, and waivers in separate rules for the sake of clarity and readability. The text of the point system established in ARM 24.35.111, and which is recodified in New Rule II, remains fundamentally unchanged.

Finally, New Rule IV codifies existing practice of the department with regard to construction contractor registration, as provided by Title 39, chapter 9, MCA, and the ability of the department to suspend the registration where necessary.

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

NEW RULE I DETERMINATIONS WHERE EXEMPTION CERTIFICATE MANDATORY

(1) When a worker is required by 39-71-417, MCA, to have an independent contractor exemption certificate and does not, the worker is conclusively determined to be an employee for purposes of wage and hour, unemployment insurance, workers' compensation, and income tax.

(2) When a worker holds an independent contractor exemption certificate and is working under that certificate as required by 39-71-417, MCA, the worker is conclusively determined to be an independent contractor for purposes of wage and hour, unemployment insurance, workers' compensation, and income tax.

(3) When worker status is conclusively determined pursuant to this rule, the ICCU may issue a decision based solely on information sufficient to determine that conclusive outcome.

(4) Notwithstanding the foregoing, the ICCU may, at its discretion, perform an investigation pursuant to ARM 24.35.202 or when a decision is needed for a program other than wage and hour, unemployment insurance, workers' compensation, or income tax. A decision may also be issued for the purposes of suspending revoking the certificate pursuant to ARM 24.35.131 or issuing penalties, or for other purposes as the ICCU deems necessary.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-71-203, 39-71-417, MCA

IMP: 39-3-201, 39-3-402, 39-51-201, 39-51-204, 39-71-417, 39-71-418, 39-71-419, MCA

REASON: Reasonable necessity exists to adopt this new rule to make explicit the holdings of the Workers' Compensation Court for the clarity of the public with regard to independent contractor exemption certificates. Specifically, the Court held in *McCone County v. ICCU*, 2012 MTWCC 19, ¶ 24, that the failure of the worker to hold an ICEC when required to do so conclusively determined her status to be that of an employee. The Court issued the same ruling for purposes of workers' compensation in *Reule v. UEF*, 2017 MTWCC 3, ¶ 44. As such, the ICCU hopes to further inform the public of their obligations and corresponding responsibilities through the enactment of this rule. In addition, proposed new rules for wage and hour claims adopt the conclusive status of the ICEC and define "independent

contractor" for wage and hour purposes to conform with workers' compensation and unemployment insurance laws. As such, this rule proposes to implement that modification. Finally, the department interprets 15-30-2523, MCA, and ARM 42.17.223 to require a mandatory determination of independent contractor status based on the holding or not holding of an ICEC. Sections (3) and (4) are designed to permit a streamlined investigation by the ICCU in instances where the legal conclusion as to independent contractor versus employee status is conclusively determined through limited facts. That is, where a worker holds an ICEC and is working under that ICEC, as defined by 39-71-417(7)(c), MCA, the only facts necessary for conclusion for the purposes of wage and hour, workers' compensation, and unemployment insurance laws are the fact of the ICEC and that the worker is working under that ICEC by performing work described in the categories of the ICEC. This proposed rule, then, permits the ICCU to issue a decision based solely on those facts, rather than engaging in a full investigation and analysis under the AB test where such investigation is unnecessary to the result.

NEW RULE II INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE APPLICATION AFFIDAVIT (1) On the form provided by the department, the applicant shall provide all information designated as required. The form must be notarized, and the applicant must state, under oath, the veracity of all information on and attached to the form.

(2) The applicant shall also submit supporting documentation to prove applicant's qualification for an ICEC. The department has the discretion to assess the reliability of the documentation and award points for each item of proof as outlined by this rule. Each item of documentation submitted may count toward points in more than one category. No more than two items of proof may be submitted under each category. To qualify for an ICEC, an applicant's documentation must be awarded a minimum of 15 points by the department for each independently established trade, occupation, profession, or business listed on the ICEC application.

(a) The department may award up to ten points for proof that the applicant has current workers' compensation, unemployment insurance, and Department of Revenue accounts for employees in each independently established trade, occupation, profession, or business. The department may award up to six points for proof of two insurance policies or accounts and may award up to three points for proof of one insurance policy or account.

(b) The department may award up to six points for each of the following proofs for each independently established trade, occupation, profession, or business:

(i) contract or memo of understanding that demonstrates applicant's independent contractor status. If the applicant can end a contract at any time without incurring any liability for failing to complete the project that is the subject of the contract, the department cannot award points for the contract under this rule. Separate contracts with different hiring agents may qualify for a maximum of six points. Each contract must include:

- (A) payment based on a completed project;
- (B) beginning and ending dates of the contract;

- (C) liability for failure to complete the project;
- (D) identification of who provides the materials and supplies;
- (E) signatures by both parties; and
- (F) defined body of work, complete project, or end result;
- (ii) signed and dated list of equipment and tools owned or controlled by the applicant with approximate values. The equipment or tool list may be documented by a rental or lease agreement, county documents verifying the business equipment tax paid, or other means;
- (iii) commercial general liability insurance policy or bonding;
- (iv) most recent business tax forms filed within the past three years;
- (v) IRS Form 1099s (miscellaneous income) from multiple hiring agents or two quarterly self-employment tax payments (IRS form 1040ES) within past three years; or
- (vi) trucking company lease agreement.
- (c) The department may award up to three points for each of the following proofs for each independently established trade, occupation, profession, or business:
 - (i) partnership or limited liability partnership agreement signed and dated by all partners that demonstrates:
 - (A) intent to form the partnership;
 - (B) contribution by all partners;
 - (C) a proprietary interest and right of control by the application; and
 - (D) the sharing of profit/loss;
 - (ii) current business license or building permit;
 - (iii) certificate of registration for the business entity issued by the Montana secretary of state;
 - (iv) articles of incorporation, annual report, articles of organization, or other documentation that verifies the applicant is an officer in a corporation, a manager in a manager-managed limited liability company, or a member of a member managed limited liability company;
 - (v) proof of ownership, home occupation license, rental or lease agreement with a statement that the property may be used for business or commercial use, or proof of IRS filing for use of home as a business;
 - (vi) educational certification for unlicensed occupations relevant to the trade, occupation, or profession for which the applicant seeks the ICEC;
 - (vii) current professional license relevant to the trade, occupation, or profession for which the applicant seeks the ICEC;
 - (viii) membership in a relevant professional association or affiliation;
 - (ix) current motor carrier (MC) authority number in applicant's personal or business name;
 - (x) business bank account; or
 - (xi) copies of advertising in a newspaper, phone book, website on the internet, or other venue.
- (d) The department may award up to one-and-one-half points for each of the following proofs for each independently established trade, occupation, profession, or business:
 - (i) federal employer identification number (EIN);

- (ii) Dunn and Bradstreet number;
 - (iii) telephone or utility bill(s) in the business name;
 - (iv) credit card(s) or purchase account(s) in the business name;
 - (v) preprinted business invoices, business cards, or brochures;
 - (vi) proof of order(s) for printed hats, shirts, or other promotional items for the business;
 - (vii) proof of business advertising using a vehicle sign, yard sign, bulletin boards, or posted flyers;
 - (viii) invoices billed to the business name or a bid proposal or estimate, either of which must include the address and phone number of the recipient;
 - (ix) vehicle registration(s) in the business name; or
 - (x) international fuel tax account number (IFTA) in the applicant's personal or business name.
- (e) The applicant may submit any other supporting documentation. The department has discretion to assess the reliability of and determine the point value of any documentation not listed in this rule.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-71-203, 39-71-417, MCA

IMP: 39-3-201, 39-3-402, 39-51-201, 39-51-204, 39-71-417, 39-71-418, 39-71-419, MCA

REASON: Reasonable necessity exists to adopt this new rule as a way to simplify and clarify the existing ICEC application process. Currently, the application process is fully defined in a single rule. This proposal suggests a rule for each of the application's constituent parts. As such, the point system currently defined at ARM 24.35.111 is proposed to be in its own rule.

NEW RULE III INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE

WAIVER (1) To execute a waiver, the applicant shall complete the department-approved waiver form. The waiver form must be signed by the applicant and notarized. The applicant shall represent on the waiver form that:

- (a) the applicant is engaged in each independently established trade, occupation, profession, or business that is specifically identified on the application form;
- (b) the applicant is responsible for all taxes related to the applicant's work as an independent contractor;
- (c) the applicant controls the details of how services are performed, both under contract and in fact, and the hiring agent retains only the control necessary to ensure the bargained for end result; and
- (d) the applicant understands and agrees that if the ICEC is granted, the applicant is not eligible for and waives the right to workers' compensation or occupational disease benefits for an injury or occupational disease related to work performed as an independent contractor in each independently established trade, occupation, profession, or business for which the ICEC is granted.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-71-203, 39-71-417, MCA

IMP: 39-3-201, 39-3-402, 39-51-201, 39-51-204, 39-71-417, 39-71-418, 39-71-419, MCA

REASON: In conformance with proposed modifications to ARM 24.35.111 and New Rule II, this new rule sets forth the requirements of the ICEC waiver. This proposal is designed to simplify the application process, by breaking it down into its constituent parts.

NEW RULE IV SUSPENSION OF CONSTRUCTION CONTRACTOR REGISTRATION (1) A contractor registration may be suspended in circumstances which the department deems necessary. These circumstances include, without limitation, the following:

(a) false statements regarding any aspect of the construction contractor registration application;

(b) suspension is required by law, for example, based on non-payment of child support pursuant to Title 40, chapter 5, part 7, MCA;

(c) failure to report a change in status as required by ARM 24.33.142; and

(d) failure to maintain workers' compensation coverage, if required.

(2) In addition to suspension, the department may assess penalties pursuant to the provisions of 39-9-301 and 39-9-401, MCA.

AUTH: 39-9-103, MCA

IMP: 39-9-204, 39-9-301, 39-9-401, MCA

REASON: Reasonable necessity exists to propose this new rule to state the most common bases for suspension of a construction contractor registration. These bases conform to current departmental practice with regard to suspension, and each constitutes a violation of the requirements of the construction contractor registration program.

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

24.33.121 CONSTRUCTION CONTRACTOR REGISTRATION FEES

(1) The fee for the issuance, renewal, or reinstatement of a construction contractor certificate of registration is ~~\$53~~ \$70.

(a) The fee is nonrefundable for applicants.

(b) An applicant will have a maximum of six months to submit the required information for approval. After six months, the applicant must resubmit the ~~\$53~~ \$70 fee and a new application.

(2) If a business structure changes to require an FEIN (or not require an FEIN), a new application and ~~\$53~~ \$70 application fee must be submitted.

AUTH: 39-9-103, MCA

IMP: 39-9-206, MCA

REASON: Reasonable necessity exists to amend the construction contractor registration fee pursuant to the requirements of 39-9-206(2), MCA, that the "fees must cover the full cost of issuing certificates, filing papers and notices, and administering and enforcing this chapter." As currently set, the fees do not cover the full cost of the construction contractor registration program. The program experienced a loss of \$67,229.76 in fiscal year 2015, with total expenses of \$338,851, a loss of \$90,031.47 in fiscal year 2016, with total expenses of \$409,989, and a loss of \$220,305.97 in fiscal year 2017, with total expenditures of \$521,890. As such, the fees must be increased. Based on the total number of current construction contractor registrations, 10,768, the department estimates approximately \$376,880 in fees per fiscal year. The department expects that, as a result of increasing the fees as proposed, the program will not be able fully to fund its costs, because the registration fee is statutorily capped at \$70. Therefore, while a \$70 fee will likely continue to be insufficient to fully cover the cost of the construction contractor registration program, the increase will more closely meet the statutory requirement to be self-funded.

24.33.131 EVIDENCE OF COMPLIANCE WITH LAWS (1) through (1)(b)(iii) remain the same.

(iv) Montana is listed in section 3A on the insurance policy's declarations page as the state under which laws the policy affords coverage;

(v) through (d) remain the same.

AUTH: 39-9-103, MCA

IMP: 39-9-201, MCA

REASON: Reasonable necessity exists to amend this rule to incorporate specifically the requirement that Montana be listed in section 3A of the insurance declaration page due to confusion which has existed. It has long been required that Montana be listed on the declaration page; however, the department has discovered that, while this requirement is widely known, it is not universally known. As such, the department seeks to make explicit this requirement.

24.33.142 REPORTING CERTIFICATE CHANGES (1) through (1)(c) remain the same.

(d) change in status of certificate as stated pursuant to ARM 24.33.151(1);

(e) phone number;

(f) addition to ownership; ~~and~~

(g) workers' compensation insurance carrier change or cancellation;-

(h) business name; or

(i) any change in principal(s) of the business.

(2) remains the same.

AUTH: 39-9-103, MCA

IMP: 39-9-201, 39-9-206, 39-9-301, 39-9-303, MCA

REASON: Reasonable necessity exists to amend (1)(d) to clarify for the public what is meant by a change in "status" that must be reported to the department. Reasonable necessity exists to insert new (1)(h) and (i) to ensure that contractors report to the department when a business or applicant name is changed.

24.33.151 CERTIFICATES OF REGISTRATION (1) through (1)(b) remain the same.

(c) "LEASED EMPLOYEES" means the contractor uses employees ~~from an employee-leasing firm~~ of a professional employer organization, as defined at 39-8-102, MCA. These employees are presumably covered with workers' compensation and unemployment insurance through the leasing company.

(d) remains the same.

(2) Along with a certificate, each certificate holder will receive a construction contractor registration wallet card and a vehicle decal. The department shall review requests for more than one decal or card on an individual basis.

(3) remains the same

AUTH: 39-9-103, MCA

IMP: 39-9-204, MCA

REASON: Reasonable necessity exists to modify (1)(c) to clarify the meaning of "employee leasing firm" as a professional employer organization. Reasonable necessity exists to modify (2) to correct a typographical omission.

24.35.101 DEFINITIONS For the purposes of ARM Title 24, chapter 35, the following definitions apply:

(1) through (10) remain the same.

~~(11) "Person" means an individual. A person may be a sole proprietor, working member of a partnership, working member of a limited liability partnership, or working member of a member managed limited liability company. An officer or manager who has elected to apply for an ICEC pursuant to 39-71-417, MCA, is a person for the purposes of these rules.~~

(11)(12) "Renewal affidavit application" means an application for renewal of an existing ICEC held by that person.

(13) through (15) remain the same but are renumbered (12) through (14).

AUTH: 39-51-301, 39-51-302, 39-71-203, 39-71-417, MCA

IMP: 39-51-201, 39-51-204, 39-71-105, 39-71-409, 39-71-417, 39-71-418, MCA

REASON: Reasonable necessity exists to strike (11) because it is duplicative of statute. Reasonable necessity exists to modify (12) to clarify the renewal application is an application, not an affidavit.

24.35.111 APPLICATION FOR INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE (1) ~~A person who regularly and customarily performs services at locations other than the person's own fixed business location and who~~

has not elected to be personally bound by the provisions of workers' compensation plan 1, 2, or 3, shall apply for an independent contractor exemption certificate (ICEC). The applicant for an ICEC shall submit:

(a) a completed ICEC application affidavit on a department-approved form bearing the applicant's original notarized signature, as required by [NEW RULE III]. ~~The applicant shall swear or affirm under oath that the statements contained in the form and attached documentation are true and accurate to the best of the applicant's knowledge. The application affidavit must include, but is not limited to:~~

- ~~(i) applicant's name and mailing address;~~
- ~~(ii) applicant's social security number;~~
- ~~(iii) list identifying each trade, occupation, profession, or business for which the applicant seeks an ICEC, including:~~
 - ~~(A) business name;~~
 - ~~(B) business structure (entity type);~~
 - ~~(C) business mailing address and business physical address; and~~
 - ~~(D) business telephone number;~~
- ~~(iv) supporting documentation for applicant's independent contractor status in each trade, occupation, profession, or business for which applicant seeks exemption from the Workers' Compensation Act, as set forth by (2);~~
- (b) a fee, as required by ARM 24.35.121; and
- (c) an executed, notarized waiver conforming to the requirements of [NEW RULE III] (3).

~~(2) The applicant shall submit supporting documentation to prove applicant's qualification for an ICEC. The department has the discretion to assess the reliability of the documentation and award points for each item of proof as outlined by this rule. Each item of documentation submitted may count toward points in more than one category. No more than two items of proof may be submitted under each category. To qualify for an ICEC, an applicant's documentation must be awarded a minimum of 15 points by the department for each independently established trade, occupation, profession, or business listed on the ICEC application.~~

~~(a) The department may award up to ten points for proof that the applicant has current workers' compensation, unemployment insurance, and Department of Revenue accounts for employees in each independently established trade, occupation, profession, or business. The department may award up to six points for proof of two insurance policies or accounts and may award up to three points for proof of one insurance policy or account.~~

~~(b) The department may award up to six points for each of the following proofs for each independently established trade, occupation, profession, or business:~~

~~(i) contract or memo of understanding that demonstrates applicant's independent contractor status. If the applicant can end a contract at any time without incurring any liability for failing to complete the project that is the subject of the contract, the department cannot award points for the contract under this rule. Separate contracts with different hiring agents may qualify for a maximum of six points. Each contract must include:~~

- ~~(A) payment based on a completed project;~~
- ~~(B) beginning and ending dates of the contract;~~

- ~~(C) liability for failure to complete the project;~~
- ~~(D) identification of who provides the materials and supplies;~~
- ~~(E) signatures by both parties; and~~
- ~~(F) defined body of work, complete project, or end result;~~
- ~~(ii) signed and dated list of equipment and tools owned or controlled by the applicant with approximate values. The equipment or tool list may be documented by a rental or lease agreement, county documents verifying the business equipment tax paid, or other means;~~
- ~~(iii) commercial general liability insurance policy or bonding;~~
- ~~(iv) most recent business tax forms filed within past two years;~~
- ~~(v) IRS Form 1099s (miscellaneous income) from multiple hiring agents or two quarterly self-employment tax payments (IRS form 1040ES) within past two years; or~~
- ~~(vi) trucking company lease agreement.~~
- ~~(c) The department may award up to three points for each of the following proofs for each independently established trade, occupation, profession, or business:~~
 - ~~(i) two or more bids, estimates, proposals, or completed billing invoices issued by the business;~~
 - ~~(ii) partnership or limited liability partnership agreement signed and dated by all partners that demonstrates:~~
 - ~~(A) intent to form the partnership;~~
 - ~~(B) contribution by all partners;~~
 - ~~(C) a proprietary interest and right of control by the applicant; and~~
 - ~~(D) the sharing of profit/loss;~~
 - ~~(iii) application for or current business license or building permit;~~
 - ~~(iv) certificate of registration for the business entity issued by the Montana secretary of state;~~
 - ~~(v) articles of incorporation, annual report, articles of organization, or other documentation that verifies the applicant is an officer in a corporation or a manager in a manager-managed limited liability company with a minimum of 20 percent ownership held by the applicant;~~
 - ~~(vi) proof of ownership, rent, or lease of business location or proof of IRS filing for use of home as a business (IRS Form 8829);~~
 - ~~(vii) educational certification for unlicensed occupations or current professional license relevant to the trade, occupation, or profession for which the applicant seeks the ICEC;~~
 - ~~(viii) membership in a relevant professional association or affiliation;~~
 - ~~(ix) current motor carrier (MC) authority number in applicant's personal or business name;~~
 - ~~(x) business bank account; or~~
 - ~~(xi) copies of advertising in a newspaper, phone book, on the internet, or other venue.~~
- ~~(d) The department may award up to one and one-half points for each of the following proofs for each independently established trade, occupation, profession, or business:~~
 - ~~(i) federal employer identification number (EIN);~~

- ~~(ii) Dunn and Bradstreet number;~~
- ~~(iii) telephone or utility bill(s) in the business name;~~
- ~~(iv) credit card(s) or purchase account(s) in the business name;~~
- ~~(v) preprinted business invoices, cards, or brochures;~~
- ~~(vi) proof of order(s) for printed hats, shirts, or other promotional items for the business;~~
- ~~(vii) proof of business advertising using a vehicle sign, yard sign, bulletin boards, or posted flyers;~~
- ~~(viii) invoices billed to the business name;~~
- ~~(ix) vehicle registration(s) in the business name; or~~
- ~~(x) international fuel tax account number (IFTA) in applicant's personal or business name.~~
- ~~(e) The applicant may submit any other supporting documentation. The department has discretion to assess the reliability of and determine the point value of any documentation not listed in this rule.~~
- ~~(3) To execute a waiver, the applicant shall complete the department-approved waiver form. The waiver form must be signed by the applicant and notarized. The applicant shall represent on the waiver form that:~~
 - ~~(a) the applicant is engaged in each independently established trade, occupation, profession, or business that is specifically identified on the application form;~~
 - ~~(b) the applicant is responsible for all taxes related to the applicant's work as an independent contractor;~~
 - ~~(c) the applicant controls the details of how services are performed, both under contract and in fact, and the hiring agent retains only the control necessary to ensure the bargained for end result; and~~
 - ~~(d) the applicant understands and agrees that if the ICEC is granted, the applicant is not eligible for and waives the right to workers' compensation or occupational disease benefits for an injury or occupational disease related to work performed as an independent contractor in each independently established trade, occupation, profession, or business for which the ICEC is granted.~~
- ~~(4) An ICEC issued by the department remains in effect for two years unless the department revokes or suspends the ICEC or the applicant requests in writing that the department cancel the ICEC.~~
- ~~(5) and (6) remain the same but are renumbered (2) and (3).~~

AUTH: ~~39-51-301, 39-51-302, 39-71-203, 39-71-417, MCA~~

IMP: ~~39-51-201, 39-51-204, 39-71-105, 39-71-409, 39-71-417, 39-71-418,~~
MCA

REASON: Reasonable necessity exists to modify (1) because it is duplicative of statute. In addition, the section is modified to narrow the rule to the specific requirements of application. Reasonable necessity exists to strike (2) through (4) because of the proposal to adopt new rules containing this information. The department hopes to shorten the length of each rule for the purpose of achieving clarity for each segment of the ICEC application, simplicity, and modernization of the administrative rules pertaining to the certificate. Reasonable necessity exists to

modify the authorizing and implementing statutes to reflect the proposed narrowing of the scope of the rule.

24.35.117 ICEC RENEWAL, AFFIDAVIT, AND WAIVER (1) Two months prior to the expiration date of an ICEC, the department shall mail an ICEC renewal affidavit application and waiver to the ICEC holder at the address on file with the department. The department shall prepare a renewal form for each ICEC holder that incorporates the most current information in the possession of the department regarding the ICEC holder's independent contractor status and lists the documentation on file with the department that supports independent contractor status.

(2) To renew an ICEC, the ICEC holder shall submit the following:

(a) signed and notarized ICEC renewal affidavit application on the department-approved form that indicates any changes in independent contractor status;

(b) through (e) remain the same.

(3) The department will verify documentation on file and evaluate all new documentation submitted by the ICEC holder. The department will assign point values to documentation, in accordance with ~~ARM 24.35.114~~ [NEW RULE II].

(4) The department has discretion to assess the reliability of and determine the point value of any documentation not listed in ~~ARM 24.35.114~~ [NEW RULE II].

(5) If the department is unable to verify any documentation needed to support independent contractor status, the department will notify the ICEC holder in writing within 30 days of receipt of the renewal affidavit application.

(6) To qualify for an ICEC renewal, the ICEC holder's documentation must be awarded a minimum of 15 points by the department for each independently established trade, occupation, profession, or business listed on the ICEC renewal affidavit application.

(7) remains the same.

(8) An ICEC holder may update the information on file with the department at any time during a current independent contractor exemption certificate period by requesting in person, over the phone, by e-mail, or in writing the revision of business name(s), business structure, phone number(s), or mailing address.

(9) An ICEC holder may add or change trade(s), occupation(s), profession(s), or business(es) to an ICEC, by executing an affidavit and waiver and submitting sufficient, relevant documentation to qualify for a minimum of 15 points, in accordance with the requirements of ~~ARM 24.35.114~~ [NEW RULE II]. When an addition is made pursuant to this section (9), the expiration date of the ICEC is not changed.

AUTH: 39-51-301, 39-51-302, 39-71-203, 39-71-409, 39-71-417, MCA

IMP: 39-51-201, 39-51-204, 39-71-105, 39-71-409, 39-71-417, 39-71-418, MCA

REASON: Reasonable necessity exists to amend (8) to clarify appropriate means of communication for the purpose of updating ICEC information with the department. Reasonable necessity exists to amend (9) to clarify existing departmental practice

that, because no fee is required to amend an ICEC to add or change the trade, occupation, profession, or business of the ICEC holder, the expiration date of the ICEC is not extended through the change. Other changes to this section—the striking of "affidavit" in favor of "application"—bring this rule into conformity with proposed amendments to ARM 24.35.101.

24.35.121 APPLICATION AND RENEWAL FEE FOR INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE (1) A nonrefundable fee of \$125 must be submitted with each initial application, each application for reinstatement of a revoked ICEC, and each renewal affidavit application.

(2) and (3) remain the same.

AUTH: 39-71-203, 39-71-401, MCA

IMP: ~~39-71-120~~, 39-71-401, 39-71-417, 39-71-418, MCA

REASON: Reasonable necessity exists to amend (1) to conform with proposed amendments to ARM 24.35.101. Reasonable necessity exists to modify the implementation statutes to strike 39-71-120, MCA, because that statute has been repealed.

24.35.131 SUSPENSION OR REVOCATION OF INDEPENDENT CONTRACTOR EXEMPTION CERTIFICATE ~~(1) An ICEC may be suspended or revoked by the department pursuant to 39-71-418, MCA. The department shall apply the two-part test pursuant to ARM 24.35.202 to determine whether an individual is an independent contractor or an employee.~~

~~(2) The department may suspend an ICEC as it applies to a particular hiring agent for whom the ICEC holder works when the department determines that a hiring agent is either exerting control or retains a right to control to a degree that causes a certificate holder to violate the provisions of 39-71-417, MCA.~~

~~(3) The department may revoke an ICEC when the department determines that a certificate holder fails to meet the test for independent contractor status, set forth by ARM 24.35.202.~~

~~(4)~~ (1) The department may revoke an ICEC when the department determines that a certificate holder is uncooperative in light of the following factors it is necessary to do so. The following are examples when the department may revoke an ICEC:

(a) the department is unable to locate the certificate holder or mail sent to the certificate holder at the address on file with the department is returned;

(b) the certificate holder fails to cooperate with the department, including without limitation: refuses to provide information to the department, including, but not limited to, updated contact information for the certificate holder and contact information for each of the certificate holder's hiring agents;

(i) failure to provide information to the department upon request;

(ii) failure to complete a worker relationship questionnaire upon request; or

(iii) failure to notify the department of changes in contact information;

~~(c) mail sent to the certificate holder is returned to the department; or~~

(c) when revocation is required by law, for example for non-payment of child support pursuant to Title 40, chapter 5, part 7, MCA; or

(d) remains the same.

~~(5) A person may appeal a department suspension or revocation of an ICEG in the same manner as that provided for denial of an application pursuant to 39-71-417, MCA.~~

(6) and (7) remain the same but are renumbered (2) and (3).

AUTH: 39-51-301, 39-51-302, 39-71-203, 39-71-417, MCA

IMP: 39-51-201, 39-51-204, 39-71-417, 39-71-418, MCA

REASON: Reasonable necessity exists to strike (1) through (3) because they are duplicative of statute and are therefore unnecessary to be restated. Reasonable necessity exists to modify (4) to clarify the intent of the current rule and to enhance the readability of the rules. Reasonable necessity exists to strike (5) because it is duplicative of statute.

24.35.202 DECISIONS REGARDING EMPLOYMENT STATUS (1) Subject to [NEW RULE I], ~~When~~ when the ICCU or another unit of the department evaluates an individual's employment status, the department shall apply a two-part test to determine whether an individual is an independent contractor or an employee. The department shall evaluate:

(a) through (3) remain the same.

(4) ~~Determinations~~ Decisions regarding employment status must comply with the criteria for an independent contractor found at 39-71-417, MCA, as well as with existing law on partnership, joint ventures, and other employment entities.

(5) Initial determinations regarding employment status may be issued by ~~the Unemployment Insurance Division or the uninsured employers~~ any unit of the department or by the Department of Revenue. Initial determinations of employment status by the department are binding on the parties unless a party disputes the determination, pursuant to ARM 24.11.2407, or 24.16.7527, ~~or~~ 42.17.210.

(6) through (8) remain the same.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302, 39-71-203, 39-71-417, MCA

IMP: 39-3-208, 39-3-209, 39-3-210, 39-51-201, 39-51-203, 39-71-415, 39-71-417, 39-71-418, MCA

REASON: Reasonable necessity exists to modify (1) to ensure conformity with proposed New Rule I. Reasonable necessity exists to modify (4) to reflect that ICCU decisions are "decisions" rather than "determinations." Reasonable necessity exists to modify (5) to clarify the various units and bureaus which may make initial worker status determinations, and to reflect that ARM 42.17.210, a rule of the Department of Revenue, has been repealed. It is the department's intention that, when an ICEC is not required by 39-71-417, MCA, the department will conduct an analysis pursuant to the AB Test.

24.35.205 BINDING NATURE OF ICCU DECISIONS REGARDING EMPLOYMENT STATUS (1) Unless appealed following mediation pursuant to 39-71-415, MCA, written decisions issued by the ICCU are binding on all parties with respect to employment status issues under the jurisdiction of the department and the jurisdiction of any other agency which elects to be included as a member of the ICCU. These decisions may affect a party's liability in matters related to unemployment insurance, the Uninsured Employer's Fund, wage and hour issues, ~~the Human Rights Commission~~ human rights, and state income tax withholding. (2) and (3) remain the same.

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302, 39-71-203, 39-71-417, MCA

IMP: 39-3-212, 39-51-1109, 39-71-415, 39-71-417, MCA

REASON: Reasonable necessity exists to modify (1) to note that ICCU decisions are binding for purposes of human rights generally, rather than simply for the Human Rights Commission.

24.35.206 MEDIATION AND APPEAL OF DECISIONS REGARDING EMPLOYMENT STATUS ~~(1) A complaint received by the department or a department request for a decision regarding employment status may be investigated by the ICCU. The ICCU shall issue a decision on employment status.~~

~~(2) A party to a dispute, which does not involve workers' compensation benefits, may appeal an ICCU decision on employment status or the denial, revocation, or suspension of an ICEG.~~

~~(3) The first step in the appeal process is mandatory mediation.~~

(1) After issuance of a decision, a dissatisfied ~~The party requesting mediation shall file a written request for mediation with the ICCU within 15 days of notice~~ the mailing of the ICCU's decision. The request for mediation is effective upon receipt by the department, not upon mailing. It is the obligation of the requesting party to ensure timely receipt of the request for mediation by the ICCU.

(2) A request for mediation may be filed in the following ways:

(a) by mail to P.O. Box 8011; Helena, MT 59604;

(b) by electronic mail to iccuappeal@mt.gov; or

(c) by facsimile to (406) 444-3465.

(3) Upon receiving a request for mediation, the ICCU shall provide the mediator a copy of its decision and any other documents it deems relevant.

~~(4) A party is considered to have been given notice of the ICCU decision on the date a written notice is personally delivered or three days after the department mails a written notice to the party. The ICCU may extend the time limits for a party to submit a written request for mediation for good cause shown.~~

~~(5) Following mediation, a party may appeal an ICCU decision by filing a petition for appeal with the Workers' Compensation Court. The appellant shall serve a copy of the petition by mail on all parties of record.~~

~~(6) A petition for appeal must be received by the Workers' Compensation Court within 30 days of the date the department mailed the mediator's report to the~~

~~parties. Notice of appeal is effective upon the actual receipt of the petition by the Workers' Compensation Court, not upon mailing.~~

~~(7) When a dispute is not resolved through mediation and no petition for appeal is filed with the Workers' Compensation Court, the ICCU's employment status decision is binding on the parties.~~

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302, 39-71-203, 39-71-417,
MCA

IMP: 2-4-201, 39-3-216, 39-51-1109, 39-71-415, 39-71-417, 39-71-418,
MCA

REASON: Reasonable necessity exists to propose to strike (1) and (2) because they are duplicative of statute. Reasonable necessity exists to amend (3) (proposed to be (1)) to clarify that the timeline to request mediation of an ICCU decision begins to run upon the ICCU mailing of the decision, as stated on the certificate of service. Proposed (2) is proposed to be amended to clarify the ways in which requests for mediation can be processed. Proposed (3) includes the requirements for file transmittal upon receipt of a request for mediation. Reasonable necessity exists to strike current (4) because it has created complication and confusion regarding the actual time to request mediation of decisions of the ICCU. Reasonable necessity exists to strike (5) through (7) because they are duplicative of 39-71-415, MCA.

6. The department proposes to repeal the following rules:

24.33.101 CONTRACTOR REGISTRATION APPLICATION
REQUIREMENTS

AUTH: 39-9-103, MCA

IMP: 39-9-102, 39-9-201, MCA

REASON: Reasonable necessity exists to repeal this rule to simplify and shorten the administrative rules. Section 39-9-201, MCA requires applicants for a contractor registration to apply using a departmental form, and sets forth the minimum requirements for such a form. However, the statute does not require adoption of an administrative rule to determine the contents of that form. As such, in the interests of ensuring the application requirements are kept up-to-date with the needs of Montana contractors and the department, removing this provision from the administrative rules will simplify the updating process.

24.35.141 GUIDELINES FOR DETERMINING WHEN AN INDEPENDENT
CONTRACTOR EXEMPTION CERTIFICATE IS NOT REQUIRED

AUTH: 39-71-203, 39-71-417, MCA

IMP: 39-71-417, MCA

REASON: Reasonable necessity exists to repeal this rule because it is duplicative of statute and in the interests of shortening and simplifying the administrative rules.

24.35.207 TRANSFER OF FILE

AUTH: 39-3-202, 39-3-403, 39-51-301, 39-51-302, 39-71-203, 39-71-417,
MCA

IMP: 2-4-201, 39-3-216, 39-51-1109, 39-71-415, 39-71-417, 39-71-418,
MCA

REASON: Reasonable necessity exists to repeal this rule to simplify and shorten the administrative rules. In particular, the proposed amendment of ARM 24.35.206 includes the pertinent provisions of this rule. As such, this rule would become duplicative.

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: Tracy Gonzalez, Department of Labor and Industry, P.O. Box 8011, Helena, Montana, 59624; telephone (406) 444-9585; fax (406) 444-3465; or e-mail tgonzalez@mt.gov, and must be received no later than 5:00 p.m., March 9, 2018.

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, which includes the name and e-mail or mailing address of the person to receive notices, and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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 adoption, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses.

11. The Office of Administrative Hearings has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER
Mark Cadwallader
Rule Reviewer

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh
Commissioner of Labor
Department of Labor and Industry

Certified to the Secretary of State January 30, 2018.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the adoption of NEW	)	NOTICE OF PROPOSED
RULE I deeded land grazing permits	)	ADOPTION AND AMENDMENT
and amendment of ARM 32.2.404)	
department of livestock brands	)	NO PUBLIC HEARING
enforcement division fees, 32.18.109	)	CONTEMPLATED
freeze branding, and 32.18.202)	
county line grazing permits)	

TO: All Concerned Persons

1. The Department of Livestock (department) proposes to adopt and amend the above-stated rules.

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 March 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 adopted provides as follows:

NEW RULE I DEEDED LAND GRAZING PERMITS (1) The deeded land grazing permit allows movement of cattle for grazing purposes from a Montana ranch of origin across multiple county lines to a Montana destination premises if the entire destination premises is the private deeded property of the livestock owner.

(2) An application must be submitted to and approved by the department prior to movement.

(3) For purposes of obtaining a permit, virgin breeding females and nursing calves are not required to be branded.

(4) The provisions of ARM 32.18.202(2) through (4) apply, except ARM 32.18.202(2)(d).

AUTH: 81-1-102, 81-3-202, MCA

IMP: 81-3-203, 81-3-211, MCA

REASON: The department is proposing to adopt this rule because new rulemaking is reasonably necessary to implement HB338 (2017). That legislation allows cattle to move on a grazing permit across multiple county lines. Rules must be established to outline the procedure for execution. Individuals impacted by this rule would be cattle producers who own grazing land in separate counties, separated by more than one county line, and whose entire grazing location is private deeded property.

Approximately 250 producers shipped cattle for grazing purposes within the State of Montana from April through July of 2017. A large portion of these movements would have been to property that does not meet the criteria for this permit type, but it would require extensive research for each individual producer to determine the number of eligible applicants. The department estimates that fewer than one dozen producers will be eligible to obtain a deeded land grazing permit.

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

32.2.404 DEPARTMENT OF LIVESTOCK BRANDS ENFORCEMENT
DIVISION FEES (1) through (3) remain the same.

(4) Permits:

- (a) Adjacent state transportation permit \$10.00
(b) Adjoining county ~~transportation or~~ grazing permit ~~40.00 per 100 head~~

<u>Number of Animals</u>	<u>Fee</u>
<u>1-100</u>	<u>\$ 30.00</u>
<u>101-200</u>	<u>\$ 40.00</u>
<u>201-300</u>	<u>\$ 50.00</u>
<u>301-400</u>	<u>\$ 60.00</u>
<u>401-500</u>	<u>\$ 70.00</u>
<u>501-600</u>	<u>\$ 80.00</u>
<u>601-700</u>	<u>\$ 90.00</u>
<u>701-800</u>	<u>\$ 100.00</u>
<u>801-900</u>	<u>\$ 110.00</u>
<u>901-1000</u>	<u>\$ 120.00</u>

(c) through (k) remain the same.

(l) Deeded land grazing permit:

(i) First-time application

<u>Number of Animals</u>	<u>Fee</u>
<u>1-50</u>	<u>\$ 100.00</u>
<u>51-100</u>	<u>\$ 125.00</u>
<u>101-200</u>	<u>\$ 150.00</u>
<u>201-300</u>	<u>\$ 175.00</u>
<u>301-400</u>	<u>\$ 200.00</u>
<u>401-500</u>	<u>\$ 225.00</u>
<u>501-600</u>	<u>\$ 250.00</u>
<u>601-700</u>	<u>\$ 275.00</u>
<u>701-800</u>	<u>\$ 300.00</u>
<u>801-900</u>	<u>\$ 325.00</u>
<u>901-1000</u>	<u>\$ 350.00</u>

(ii) Renewal

<u>Number of Animals</u>	<u>Fee</u>
<u>1-100</u>	<u>\$ 40.00</u>
<u>101-200</u>	<u>\$ 50.00</u>
<u>201-300</u>	<u>\$ 60.00</u>
<u>301-400</u>	<u>\$ 70.00</u>
<u>401-500</u>	<u>\$ 80.00</u>
<u>501-600</u>	<u>\$ 90.00</u>
<u>601-700</u>	<u>\$ 100.00</u>
<u>701-800</u>	<u>\$ 110.00</u>
<u>801-900</u>	<u>\$ 120.00</u>
<u>901-1000</u>	<u>\$ 130.00</u>

(5) remains the same.

AUTH: 81-1-102, 81-3-202, MCA

IMP: 81-3-205, 81-3-211, 81-4-602, 81-4-605, 81-5-112, 81-7-504, 81-8-256, 81-8-264, 81-8-271, 81-8-276, 81-8-304, 81-9-113, 81-9-411, MCA

REASON:

32.2.404 (4)(b)

Based on fiscal analysis, the department is proposing to raise fees as the existing adjoining grazing permit fees are not commensurate with cost. Currently about 800 grazing permits are issued annually. This fee change would affect these 800 permittees.

32.2.404 (4)(i)(i)

The department has created a new type of permit for which a fee is proposed. The fee for first time application of deeded land grazing permits is based on fiscal analysis of department staff time required to process, ensure compliance, and issue the permit. It is estimated that this would affect no more than a dozen producers in Montana.

32.2.404 (4)(i)(ii)

Based on fiscal analysis, the process of renewing a deeded land grazing permit will cost less than processing a first-time application. Therefore, the department is proposing a separate fee for renewals that is commensurate with cost. The fee to renew a deeded land grazing permit is estimated to affect no more than a dozen producers in Montana.

32.18.109 FREEZE BRANDING (1) through (1)(c) remain the same.

(d) the freeze brand will be issued on the same certificate and except on a new recording will not be charged an additional recording fee; and

(e) freeze brands can only be sold or transferred along with the hot iron certificate; _

~~(f) a grazing permit will not be issued to freeze brand cattle.~~

AUTH: 81-1-102, MCA

IMP: 81-1-102, MCA

REASON: Cattle moving on a grazing permit are required to be branded with a Montana recorded brand. The department is proposing to amend this rule to remove language restricting grazing permit movements for freeze-brand cattle because the department began recognizing freeze brands on cattle in 2014.

32.18.202 ADJOINING COUNTY LINE GRAZING PERMITS (1) The adjoining county grazing permit allows livestock to move for grazing purposes from the ranch of origin in Montana to a premises in an adjoining Montana county.

(2) The permit must be issued by a department employee, not a deputy stock inspector.

(a) The ranch of origin and destination premises must be owned or controlled by the livestock owner or the owner's agent. The owner or owner's agent must be authorized to grant department employees access to the destination premises to inspect any livestock that are present while the permit is in effect.

(b) Permits are valid for eight months after the issue date.

(c) Only one permit may be issued for an animal or group of animals in any 12-month period.

(d) (4) For the purpose of obtaining an adjoining county grazing permit, livestock must be moved under a county line grazing permit must be hot iron branded with a Montana brand recorded to the owner of the livestock.

(e) Requests for permits may be denied if previous permits have been suspended.

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

(3) Grazing permits may be suspended if the livestock owner:

(a) provides false information on the permit;

(b) transports animals not authorized to move on a grazing permit;

(c) allows animals to leave or be removed from the destination premises and not return to the ranch of origin; and

(d) violates state or federal livestock containment, livestock inspection, or animal health regulations.

(4) If the permit is expired or suspended, or if animals are not returning to the origin premises, animals must move in accordance with 81-3-211(1) through (6)(e) and (7), MCA.

AUTH: 81-1-102, 81-3-202, MCA

IMP: 81-3-203, 81-3-211, MCA

REASON: The department is proposing to amend this rule to provide a more thorough explanation of the process for issuance of an adjoining county grazing

permit. These changes reflect current practices and, thus, should have no effect on individuals using this permit.

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., March 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 public 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., March 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 81 persons based on based on the approximately 811 seasonal grazer permittees.

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 apply. Rep. Casey Knudsen was notified of this proposed action October 2, 2017 by telephone and email.

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

/s/ 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 30, 2018

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

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 37.57.106 pertaining to) AMENDMENT
expanding the children's special)
health services) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. The Department of Public Health and Human Services proposes to amend the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on February 21, 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 MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.57.106 ELIGIBILITY FOR CSHS FINANCIAL ASSISTANCE

(1) remains the same.

(2) Family income must be verified to determine eligibility. The department will request documentation of income from the applicant.

(a) through (c) remain the same.

(d) A family whose income, less any out-of-pocket expenses for health insurance premiums, care expenses for children, disabled or elderly adults while adults are working, and earned income disregards is at or less than ~~261%~~ 300% of the federal poverty income guidelines and one of the following:

(i) through (6) remain the same.

AUTH: 50-1-202, MCA

IMP: 50-1-202, MCA

4. STATEMENT OF REASONABLE NECESSITY

The department proposes to amend ARM 37.57.106 to expand the Children's Special Health Services Financial Assistance Program (program) so the department can serve families who do not currently qualify for the Healthy Montana Kids

Program (HMK). \$100,000 in federal grant funds are made available to the program July 1, annually, until they are disbursed. Families can receive up to \$2,000 per state fiscal year (SFY). The program can benefit a minimum of fifty families per SFY.

The proposed amendment seeks to raise the program's current federal poverty income level (FPL) from 261% to 300% to qualify certain Montana families for financial assistance.

The department believes the amendment necessary because the program's FPL threshold of 261% is the same as that for HMK, and the program is not serving some families because they otherwise qualify for HMK. As a result, the program has only paid out \$2,000 to one family in SFY 2017. More Montana families with private insurance, who have out of pocket expenses and do not qualify for HMK, could benefit from the program if the FPL threshold were raised to 300%.

Fiscal Impact

This proposed rule amendment will not change the fiscal impact of the program.

5. The department intends to apply this rule amendment retroactively to July 1, 2017. A retroactive application of the proposed rule amendment does not result in a negative impact to any affected party.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on March 9, 2018. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

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

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

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 6 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. 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/ Nicholas Domitrovich
Nicholas Domitrovich, Attorney
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State January 30, 2018.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.106.2202 pertaining to) PROPOSED AMENDMENT
updating residential treatment)
facilities rules)

TO: All Concerned Persons

1. On March 1, 2018, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on February 14, 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 rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.106.2202 RESIDENTIAL TREATMENT FACILITY: LICENSURE
STANDARDS (1) A residential treatment facility must meet the requirements of the following:

(a) ~~The standards for the following categories, contained in the Joint Commission on Accreditation of Health Care Organizations' 1993 Accreditation Manual for Mental Health, Chemical Dependency, and Mental Retardation/Developmental Disabilities Services~~ 2017 Comprehensive Accreditation Manual for Behavioral Health Care:

(i) ~~administrative/clinical management, as specified under the following headings:~~

- ~~(A) governance and management (GM);~~
- ~~(B) professional staff organization (PO), with the exception of PO.2.5.8.1;~~
- ~~(C) human resources management (HR);~~
- ~~(D) planning and evaluation (PE);~~
- ~~(E) quality assessment and improvement (QA);~~
- ~~(F) utilization review (UR);~~
- ~~(G) research (RS), if provided;~~
- ~~(H) patient rights (PI);~~

- ~~(I) clinical records management (CR);~~
- ~~(ii) patient services, as specified under the following headings:~~
 - ~~(A) patient management (PM);~~
 - ~~(B) child and adolescent services (CA);~~
 - ~~(C) forensic services (FC), if provided;~~
 - ~~(D) special treatment procedures (SC), if provided;~~
- ~~(iii) patient support services, as specified under the following headings:~~
 - ~~(A) nutrition services (NU);~~
 - ~~(B) emergency services (ER);~~
 - ~~(C) pharmacy services (PH), as specified for residential settings in Appendix~~

~~A;~~

- ~~(D) physical health services (PY);~~
- ~~(E) libraries and information networks (LI);~~
- ~~(F) rehabilitation services (RH), as specified for residential settings in~~

~~Appendix A;~~

- ~~(iv) environmental management, as specified under the following headings:~~
 - ~~(A) plant, technology and safety management (PL), as specified for residential settings in Appendix A;~~
 - ~~(B) therapeutic environment (TH);~~
 - ~~(C) infection control (IC), with the exception of IC.2.2.1 and IC.2.2.2--~~
- ~~IC.2.2.4.1; and~~
- ~~(v) for facilities in existence or for which construction had commenced prior to February 11, 1994, the interim life safety measures contained in Appendix D.~~
- ~~(b) The standards contained in Title 42 CFR, part 441, subpart D, as they exist on October 1, 1992.~~

- (i) Care, Treatment, and Services (CTS);
- (ii) Environment of Care (EC);
- (iii) Emergency Management (EM);
- (iv) Human Resource Management (HRM);
- (v) Infection, Prevention and Control (IC);
- (vi) Leadership (LD);
- (vii) Life Safety (LS);
- (viii) Medication Management (MM);
- (ix) National Patient Safety Goals (NPSG);
- (x) Performance Improvement (PI);
- (xi) Record of Care, Treatment, and Services (RC);
- (xii) Rights and Responsibility of the Individual (RI); and
- (xiii) Waived Testing (WT).

(2) A residential treatment facility may not share direct care staff or provide joint activities or treatment in conjunction with another type of health care facility, even if both facilities are under the same management, unless the joint activity involves facilities under a single management and is a specific treatment program that is clinically appropriate for all of the children engaged in it (e.g., appropriate for patients of both a residential treatment facility and an inpatient acute psychiatric facility).

(3) remains the same.

~~(4) The department hereby adopts and incorporates by reference the 1993 Accreditation Manual for Mental Health, Chemical Dependency, and Mental Retardation/Developmental Disabilities Services, published by the Joint Commission on Accreditation of Healthcare Organizations, 2017 Comprehensive Accreditation Manual for Behavioral Health Care, which contains accreditation standards for facilities providing mental health services, and Title 42 of the Code of Federal Regulations (CFR), part 441, subpart D (effective October 1, 1992), which contains standards for provision of inpatient psychiatric services to individuals under age 21. Copies of these standards are available from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.~~

(5) The department adopts and incorporates by reference Title 42 CFR 440.160 (2010) and Title 42 CFR, part 441, subpart D (2010).

(6) The residential treatment facility must have 24-hour onsite nursing care by a registered nurse.

(7) The youth must be evaluated by a physician within 24 hours of admission.

(8) All legal representatives of the youth must be consulted and invited to participate in the development and review of the treatment plan. Valid reasons must be indicated if such a plan is not clinically appropriate or feasible.

(9) A comprehensive discharge plan directly linked to the behaviors and symptoms that resulted in admission and estimated length of stay must be developed upon admission.

(10) If the youth is a student with disabilities, an individualized education plan (IEP) must be in place that provides programs and services consistent with requirements under the Individuals with Disabilities Education Act (IDEA) and state special education requirements. If the youth is not a student with disabilities, educational services and programs must be designed to meet the educational needs of the youth.

AUTH: 50-5-103, MCA

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services is proposing to amend ARM 37.106.2202 regarding residential treatment facilities.

The amendments to the rule update references and clarify current practice for all licensed residential treatment facilities.

It is necessary to amend the residential treatment facility licensure rules in order to adopt and incorporate the current updated Joint Commission on Accreditation of Health Care Organization standards from the 1993 Manual to the 2017 Comprehensive Accreditation Manual for Behavioral Health Care and current updated Code of Federal Regulations for residential care facilities providing psychiatric care as published in 1992 to the 2010 standards.

The department proposes to revise the rule for residential treatment facilities programs to clarify requirements in licensure rule for medical staff that is on call at all times, require 24-hour nursing staff on site, and meet the education requirements of each youth. The proposed changes are necessary to ensure compliance with federal CFR requirements, remain consistent with state Medicaid requirements, and ensure all youth receive appropriate medical oversight to treat and manage the psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the condition.

Fiscal Impact

This rulemaking has no fiscal impact.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., March 9, 2018.

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

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

8. 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.

10. 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 rate increases 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/ Flint Murfitt

Flint Murfitt, Attorney
Rule Reviewer

/s/ Sheila Hogan

Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State January 30, 2018.

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

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 37.12.401 pertaining to the) AMENDMENT
increase of laboratory fees)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. The Department of Public Health and Human Services proposes to amend the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on February 21, 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 MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.12.401 LABORATORY FEES FOR ANALYSES (1) remains the same.

(2) The department will maintain a list of all tests available from the lab and the price of each test. The department adopts and incorporates by reference the Laboratory Test Fee List effective ~~July 1, 2015~~ April 1, 2018, which is available on the web site of the Department of Public Health and Human Services at ~~http://dphhs.mt.gov/Portals/85/publichealth/documents/Lab/PublicHealthLabTesting/PHLFeesJuly2015.pdf~~ http://dphhs.mt.gov/publichealth/LaboratoryServices/PublicHealthLabTesting, and by mail upon request to the lab at the Department of Public Health and Human Services, Public Health and Safety Division, P.O. Box 6489, Helena, MT 59604-6489.

(3) and (4) remain the same.

AUTH: 50-1-202, MCA
IMP: 50-1-202, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.12.401 to increase fees that the Laboratory Services Bureau charges for services provided by the Montana Public Health and Environmental Laboratories.

The Laboratory Services Bureau is primarily a fee for service-funded operation although some general funds and federal grant support do contribute to maintaining operational infrastructure. The laboratories rely on numerous commercial suppliers and manufacturers of laboratory services, instruments, and consumables in order to operate, most of whom have increased their fees on an annual basis.

The Laboratory Services Bureau will not have raised fees for approximately four years at the time that this proposed rule change becomes effective. Without the ability to adjust fees, the laboratory will not be able to maintain critical services provided by the state as the cost of operations has increased over the past four years while fees have remained constant and grant support has decreased. There is also an increasing amount of laboratory services that are performed for public health purposes and are not revenue generating. The proposed fee changes will be effective April 1, 2018

Fiscal Impact

An increase in fees will impact healthcare providers and environmental services clients. This fee change will not be a uniform across the board percent increase but many laboratory testing service fees will increase between 15 and 20 percent where applicable. The proposed fees will be comparable to those of other laboratory service providers in those instances where competitive services exist.

5. The department intends to adopt this rule amendment effective April 1, 2018.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on March 9, 2018. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

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

8. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the

Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 117 persons based on a total of 1,178 persons that may be impacted by this rule amendment.

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

/s/ Shannon L. McDonald
Shannon L. McDonald, Attorney
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State January 30, 2018.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 37.86.5102 and 37.86.5112 and	)	PROPOSED AMENDMENT AND
the repeal of ARM 37.86.5201,	)	REPEAL
37.86.5202, 37.86.5204, 37.86.5205,)	
and 37.86.5206 pertaining to)	
passport to health program updates)	
and the repeal of health improvement)	
program rules)	

TO: All Concerned Persons

1. On March 2, 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.

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 February 21, 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:

37.86.5102 PASSPORT TO HEALTH PROGRAM: DEFINITIONS

(1) through (7) remain the same.

(8) "Ineligible" means a Medicaid member who is not eligible to participate in a managed care program, such as the Passport Program, but is eligible for regular Medicaid. The following categories of members are ineligible for the Passport Program:

(a) through (e) remain the same.

(f) eligible for pregnancy Medicaid ~~foster care~~;

(g) and (h) remain the same.

(i) eligible for Plan First; ~~and~~

(j) receiving Medicaid under a presumptive eligibility program- ; and

(k) eligible for the Breast and Cervical Cancer program.

(9) through (16) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-113, 53-6-116, MCA

37.86.5112 PASSPORT TO HEALTH PROGRAM: REIMBURSEMENT

(1) Reimbursement for primary care case management services is ~~\$3.00~~ a month for each enrollee as follows:

(a) \$3.00 per enrollee per month for individuals categorically eligible for Aged, Blind, Disabled and Medically Frail Medicaid; or

(b) \$1.00 per enrollee per month for all others who are members of Passport eligible populations.

(2) through (4) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-116, MCA

4. The department proposes to repeal the following rules:

37.86.5201 HEALTH IMPROVEMENT PROGRAM: DEFINITIONS is found on page 37-21255 of the Administrative Rules of Montana.

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

37.86.5202 HEALTH IMPROVEMENT PROGRAM: GENERAL is found on page 37-21256 of the Administrative Rules of Montana.

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

37.86.5204 CRITERIA FOR DETERMINING MEDICAID AND HEALTHY MONTANA KIDS PLUS (HMK PLUS) ELIGIBLE INDIVIDUALS MANAGED UNDER THE HEALTH IMPROVEMENT PROGRAM is found on page 37-21259 of the Administrative Rules of Montana.

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

37.86.5205 HEALTH IMPROVEMENT PROGRAM: CLIENT ELIGIBILITY AND ASSIGNMENT is found on page 37-21261 of the Administrative Rules of Montana.

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

37.86.5206 HEALTH IMPROVEMENT PROGRAM: SCOPE OF SERVICES AND REIMBURSEMENT is found on page 37-21262 of the Administrative Rules of Montana.

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

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.86.5102 and 37.86.5112 and the repeal of ARM 37.86.5201, 37.86.5202, 37.86.5204, 37.86.5205, and 37.86.5206.

In November of 2017, the governor called a special session to address the state budget, which had experienced revenue shortfalls combined with 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 for all state agencies and included a \$49 million reduction in general fund dollars to the department's budget for the 2018-2019 biennium.

The rule amendments in this notice are proposed as part of spending reductions under 17-7-140, MCA, which ensures the expenditure of appropriations does not exceed available revenue. 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.

In this notice, the Health Resources Division (HRD) proposes to update the list of ineligible populations for the Passport to Health Program, revise the monthly primary care management rates for Passport, and repeal rules for the Health Improvement Program (HIP). In place of HIP, the department will be implementing a new Complex Care Management Program with Patient Centered Medical Home (PCMH) providers that will provide specialized care management for members with complex needs. This new program will be implemented within the PCMH provider contracts and is not reflected in this rule notice.

The following summaries describe in detail the changes that will be made:

ARM 37.86.5102

In ARM 37.86.5102(8), the department will revise the list of ineligible populations for Passport. Foster care will be removed from the list, which will allow children in foster care to receive Passport services. Pregnancy Medicaid and Breast and Cervical Cancer populations will be added to the list of ineligible populations because enrollees in those populations receive specialized services from medical specialists, and they should not have to get referrals through the Passport program to see those specialists. Enrollees in those populations may later become eligible for the Passport program after their eligibility category changes – when the pregnancy ends or cancer treatment is completed.

ARM 37.86.5112

In ARM 37.86.5112(1), the department will reduce provider reimbursement from \$3.00 to \$1.00 per enrollee per month for primary care case management services for most Passport eligible populations. However, reimbursement for members who are categorically eligible for Aged, Blind, Disabled and Medically Frail Medicaid will remain \$3.00 per member per month. Members determined categorically eligible for Aged, Blind, Disabled and Medically Frail Medicaid typically have more healthcare needs and could benefit the most from care coordination through the Passport program. All other Passport eligible populations are typically healthy and need access to a health home but require less care coordination.

ARM 37.86.5201, 37.86.5202, 37.86.5204, 37.86.5205, and 37.86.5206

The department proposes to repeal rules relating to the Health Improvement Program and eliminate HIP. The department is expanding the Patient Centered Medical Home (PCMH) model and will transition HIP to the new Complex Care Management program, which will be part of the PCMH contracts. Providers who currently participate in HIP may be eligible to enter into PCMH contracts with the department, if the providers choose to do so.

Fiscal Impact

The proposed changes will result in a total projected cost savings in state and federal funds of \$3,336,437 in state fiscal year (SFY) 2018 and \$6,672,873 in SFY 2019.

The proposed rulemaking is estimated to affect: 7,103 Medicaid members, 113,345 Health Improvement program members, 283 Passport providers, and 13 Health Improvement program providers.

6. The department intends the proposed rule amendments to be applied effective April 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., March 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, apply and have been fulfilled. The primary bill sponsor was notified by electronic mail on January 26, 2018.

11. 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 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 rate increases 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 30, 2018.

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 37.27.136, 37.27.137,	)	PROPOSED AMENDMENT AND
37.27.138, 37.27.902, 37.27.903,	)	REPEAL
37.86.3515, 37.88.101, 37.88.907)	
and the repeal of ARM 37.27.906,)	
37.86.3501, 37.86.3502, 37.86.3503,)	
37.86.3505, 37.86.3506, 37.86.3507,)	
37.88.110, 37.88.201, 37.88.205,)	
37.88.206, 37.88.301, 37.88.305,)	
37.88.306, 37.88.601, 37.88.605,)	
37.88.606, 37.88.901, 37.88.903,)	
37.88.906, 37.88.908, 37.88.909)	
pertaining to Adult Mental Health and)	
Substance Use Disorder)	

TO: All Concerned Persons

1. On March 1, 2018, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on February 16, 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:

37.27.136 OUTPATIENT COMPONENT REQUIREMENTS (1) ~~Patient~~ Individual placement criteria ~~shall~~ must address the following:

~~(a) Persons able to receive services on a nonresidential and less intensive basis shall be admitted to this component. Persons needing detoxification, inpatient or intermediate care services shall be referred to an appropriate treatment program. Persons manifesting signs and symptoms of a condition that warrants acute medical care shall not be admitted but shall be referred to a hospital.~~

~~(b) Persons should demonstrate stable physical or emotional/behavioral conditions, sufficient motivation, and supportive environmental factors to participate in this component. This level of care involves weekly sessions usually supplemented by involvement in self help groups. The intensity typically does not exceed 9 contact hours per week.~~

~~(a) referrals to a hospital for individuals manifesting signs and symptoms of a condition that warrants acute medical care; and~~

~~(b) discharge criteria that demonstrates successful completion of treatment or justification for either an extension or a transfer.~~

~~(c) Persons who have recently completed a more intensive level of care may utilize this level for aftercare services. This level of care also may be appropriate for protracted evaluation of patients who require some additional time to make a commitment to a more intensive recovery effort.~~

~~(d) Dimensional admission criteria must demonstrate compliance with the preceding descriptions and encompass the dimensions delineated in ARM 37.27.120(1)(j)(i) through (vi).~~

~~(e) Continued stay criteria shall be based on the above criteria to justify continuance at this level of care or transfer to a more restrictive treatment environment. A continued stay/utilization review must be documented at 45 days.~~

~~(f) Discharge criteria shall be based on previous dimensional criteria to demonstrate successful completion of treatment or justification for an extension or transfer.~~

~~(2) Outpatient services shall must include:~~

~~(a) Admission and screening services in accordance with dimensional admission criteria which substantiates the appropriateness of treatment based on a biopsychosocial assessment corresponding to the dimensional admission criteria via utilization review.~~

~~(b) Crisis intervention, screening evaluation, individual, group and family counseling, intervention services, structured educational presentation, referral and transportation services, discharge, and follow-up services.~~

~~(a) sufficient staff coverage 24 hours a day, seven days a week; and~~

~~(b) treatment plan assessment and staffing every 30 days.~~

~~(c) A plan for outreach activities which includes: target groups, methodology, and special emphasis programs.~~

~~(d) Availability of 24-hour, seven-day a week coverage.~~

~~(e) Assessments and evaluations shall be conducted by a certified chemical dependency counselor based on at least three cross-referenced diagnostic tools.~~

~~(f) A minimum of 2.5 counseling contacts per month.~~

~~(g) Treatment plan assessment/staffing every 45 days.~~

~~(3) Staff requirements:~~

~~(a) Counseling staff shall be certified and trained in the field of chemical dependency counseling and education and shall demonstrate an ability to work with clients and a knowledge of the etiology of chemical dependency.~~

~~(b) Sufficient staff shall be available to provide 24-hour on-call services.~~

~~(c) Staff shall be familiar with community resources for referral, including medical, social, vocational, mental health, alcoholics anonymous, etc.~~

~~(4)~~ (3) The program shall must develop policies and procedures to address the above-listed services, staff requirements, and the criteria in ARM 37.27.115.

~~(5)~~ Client recordkeeping and reporting requirements specific to the outpatient care component shall include:

- ~~(a)~~ ADIS admission/discharge forms.
- ~~(b)~~ Date of admission.
- ~~(c)~~ Admission note/utilization review which justifies the admission to this level of care based on compliance with dimensional admission criteria are results of diagnostic tools, if applicable.
- ~~(d)~~ Biopsychosocial assessment.
- ~~(e)~~ Dimensional admission criteria checklist.
- ~~(f)~~ Medical history.
- ~~(g)~~ Documentation of all supportive service contacts.
- ~~(h)~~ Individualized treatment plan which is reviewed and updated at least every 45 days and responds to ARM 37.27.120(g).
- ~~(i)~~ Progress notes shall be written following each contact (a minimum of once a month) and respond to ARM 37.27.120(h).
- ~~(j)~~ Discharge summary that includes: compliance with dimensional criteria or transfer, an account of the client's response to treatment which reviews the treatment plan and documents the client's progress in accomplishing treatment goals and a follow-up plan.

~~(6)~~ (4) Program effectiveness and quality assurance efforts which include individual case review and utilization and effectiveness review: as described below.

~~(a)~~ Individual case review is a procedure for monitoring a client's progress and is designed to ensure the adequacy and appropriateness of the services provided to that client and shall:

~~(i)~~ Be designed to ensure that the care provided to clients is evaluated and updated every 45 days, according to the needs of each client.

~~(ii)~~ Be accomplished through staff meetings and/or quarterly staff reviews. All involved treatment staff must participate. In small rural programs with only one staff member, files shall be reviewed by that staff member.

~~(b)~~ (a) Utilization and effectiveness - review is a process of using patient placement criteria to evaluate the necessity and appropriateness of allocated services and resources to ensure confirm that the programs services are necessary, cost efficient, and effectively utilized. Utilization and effectiveness reviews shall must:

~~(i)~~ Utilize patient placement criteria to justify the necessity of admissions, continued stay, transfer and discharge at timely intervals and to document justification via a utilization review note.

~~(ii)~~ Ensure the collection, analysis and utilization of information which collect, analyze, and utilize the information to demonstrates program effectiveness. This shall include, but not be limited to, completion of goals and objectives, average monthly caseloads, average contacts per client per month, completion ratios, employment and follow-up data.

AUTH: 53-24-204, 53-24-208, MCA
IMP: 53-24-208, MCA

37.27.137 DAY TREATMENT COMPONENT REQUIREMENTS (1) ~~Patient placement criteria shall be developed and address the following:~~

~~(a) Persons requiring a more intensive treatment experience than intensive outpatient treatment but do not require inpatient care. This level of care provides at least five hours of contact time per day for at least four days per week, for a total of 20 to 40 hours per week.~~

~~(b) Persons admitted to this level of care require the presence of minimal, if any symptoms of substance withdrawal; the ability to safely respond to and benefit from ambulatory detoxification, if necessary; the absence of significant or unstable physical or emotional/behavioral complicating conditions; the presence of a current impending episode of loss of control or a current threat of loss of control in a previously successful patient. Due to significant life disruptions and/or lack of social supports the patient requires an intensive outpatient treatment free from the distractions of work, school, family, and/or social problems to focus on recovery. Although the patient may acknowledge a need for change, ambivalence about treatment and problems in several dimensions require the resources of a multidisciplinary team.~~

~~(c) Dimensional admission criteria shall be developed to demonstrate compliance with the preceding descriptions and encompass dimensions delineated in ARM 37.27.120(1)(j)(i) through (vii).~~

~~(d) Continued stay criteria shall be developed based on the above criteria to justify continuance at this level of care or transfer to a more or less restrictive treatment environment. A continued stay/utilization review shall be documented at least once, preferably at ten days.~~

~~(e) Discharge criteria shall be developed based on the previous dimensional criteria to demonstrate successful completion of treatment or justification for an extension or transfer.~~

~~(2) (1) Day treatment services will may be offered within an inpatient setting and all of the corresponding standards pursuant to inpatient care will be applied with exception of 24 hour supervision and residential requirements.~~

AUTH: 53-24-208, MCA

IMP: 53-24-208, MCA

37.27.138 INTENSIVE OUTPATIENT TREATMENT COMPONENT REQUIREMENT (1) ~~Patient placement criteria shall be developed and address the following:~~

~~(a) Persons should have only minimal (if any) continuing symptoms of intoxication or withdrawal; the presence of stable physical and emotional/behavioral conditions (if any); a recent history of behavioral deterioration with increasing life impairment. The client requires structured outpatient counseling involving ten to 30 hours of program contact time per week in order to provide the necessary intensity of services without an inpatient placement. The client must be sufficiently accepting of treatment and have an environment which is adequate to support recovery efforts. This level of care affords the client the opportunity to interact with the real world environment while still benefiting from a programmatic structured therapeutic milieu.~~

~~(b) Persons Individuals needing detoxification withdrawal management, inpatient, or intermediate care residential services shall must be referred to an appropriate treatment program.~~

~~(2) Persons Individuals manifesting signs and symptoms of a condition that warrants acute medical care shall not be admitted but must be referred to a hospital.~~

~~(c) Dimensional admission criteria shall demonstrate compliance with the preceding descriptions and encompass the dimensions delineated in ARM 37.27.120(1)(j)(i) through (vii).~~

~~(d) Continued stay criteria shall be developed based on the above criteria to justify continuance at this level of care or transfer to a more or less restrictive treatment environment. A continued stay/utilization review shall be documented at three weeks following admission or as needed.~~

~~(e) Discharge criteria shall be developed based on previous dimensions to demonstrate successful completion of treatment which includes 90% completion of all required sessions or justification for an extension or transfer.~~

~~(2) (3) Intensive outpatient services shall must include: referral, transfer, discharge, aftercare, and follow-up services that ensure a continuity of care.~~

~~(a) Admission and screening in accordance with dimensional admission criteria which substantiate the appropriateness of treatment based on a biopsychosocial assessment corresponding to the dimensional admission criteria via utilization review. Additionally, assessments shall include at least three cross-referenced diagnostic/assessment tools confirming a determination of chemical dependency. This assessment must be conducted by a certified chemical dependency counselor.~~

~~(b) Structured outpatient counseling equaling ten to 30 hours per week consistent with the individualized treatment plan. The content of this service must be similar to inpatient treatment and offer the same foundations for recovery.~~

~~(c) A minimum of two skilled treatment services per day at least three times per week. One of the skilled treatment services must be group counseling of at least two to three hours in duration. Skilled treatment services may include group counseling, individual counseling, family counseling, and educational presentations (lectures).~~

~~(d) The structured educational series shall be presented in a logical, progressive format which contains the essential elements necessary for recovery.~~

~~(e) One session of documented individual counseling per week with a certified or eligible chemical dependency counselor.~~

~~(f) Other support services as necessary.~~

~~(g) Availability of professional consultation including medical.~~

~~(h) Direct affiliation with more intensive levels of care. This may be offered as part of the overall program or via contract/agreement.~~

~~(i) Encouragement of clients to attend A.A. twice weekly.~~

~~(j) Periodic assessment review and treatment plan update every two weeks.~~

~~(k) Provision of family services as appropriate.~~

~~(l) Referral, transfer, discharge, aftercare, and follow-up services that ensure a continuity of care.~~

~~(3) (4) Staff requirements: The program must provide availability of professional counseling services 24 hours per day, 7 days per week.~~

~~(a) Counseling staff shall be certified or eligible and trained in the field of chemical dependency counseling. Counselors conducting the IAP program shall demonstrate an ability to work with clients, a knowledge of the etiology of chemical dependency, and expertise in group skills.~~

~~(b) Availability of professional counseling services 24 hours per day, seven days per week.~~

~~(c) The program shall provide sufficient staff to provide for all aspects of this service.~~

~~(d) Staff shall be familiar with community resources for referral including medical, social, vocational, mental health, spiritual, alcoholics anonymous, and etc.~~

~~(4) (5) Required policies and procedures: The program shall must develop policies, procedures, and plans to address the above-listed services, staff requirements, and criteria requirements.~~

~~(5) Client recordkeeping and reporting requirements specific to the intensive outpatient component shall include:~~

~~(a) ADIS admission/discharge forms;~~

~~(b) Date of admission;~~

~~(c) Admission note/utilization review, which justifies the admission to this level of care based on compliance with dimensional admission criteria and results of diagnostic tools.~~

~~(d) Biopsychosocial assessment;~~

~~(e) Dimensional admission criteria checklist;~~

~~(f) Documentation of all supportive service contacts;~~

~~(g) Individualized treatment plan, which is reviewed and updated every two weeks and responds to ARM 37.27.120(h).~~

~~(h) continued stay/utilization review note which justifies continuation of IOP or transfer based on dimensional criteria;~~

~~(i) Progress notes written at a minimum of three times a week, reflecting required services i.e. ten to 30 hours per week and responding to ARM 37.27.120(h).~~

~~(j) Discharge summary that includes: compliance with dimensional criteria or transfer; an account of the clients response to treatment; a review of the treatment plan and corresponding progress; reason for discharge and aftercare plan.~~

~~(6) Program effectiveness and quality assurance shall include must:~~

~~(a) Individual case review is a procedure for monitoring a client's progress and is designed to ensure the adequacy and appropriateness of the services provided to that client and shall:~~

~~(i) (a) Bbe designed to ensure that the care provided to clients individuals is evaluated and updated every month, according to the needs of each client individual.~~

~~(ii) (b) Bbe accomplished through reviews, which all involved treatment staff attend.~~

~~(b) (7) Utilization and eEffectiveness review is a process of using patient placement criteria to evaluate the necessity and appropriateness of patient placement, allocated services and resources to ensure the program's services are necessary, cost efficient, and effectively utilized. Utilization and eEffectiveness reviews shall must:~~

~~(i) Utilize patient placement criteria to justify the necessity of admissions, continued stay, transfer and discharge at timely intervals and document justification via a utilization review note.~~

~~(ii) (a) Be designed to achieve cost efficiency, increase effective utilization of program's services, and ensure verify the necessity of services provided;~~

~~(iii) (b) Address under-utilization, over-utilization, and inefficient scheduling as well as over-utilization of the program's resources.~~

~~(iv) (c) Ensure methods for identifying and monitoring utilization and effectiveness related problems including analysis of the appropriateness and necessity of admission, caseload, continued stays, recidivism, completion ratios, frequency of services, and delays in the provision of services, effectiveness of the aftercare plan based on verification of referrals and results of follow-up, as well as utilization of the findings of related quality assurance activities and all current relevant documentation.~~

AUTH: 53-24-208, MCA

IMP: 53-24-208, MCA

37.27.902 MEDICAID SUBSTANCE USE DISORDER SERVICES:
PURPOSE AUTHORIZATION REQUIREMENTS (1) remains the same.

(2) In addition to the requirements contained in rule, the department has developed and published the Addictive and Mental Disorders Division, Medicaid Services Provider Manual for Adult Mental Health and Substance Use Disorder (Manual), dated April 1, 2018, which it adopts and incorporates by reference. The purpose of the Manual is to implement requirements for utilization management and services. 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, Addictive and Mental Disorders Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at <http://dphhs.mt.gov/amdd.aspx>.

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

37.27.903 MEDICAID SUBSTANCE USE DISORDER SERVICES:
GENERAL REQUIREMENTS (1) and (2) remain the same.

~~(3) Medicaid substance use disorder services include:~~

~~(a) screening and assessment;~~

~~(b) individual therapy;~~

~~(c) group therapy;~~

~~(d) family therapy;~~

~~(e) multiple-family group therapy;~~

~~(f) targeted case management for substance use disorders as defined in ARM 37.86.3301 through 37.86.3306 and ARM 37.86.4001 through 37.86.4010;~~

~~(g) nonhospital inpatient substance use disorder detoxification;~~

~~(h) nonhospital inpatient substance use disorder residential treatment; and~~

~~(i) nonhospital inpatient substance use disorder residential day treatment.~~

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

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

37.86.3515 TARGETED CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS, REIMBURSEMENT (1) Targeted Case management services for adults with severe disabling mental illness will be reimbursed on a fee per unit of service basis as follows. For purposes of this rule, a unit of service is a period of 15 minutes.

~~(2) The department adopts the method of establishing rates for mental health case manager providers approved by the Centers for Medicare and Medicaid Services (CMS) on February 1, 2011. That method is:~~

~~(a) The department determined the total costs of providing case management services by using case management provider reports of the most recent wage costs, benefit costs, and other case management costs.~~

~~(b) The department used actual time units billed from the providers of the most complete fiscal year.~~

~~(c) The department determined yearly wage cost per case manager full-time employee (FTE) added to the yearly benefit costs per case manager FTE, and yearly other costs per FTE. The total costs are divided by the average units billed per FTE. This final calculation will be the rate per 15-minute unit.~~

~~(d) The department will update the rate setting methodology every three years or whenever significant changes in services occur.~~

(3) (2) The department adopts and incorporates by reference the department's fee schedule which sets forth the reimbursement rates for targeted case management. The provider reimbursement rate for targeted case management services for ~~persons~~ adults with severe disabling mental illness is stated in the department's fee schedule as provided in ARM 37.85.405(5) 106.

~~(4) The department may, in its discretion, designate a single provider of case management services in a designated geographical region. Any provider designated as the sole case management provider for a designated geographical region must, as a condition of such designation, agree to serve the entire designated geographical region.~~

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

37.88.101 MEDICAID MENTAL HEALTH SERVICES FOR ADULTS, AUTHORIZATION REQUIREMENTS (1) Mental health services for a Medicaid adult under the Montana Medicaid program will be reimbursed only if the client is 18 or more years of age and has been determined to have a severe disabling mental illness ~~as defined in ARM 37.86.3503.~~

~~(2) Adult intensive outpatient therapy services may be medically necessary for a person with safety and security needs who has demonstrated the ability and likelihood of benefit from continued outpatient therapy. The person must meet the requirements of (2)(a) or (b). The person must also meet the requirements of (2)(c). The person has:~~

- ~~(a) a DSM diagnosis with a severity specifier of moderate or severe bipolar I disorder, bipolar II disorder, or major depressive disorder; or~~
- ~~(b) a DSM diagnosis borderline personality disorder;~~
- ~~(c) ongoing difficulties in functioning because of mental illness for a period of at least six months or for an obviously predictable period over six months, as indicated by:~~
 - ~~(i) dysregulation of emotion, cognition, behavior, and interpersonal relationships;~~
 - ~~(ii) resulting in recurrent suicidal, parasuicidal, serious self-damaging impulsive behaviors, or serious danger to others;~~
 - ~~(iii) a history of treatment at a higher level of care, and~~
 - ~~(iv) evidence that lower levels of care are inadequate to meet the needs of the client.~~

(2) In addition to the requirements contained in rule, the department has developed and published the Addictive and Mental Disorders Division, Medicaid Services Provider Manual for Adult Mental Health and Substance Use Disorder (Manual), dated April 1, 2018, which it adopts and incorporates by reference. The purpose of the Manual is to implement requirements for utilization management and services. 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, Addictive and Mental Disorders Division, 100 N. Park, Ste. 300, P.O. Box 202905, Helena, MT 59620-2905 or at <http://dphhs.mt.gov/amdd.aspx>.

- (3) Medicaid reimbursement for mental health services will be the lowest of:
- (a) the provider's actual (submitted) charge for the service; or
 - (b) the rate established in the department's fee schedule. Reimbursement fees are as provided in ARM 37.85.105(5) and 37.85.106(2)(c).

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

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

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

37.88.907 MENTAL HEALTH CENTER SERVICES FOR ADULTS, REIMBURSEMENT (1) The department adopts and incorporates by reference the Medicaid Adult Mental Health and the ~~Adult Mental Health Services Plan~~ fee schedule as provided in ARM 37.85.105(5). A copy of the department's fee schedule is posted at the Montana Medicaid provider web site at www.dphhs.mt.gov/amdd/services/index.shtml. A copy may be obtained from the Department of Public Health and Human Services, Addictive and Mental Disorders Division, PO Box 202905, Helena, MT 59620-2905. Medicaid reimbursement for mental health center services will be the lowest of:

- (a) through (2)(b) remain the same.
- ~~(3) For day treatment, program of assertive community treatment, and crisis intervention services, Medicaid will not reimburse a mental health center provider for more than one fee per treatment day per individual. This does not apply to practitioner services to the extent such services are separately billed in accordance with these rules.~~

~~(4) For purposes of Medicaid billing and reimbursement of day treatment~~

~~services, a "half day" means that the individual has attended the day treatment program for a minimum of two hours during the treatment day.~~

~~(5) For purposes of meeting the minimum hours required in (3), the provider may not include time during which the individual is receiving practitioner services that are billed separately as practitioner services under ARM 37.88.906, up to a maximum of four hours during the treatment day.~~

~~(6) Services billed as community-based psychiatric rehabilitation and support may not be counted toward the time requirements for any other service or billed by the provider as any other type or category of service.~~

~~(7) Reimbursement will be made to a provider for reserving an adult foster care or mental health adult group home bed only if:~~

~~(a) the individual's plan of care documents the medical need for a therapeutic visit as part of a therapeutic plan;~~

~~(b) the individual is temporarily absent on a therapeutic visit;~~

~~(c) the provider clearly documents staff contact and individual achievements or regressions during and following the therapeutic visit; and~~

~~(d) no more than 14 patient days per individual in each rate year will be reimbursed for therapeutic visits.~~

~~(8) remains the same, but is renumbered (3).~~

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

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

4. The department proposes to repeal the following rules:

37.27.906 MEDICAID SUBSTANCE USE DISORDERS SERVICES: TREATMENT REQUIREMENTS is found on page 37-6091 of the Administrative Rules of Montana.

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

37.86.3501 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS, DEFINITIONS is found on page 37-20631 of the Administrative Rules of Montana.

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

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

37.86.3502 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS, ELIGIBILITY is found on page 37-20632 of the Administrative Rules of Montana.

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

IMP: 53-6-101, 53-21-701, MCA

37.86.3503 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS, SEVERE DISABLING MENTAL ILLNESS is found on page 37-20633 of the Administrative Rules of Montana.

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

37.86.3505 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS, SERVICE COVERAGE is found on page 37-20635 of the Administrative Rules of Montana.

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

37.86.3506 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS, SERVICE REQUIREMENTS is found on page 37-20637 of the Administrative Rules of Montana.

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

37.86.3507 CASE MANAGEMENT SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS, PROVIDER REQUIREMENTS is found on page 37-20639 of the Administrative Rules of Montana.

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

37.88.110 TEMPORARY RATE ADJUSTMENT is found on page 37-21539 of the Administrative Rules of Montana.

AUTH: 53-6-113, 53-21-201, MCA
IMP: 53-6-101, 53-6-113, 53-21-201, MCA

37.88.201 LICENSED CLINICAL SOCIAL WORK SERVICES, DEFINITIONS is found on page 37-21549 of the Administrative Rules of Montana.

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

37.88.205 LICENSED CLINICAL SOCIAL WORK SERVICES, REQUIREMENTS is found on page 37-21553 of the Administrative Rules of Montana.

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

37.88.206 LICENSED CLINICAL SOCIAL WORK SERVICES, REIMBURSEMENT is found on page 37-21555 of the Administrative Rules of Montana.

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

IMP: 53-1-601, 53-1-602, 53-1-603, 53-6-101, 53-6-113, 53-21-202, 53-21-701, 53-21-702, MCA

37.88.301 LICENSED PROFESSIONAL COUNSELOR SERVICES, DEFINITIONS is found on page 37-21575 of the Administrative Rules of Montana.

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

IMP: 53-6-101, MCA

37.88.305 LICENSED PROFESSIONAL COUNSELOR SERVICES, REQUIREMENTS is found on page 37-21581 of the Administrative Rules of Montana.

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

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

37.88.306 LICENSED PROFESSIONAL COUNSELOR SERVICES, REIMBURSEMENT is found on page 37-21583 of the Administrative Rules of Montana.

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

IMP: 53-1-601, 53-1-602, 53-1-603, 53-6-101, 53-6-113, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

37.88.601 LICENSED PSYCHOLOGIST SERVICES, DEFINITIONS is found on page 37-21633 of the Administrative Rules of Montana.

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

IMP: 53-6-101, MCA

37.88.605 LICENSED PSYCHOLOGIST SERVICES, REQUIREMENTS is found on page 37-21637 of the Administrative Rules of Montana.

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

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

37.88.606 LICENSED PSYCHOLOGIST SERVICES, REIMBURSEMENT is found on page 37-21638 of the Administrative Rules of Montana.

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

IMP: 53-1-601, 53-1-602, 53-1-603, 53-6-101, 53-6-113, 53-21-202, 53-21-701, 53-21-702, MCA

37.88.901 MENTAL HEALTH CENTER SERVICES FOR ADULTS, DEFINITIONS is found on page 37-21667 of the Administrative Rules of Montana.

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

37.88.903 MENTAL HEALTH CENTER SERVICES FOR ADULTS, DEFINED is found on page 37-21671 of the Administrative Rules of Montana.

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

37.88.906 MENTAL HEALTH CENTER SERVICES FOR ADULTS, COVERED SERVICES is found on page 37-21679 of the Administrative Rules of Montana.

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

37.88.908 MENTAL HEALTH CENTER SERVICES FOR ADULTS, PROGRAM OF ASSERTIVE COMMUNITY TREATMENT (PACT) is found on page 37-21682 of the Administrative Rules of Montana.

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

37.88.909 MENTAL HEALTH CENTER SERVICES FOR ADULTS, INTENSIVE COMMUNITY-BASED REHABILITATION FACILITY is found on page 37-21683 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 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 department 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 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 reductions in services and the implementation of utilization management. In proposing any rates of reimbursement in this notice, the department primarily considered the availability of appropriated funds, as provided in 53-6-113(3), MCA. In considering any service reductions proposed in this rulemaking, 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.

The following summaries describe in detail the proposed rule amendments to be made:

The department is proposing to adopt and incorporate into administrative rule a provider manual entitled, Addictive and Mental Disorders Division, Medicaid Services Provider Manual for Adult Mental Health and Substance Use Disorder (Manual), effective April 1, 2018. The department also is proposing the following rule amendments and repeals to simplify the rules for both adult mental health and substance use disorder and to align the language in the Manual with the current practice of the department.

Amendments to Utilization Management

The department is proposing to add utilization management to the following covered services:

- (1) acute inpatient hospital services for out of state facilities will continue to require prior authorization;
- (2) intensive community based rehabilitation (ICBR), program for assertive community treatment (PACT), and therapeutic group home (TGH) will now require prior authorization and continued stay reviews;

(3) secure crisis diversion, also known as crisis intervention facility, will continue to require continued stay reviews, however the timeline will change from seven days to five days;

(4) community based psychiatric rehabilitation and supports (CBPRS) will implement a limit of two hours per day (eight units per day);

(5) targeted case management (TCM) will implement a limit of 24 hours per state fiscal year (96 units per state fiscal year);

(6) Outpatient (OP) therapy more than 12 sessions for individual therapy and 12 sessions of group therapy will require the member to have either a severe disabling mental illness (SDMI) or substance use disorder (SUD) for OP therapy more than 12 sessions diagnosis.

(7) SUD medically monitored intensive inpatient (ASAM 3.7), SUD clinically managed high-intensity residential (ASAM 3.5), and SUD Clinically managed low-intensity residential (ASAM 3.1) will now require prior authorization and continued stay reviews.

Amendments to the SDMI Eligibility Requirements

The department is proposing to move the definition of SDMI from ARM 37.86.3503 to the Manual, align diagnoses to the current DSM-V and ICD-10 coding standards, and update for accuracy. This is necessary to ensure accurate reimbursement for services to members diagnosed with SDMI. The department proposes to make the following amendments to the current SDMI definition:

(1) Remove F20.3 (schizophrenia, undifferentiated type) because unspecified/undifferentiated diagnoses are not reimbursable by Montana Medicaid;

(2) Update the diagnosis code for obsessive compulsive disorder from F42 to F42.2 for accuracy. This billing code was updated between the 2015 and 2018 version of the ICD-10 manual.

(3) Add diagnosis codes F44.0, F44.1, F44.2, F44.81 for dissociative disorder. This diagnostic category was added to the SDMI criteria because when an adult is diagnosed with this type of disorder, the symptoms are of a severe nature. Symptoms cause clinically significant distress or impaired social and/or occupational functioning.

(4) Add diagnosis code F41.1 for generalized anxiety disorder. This diagnosis was added to assist transitional age youth with a serious emotional disturbance into an adult with a SDMI mental health services and due to the nature of the chronicity of the symptoms.

(5) Add diagnosis code F34.1 for persistent depressive disorder (dysthymia). This diagnosis was added to assist transitional age youth with a serious emotional disturbance into an adult with a SDMI mental health services and due to the nature of the chronicity of the symptoms.

(6) Add diagnosis codes F50.01, F50.02, F50.2 for feeding and eating disorders. This diagnosis was added to assist transitional age youth with a serious emotional disturbance into an adult with a SDMI mental health services and due to the nature of the chronicity of the symptoms.

(7) Add diagnosis F64.8 for gender dysphoria. This diagnosis was added to assist transitional age youth with a serious emotional disturbance into an adult with a SDMI mental health services and due to the nature of the chronicity of the symptoms as well as national statistics reflecting a high suicide rate in this population.

(8) The department is proposing to implement a level of impairment worksheet (LOI). This is necessary to provide a consistent means to determine the level of impairment of a member. Providers will be required to complete this worksheet when determining the SDMI eligibility of a member. The SDMI eligibility of a member must be determined annually.

Amendments to Administrative Rules of Montana. Specifically, the department is proposing the following:

ARM 37.27.136

The department is proposing to amend ARM 37.27.136. This is necessary to update requirements to align with current practice as outlined in The American Society of Addiction Medicine (ASAM) Criteria, remove language that is duplicative with The ASAM Criteria and ARM 37.27.120, and move pertinent requirements for this service to the Manual. Due to the fact the rule pertains to both Medicaid and non-Medicaid providers and services, some information was maintained in rule that may be duplicative with the Manual, which is specific to Medicaid providers and services.

ARM 37.27.137

The department is proposing to amend ARM 37.27.137(1). This is necessary to update requirements to align with current practice and because applicable language has been moved to the Manual and updated for accuracy.

ARM 37.27.138

The department is proposing to amend ARM 37.27.138. This is necessary to update requirements to align with current practice and because applicable language has been moved to the Manual. In addition, the language in (2) is duplicative of ARM 37.27.116 through 37.27.120, the language in (3) is duplicative of ARM 37.27.115 and ARM 37.27.120, and the language in (5) is duplicative of ARM 37.27.120.

ARM 37.27.902

The department is proposing to amend ARM 37.27.902 to adopt and incorporate the Manual, effective April 1, 2018.

ARM 37.27.903

The department is proposing to amend ARM 37.27.903 to strike (3) and move the language to the Manual and align to current practice and update for accuracy.

ARM 37.86.3515

The department is proposing to amend ARM 37.86.3515. This is necessary to amend the service name to targeted case management in (1) and strike (2) and (4) because the language is outdated and no longer applicable. In addition, the department is proposing to amend (3) to correct the reference to the department's fee schedule for targeted case management for adults with a severe disabling mental illness from ARM 37.85.105 to ARM 37.85.106, which was recently promulgated in MAR Notice No. 37-801.

ARM 37.88.101

The department proposes to amend ARM 37.88.101 to adopt and incorporate the Manual. The language pertaining to intensive outpatient therapy has been transferred to the Manual and the name corrected to dialectical behavioral therapy. In addition, the department proposes to align the service language in the Manual with the current practice. The department proposes to move the language from ARM 37.88.206(2) to this rule and update the language because the requirements outlined are not specific to only licensed clinical social work service but are applicable to all Montana Medicaid adult mental health programs.

ARM 37.88.907

The department is proposing to amend ARM 37.88.907; this is necessary to correct the reference in (1) to the adult mental health service plan fee schedule, which is adopted and incorporated in ARM 37.85.104 and 37.89.125, respectively. In addition, the department proposes to remove (3), (4), (5), (6), and (7) because the requirements were moved to the Manual and updated for accuracy.

Repeals of certain Administrative Rules of Montana. Specifically, the department is proposing the following:

ARM 37.27.906

The department is proposing to repeal ARM 37.27.906. This is necessary because medical necessity criteria and references to The ASAM Criteria and ICD-10 were moved to the Manual and updated for accuracy.

ARM 37.88.110

The department is proposing to repeal ARM 37.88.110. This is necessary because this rule applied specifically to the timeframe of January 11, 2002 through June 30, 2002.

ARM 37.88.201, ARM 37.88.301, and ARM 37.88.601

The department is proposing to repeal ARM 37.88.201, 37.88.301, and 37.88.601. This is necessary because licensed clinical social work services (LCSW), licensed professional counselor services (LCPC), and licensed psychologist services are already defined in Title 37, chapter 22, MCA; Title 37, chapter 23, MCA; and Title 37, chapter 17, MCA, respectively. In addition, LCPCs and LCSWs are further defined in ARM Title 24, chapter 219; therefore, these rules are repetitive.

ARM 37.88.205, ARM 37.88.305, ARM 37.88.605

The department is proposing to repeal ARM 37.88.205, 37.88.305, and 37.88.605. This is necessary because the language contained in these rules are duplicative of other administrative rules and applicable to other Medicaid programs in which LCPCs, LCSWs, and licensed psychologists provide services.

ARM 37.88.206, ARM 37.88.306, ARM 37.88.606

The department is proposing to repeal ARM 37.88.206, 37.88.306, and 37.88.606. This is necessary because the information regarding billing codes, modifiers, and Healthcare common procedure coding system (HCPCS) is contained in the fee schedule adopted and incorporated in ARM 37.85.105. In addition, the department proposes to move and update the language contained in (2) to ARM 37.88.101. This is necessary because the requirements outlined are applicable to all Montana Medicaid mental health programs.

ARM 37.88.901

The department is proposing to repeal ARM 37.88.901. This is necessary because applicable definitions were moved to the Manual and outdated definitions removed.

ARM 37.88.903

The department is proposing to repeal ARM 37.88.903. This is necessary because mental health center service definitions and requirements are now located in the Manual.

ARM 37.88.905

The department is proposing to repeal ARM 37.88.905. This is necessary because the language is duplicative of language in ARM Title 37 chapter 106, subchapter 19 and ARM 37.85.414.

ARM 37.88.906

The department is proposing to repeal ARM 37.88.906. This is necessary because the language is duplicative of language in ARM Title 37 chapter 106, subchapter 19.

ARM 37.88.908

The department is proposing to repeal ARM 37.88.908. This is necessary because the language was moved to the Manual and updated for accuracy.

ARM 37.88.909

The department is proposing to repeal ARM 37.88.909 because the language was moved to the Manual and updated for accuracy.

ARM 37.86.3501

The department is proposing to repeal ARM 37.86.3501. This is necessary because pertinent information contained in this rule is now located in the Manual in the section pertaining to TCM.

ARM 37.86.3502

The department is proposing to repeal ARM 37.86.3502. This is necessary for general housekeeping purposes because the rules referenced are proposed to be repealed in this rulemaking.

ARM 37.86.3503

The department is proposing to repeal ARM 37.86.3503. This is necessary because the SDMI definition and criteria were moved to the Manual, diagnoses aligned to the current DSM-V and ICD-10 coding standards, and updated for accuracy.

ARM 37.86.3505

The department is proposing to repeal ARM 37.86.3505. This is necessary because pertinent information contained in this rule is now located in the Manual in the section pertaining to TCM.

ARM 37.86.3506

The department is proposing to repeal ARM 37.86.3506. This is necessary because pertinent information contained in this rule is now located in the Manual in the section pertaining to TCM.

ARM 37.86.3507

The department is proposing to repeal ARM 37.86.3507, as it is duplicative of ARM 37.106.1902 and the provider requirements in the Manual.

FISCAL IMPACT

The proposed Manual includes the addition of utilization management to select services. Historically, there has been no utilization management requirements for these services; therefore, any fiscal impact is unquantifiable. The department lost approximately one-eighth of its Medicaid appropriation for the biennium and although this decrease was specified for targeted case management, the department has chosen to retain this service and instead, instituting utilization management to achieve those cost savings over the last 15 months of the biennium.

Utilization management will be applied to the following services:

- Therapeutic group home;
- Program for assertive community treatment;
- Intensive community based rehabilitation;
- Substance use disorder (SUD) ASAM 3.1, ASAM 3.5, and ASAM 3.7;
- An annual limit of 24 hours (96 unit) on adult mental health targeted case management (TCM) and SUD TCM for adult and youth;
- An annual limit on outpatient mental health therapy requiring a prior authorization asserting severe disabling mental illness status or an ASAM 2.0 or higher acuity to receive more than 12 sessions per year for individual and 12 sessions per year for group;
- A daily limit of two hours (eight units) for individual and two hours (eight units) of group community based psychiatric rehabilitation and supports (CBPRS);
- and
- A decrease in the number of days a member can receive secure crisis diversion services before getting a continued stay review from seven days to five days.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., March 9, 2018.

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

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

9. 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 will significantly and directly impact small businesses.

11. 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 rate increases 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/ Jorge Quintana
Jorge Quintana
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State January 30, 2018.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.2.613, 42.2.614, 42.2.615,) PROPOSED AMENDMENT
42.2.616, and 42.2.617 pertaining to)
the office of dispute resolution (ODR))

TO: All Concerned Persons

1. On March 8, 2018, at 9 a.m., the Department of Revenue will hold a public hearing in the 3rd Floor Reception Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The hearing room is most readily accessed by entering through the east doors of the building facing Sanders Street.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5 p.m. on February 26, 2018, to advise us of the nature of the accommodation you need. Please contact Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov.

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

42.2.613 DEFINITIONS The following definitions apply to rules found in this subchapter.

(1) through (6) remain the same.

(7) "Form CAB-9" is a document titled Notice of Referral to the Office of Dispute Resolution for Centrally Assessed Companies that is available at revenue.mt.gov for use by a centrally assessed company to appeal an informal review determination to the ODR.

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

(9)(10) "Initial conference" means a conference conducted by the ODR with the parties involved to consider the issues raised by the parties in dispute and determine:

(a) whether the proceedings will be informal or formal;

(b) the necessity of for discovery; and

(c) a schedule that addresses will address the context and needs of the particular dispute; or

(d) whether the taxpayer will elect to bypass the ODR.

(10)(11) "Liquor matters" means disputes arising from the department's administration of the Montana Alcoholic Beverage Code (Title 16, chapters 1 through 4, and 6, MCA). Liquor matters are contested cases conducted pursuant to the Montana Administrative Procedure Act set out in Title 2, chapter 4, MCA. Liquor

matters are not subject to the dispute resolution procedures established by 15-1-211, part 6, MCA.

(11) through (17) remain the same, but are renumbered (12) through (18).

AUTH: 15-1-201, 15-1-211, MCA

IMP: 15-1-211, 15-1-406, 15-23-102, ~~15-23-107~~, MCA

REASON: The department proposes amending ARM 42.2.613 due to the enactment of Senate Bill 137, L. 2017, which revised taxpayer dispute resolution procedures to allow taxpayers the right to bypass the department's Office of Dispute Resolution (ODR) process and directly appeal to the state tax appeal board. The department proposes amending the definition of "initial conference," in newly numbered (10), to reflect a taxpayer's ability to bypass the ODR during the initial conference.

The department also proposes adding a definition for "Form CAB-9," a form used by centrally assessed companies in the appeal process, and proposes amending the definition of "liquor matters," in newly numbered (11), to specify that liquor matters are considered contested cases under the Montana Administrative Procedure Act and not subject to the dispute resolution procedures provided for in 15-1-211, MCA. The proposed addition and amendment of these two definitions are unrelated to the new legislation.

The department further proposes removing an unnecessary implementing citation from the rule.

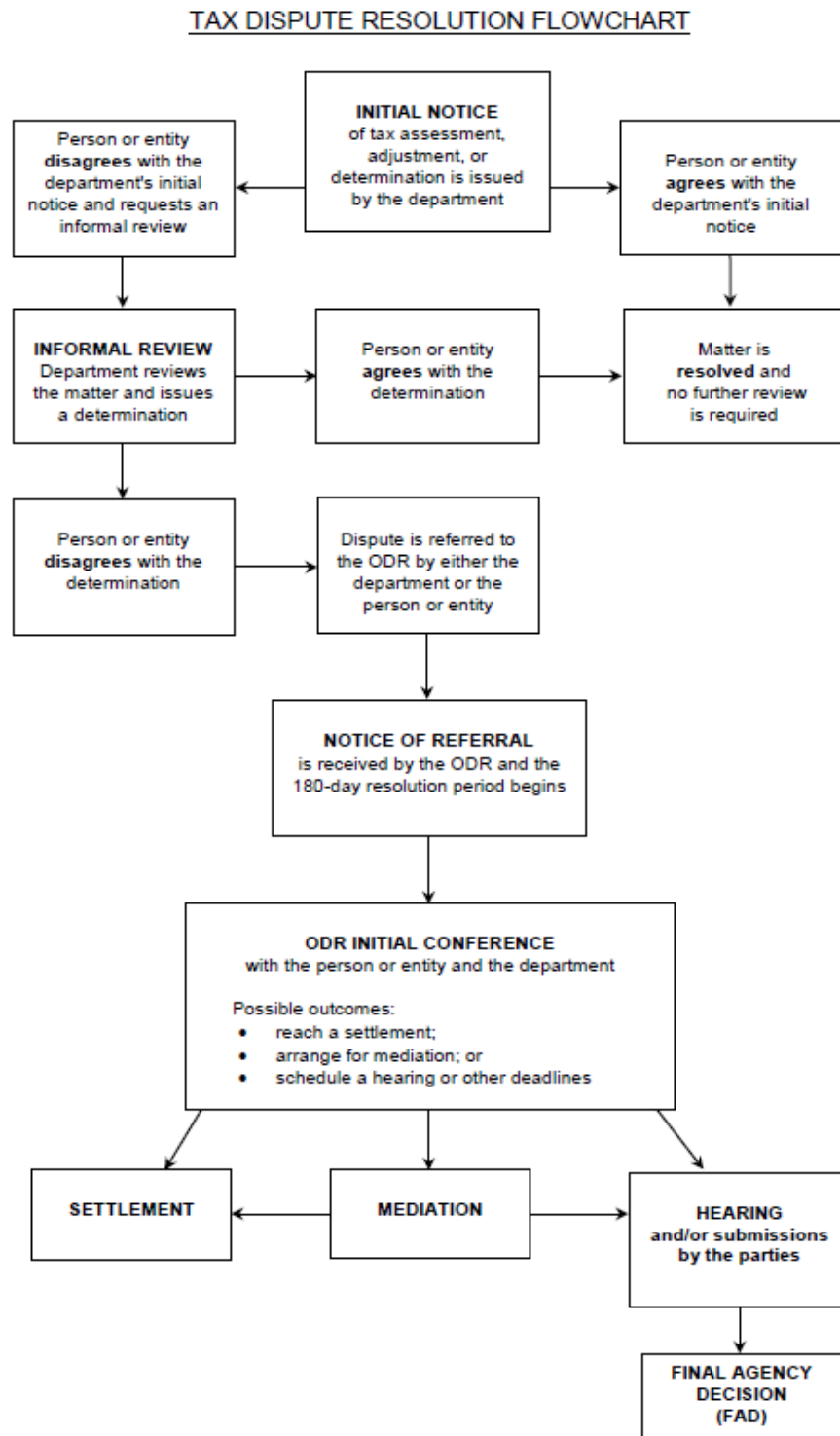
42.2.614 PURPOSE (1) through (3) remain the same.

(4) The flowchart in (6) provides the ~~tax~~ dispute resolution procedure. A final agency decision must be issued within 180 days from the date the notice of referral to the ODR is received as provided for in 15-1-211, MCA, unless extended by mutual consent of the parties.

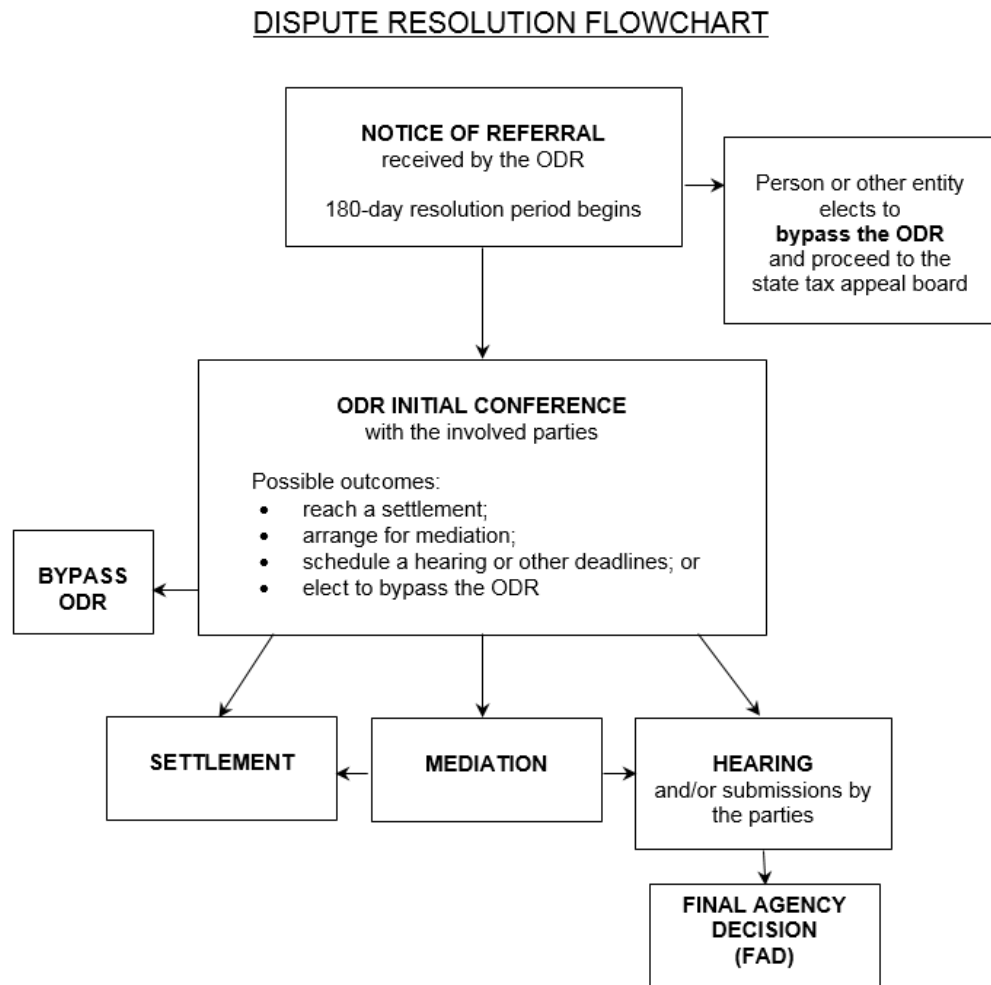
(5) remains the same.

(6) The following flowchart shows ~~how the tax dispute resolution procedure will flow from the initial notice to the final agency decision process~~:

This flowchart is being stricken:



This flowchart is being added:



AUTH: 15-1-201, 15-1-211, MCA

IMP: 15-1-211, 69-8-414, MCA

REASON: The department proposes amending ARM 42.2.614 due to the enactment of Senate Bill 137, L. 2017, which revised taxpayer dispute resolution procedures to allow taxpayers the right to bypass the department's Office of Dispute Resolution (ODR) process and file an appeal with the state tax appeal board, after having first filed an appeal with the ODR. The proposed amendment to this rule is intended to inform taxpayers of their bypass opportunity by adding references to it in the dispute resolution flowchart in (6). The department further proposes restructuring the flowchart to remove steps unrelated to the dispute resolution process. The word "tax" is also proposed to be removed from the language in (4), (6), and the flowchart title because not all disputes that come before the ODR are tax related.

42.2.615 REFERRAL REQUIREMENTS REFERRALS TO THE ODR

(1) remains the same.

(2) A person or other entity who has filed an appeal with the ODR may, within 30 days of filing the appeal, elect to bypass review by that office and file an appeal with the state tax appeal board. If the person or other entity elects to bypass review by the ODR, the determination originally issued by the division will be deemed the final department decision.

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

AUTH: 15-1-201, 15-1-211, MCA

IMP: 15-1-211, MCA

REASON: The department proposes amending ARM 42.2.615 due to the enactment of Senate Bill 137, L. 2017, which revised taxpayer dispute resolution procedures to allow taxpayers the right to bypass the department's Office of Dispute Resolution (ODR) process and directly appeal to the state tax appeal board after having first filed an appeal with the ODR. The proposed amendment of the language in (2) is intended to inform taxpayers of the deadline for requesting a bypass of the ODR process and to notify them that upon bypass, the division's initial determination becomes the final department decision for purposes of appeal to the state tax appeal board. The department further proposes revising the rule's catchphrase to better capture the content of the rule as amended.

42.2.616 FORMALITY OF PROCEDURES (1) The department recognizes that a wide array of parties ~~appears~~ appear before the department with disputes to resolve. These disputes range from large corporations employing professional tax counsel to individuals appearing on their own behalf. It is the intent of the department to accommodate all such disputes to the greatest extent possible in a manner that is deemed most appropriate for each situation.

(2) and (3) remain the same.

(4) When conducting discovery, the parties shall attempt to obtain discovery through informal consultation or communication. If reasonable informal efforts to obtain information are unsuccessful, then formal discovery procedures may be used.

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

AUTH: 15-1-201, 15-1-211, MCA

IMP: 15-1-211, MCA

REASON: The department proposes amending ARM 42.2.616 due to the enactment of Senate Bill 137, L. 2017, which revised taxpayer dispute resolution procedures, and specified that discovery in matters before the ODR must be conducted informally if possible. The proposed addition of the language in new (4) is intended to inform taxpayers of this requirement. The department further proposes amending (1) to make a grammatical change.

42.2.617 INITIAL CONFERENCES (1) through (7) remain the same.

~~(8) Except for centrally assessed property and industrial property, a party must exhaust available administrative remedies prior to appealing a matter from the~~

~~ODR to the next level. The parties may jointly stipulate to waive a written determination by the ODR.~~

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

AUTH: 15-1-201, 15-1-211, MCA

IMP: 15-1-211, MCA

REASON: The department proposes amending ARM 42.2.617 due to the enactment of Senate Bill 137, L. 2017, which revised taxpayer dispute resolution procedures and added a new provision allowing a taxpayer who wishes to bypass the ODR the right to do so. Therefore, the department proposes striking the language in (8) because taxpayers are no longer required to proceed before the ODR prior to appealing to the state tax appeal board.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail lalogan@mt.gov and must be received no later than March 16, 2018.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding a particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at revenue.mt.gov/rules, or through the Secretary of State's web site at sos.mt.gov/ARM/register.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of Senate Bill 137, L. 2017, Senator Duane Ankney, was contacted by regular mail on June 14, 2017, and January 11, 2018.

9. Regarding 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. Documentation of the department's determination is available at revenue.mt.gov or upon request from the person in 4.

/s/ Laurie Logan

Laurie Logan
Rule Reviewer

/s/ Mike Kadas

Mike Kadas
Director of Revenue

Certified to the Secretary of State January 30, 2018.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF ADOPTION AND
Rules I through XV and the repeal of	)	REPEAL
ARM 4.6.401 through 4.6.404)	
pertaining to the Montana Pulse Crop)	
Committee)	

TO: All Concerned Persons

1. On December 22, 2017, the Department of Agriculture published MAR Notice No. 4-17-243 pertaining to the public hearing on the proposed adoption and repeal of the above-stated rules at page 2373 of the 2017 Montana Administrative Register, Issue Number 24.

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

The department has adopted the above-stated rules as proposed: New Rule I (4.6.405), II (4.6.406), III (4.6.407), IV (4.6.408), V (4.6.409), VI (4.6.410), VII (4.6.411), VIII (4.6.412), IX (4.6.413), X (4.6.414), XI (4.6.415), XII (4.6.416), XIII (4.6.417), XIV (4.6.418), and XV (4.6.419).

3. No comments or testimony were received.

/s/ Zach Coccoli
Zach Coccoli
Rule Reviewer

/s/ Ben Thomas
Ben Thomas
Director
Agriculture

Certified to the Secretary of State January 30, 2018.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the repeal of ARM) NOTICE OF REPEAL
4.6.301, 4.6.302, and 4.6.303)
pertaining to the Montana Cherry)
Research and Development Program)

TO: All Concerned Persons

1. On December 22, 2017, the Department of Agriculture published MAR Notice No. 4-17-244 pertaining to the proposed repeal of the above-stated rules at page 2379 of the 2017 Montana Administrative Register, Issue Number 24.
2. The department has repealed the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ Zach Coccoli
Zach Coccoli
Rule Reviewer

/s/ Ben Thomas
Ben Thomas
Director
Agriculture

Certified to the Secretary of State January 30, 2018.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 10.64.301 pertaining to school)
bus requirements)

TO: All Concerned Persons

1. On December 22, 2017, the Board of Public Education published MAR Notice No. 10-64-281 pertaining to the proposed amendment of the above-stated rule at page 2381 of the 2017 Montana Administrative Register, Issue Number 24.

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

3. Pursuant to 2-4-305(8)(a), MCA, the board adds the following to the citation of authority for the rule: Mont. Const. Art. X, sec. 9.

4. The following comments were received:

COMMENT NO. 1: Dennis Parman, Executive Director for the Montana Rural Education Association, submitted a written comment requesting that the adoption of the revised bus standards have an implementation date of January 31, 2018, to ensure that school districts could apply the revised standard to the second annual inspection that, under ARM 10.7.101(2)(l) and 10.7.110(3), must be completed by January 31.

RESPONSE: The board thanks Mr. Parman for his comments and recognizes the importance of the rule amendment applying no later than January 31, 2018. Pursuant to its authority under Article X, section 9(3)(a) of the Montana Constitution, the board intends to apply this rule amendment retroactively to January 31, 2018. A retroactive application of the rule amendment does not result in a negative impact to any affected party.

5. Pursuant to its authority under Article X, section 9(3)(a) of the Montana Constitution, the board intends to apply this rule amendment retroactively to January 31, 2018. A retroactive application of the rule amendment does not result in a negative impact to any affected party.

/s/ Peter Donovan
Peter Donovan
Rule Reviewer

/s/ Sharon Carroll
Sharon Carroll
Board Chair
Board of Public Education

Certified to the Secretary of State January 30, 2018.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 23.2.205 and repeal of ARM	)	REPEAL
23.12.1415 pertaining to investigative)	
complaint review and a student's)	
ranking at the Montana Law)	
Enforcement Academy)	

TO: All Concerned Persons

1. On December 22, 2017, the Department of Justice published MAR Notice No. 23-12-250 pertaining to the proposed amendment and repeal of the above-stated rules at page 2388 of the 2017 Montana Administrative Register, Issue Number 24.
2. The department has amended and repealed the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ Matthew T. Cochenour
Matthew T. Cochenour
Rule Reviewer

/s/ Timothy C. Fox
Timothy C. Fox
Attorney General
Department of Justice

Certified to the Secretary of State January 30, 2018.

BEFORE THE WORKERS' COMPENSATION COURT
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 24.5.301, 24.5.302, 24.5.303,	)	ADOPTION
24.5.306, 24.5.307, 24.5.309,)	
24.5.310, 24.5.311, 24.5.316,)	
24.5.318, 24.5.319, 24.5.320,)	
24.5.322, 24.5.325, 24.5.327,)	
24.5.329, 24.5.330, 24.5.334,)	
24.5.336, 24.5.337, and 24.5.348)	
pertaining to annual review; and the)	
adoption of NEW RULE I, pertaining)	
to pretrial identification of witnesses)	
and exhibits, and NEW RULE II,)	
pertaining to withdrawal of attorney)	

TO: All Concerned Persons

1. On November 24, 2017, the Workers' Compensation Court published MAR Notice No. 24-5-328 pertaining to the public hearing on the proposed amendment and adoption of the above-stated rules at page 2111 of the 2017 Montana Administrative Register, Issue Number 22.

2. The Workers' Compensation Court has amended the following rules as proposed: ARM 24.5.301, 24.5.302, 24.5.303, 24.5.306, 24.5.307, 24.5.309, 24.5.310, 24.5.311, 24.5.316, 24.5.318, 24.5.319, 24.5.320, 24.5.322, 24.5.325, 24.5.327, 24.5.329, 24.5.330, 24.5.334, 24.5.336, 24.5.337, and 24.5.348.

3. The Workers' Compensation Court has adopted the following rules as proposed: New Rule I (ARM 24.5.315) and New Rule II (ARM 24.5.353).

4. No comments or testimony were received.

5. The aforementioned amendments and adoptions are effective March 15, 2018.

/s/ WENDY S. CASH
Wendy S. Cash, Rule Reviewer
Workers' Compensation Court

/s/ DAVID M. SANDLER
David M. Sandler, Judge
Workers' Compensation Court

Certified to the Secretary of State January 26, 2018.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 24.141.507 military training or	)	REPEAL
experience, 24.141.2301)	
unprofessional conduct, and)	
24.141.2401 screening panel, and the)	
repeal of ARM 24.141.401 board)	
meetings, 24.141.402 apprentice)	
registration, 24.141.2101 renewals,)	
and 24.141.2402 complaint procedure)	

TO: All Concerned Persons

1. On October 13, 2017, the State Electrical Board (board) published MAR Notice No. 24-141-38 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 1743 of the 2017 Montana Administrative Register, Issue No. 19.

2. On November 3, 2017, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. No comments were received by the November 13, 2017 deadline.

3. The board has amended ARM 24.141.507, 24.141.2301, and 24.141.2401 exactly as proposed.

4. The board has repealed ARM 24.141.401, 24.141.402, 24.141.2101, and 24.141.2402 exactly as proposed.

STATE ELECTRICAL BOARD
MEL MEDHUS III, 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 30, 2018.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 24.168.402 licensure	)	REPEAL
requirements, 24.168.406 military)	
training or experience, 24.168.411)	
general practice requirements,)	
24.168.2301 unprofessional conduct,)	
and 24.168.2307 screening panel, and)	
the repeal of 24.168.711)	
ophthalmological diagnostic)	
permissible drugs)	

TO: All Concerned Persons

1. On September 8, 2017, the Board of Optometry published MAR Notice No. 24-168-43 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 1474 of the 2017 Montana Administrative Register, Issue No. 17.

2. On October 3, 2017, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. No comments were received by the October 6, 2017, deadline.

3. The board has amended ARM 24.168.402, 24.168.406, 24.168.411, 24.168.2301, and 24.168.2307 exactly as proposed.

4. The board has repealed ARM 24.168.711 exactly as proposed.

BOARD OF OPTOMETRY
DOUG KIMBALL, O.D., 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 30, 2018.

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

In the matter of the adoption of NEW	)	NOTICE OF ADOPTION,
RULES I through IV, the amendment	)	AMENDMENT AND REPEAL
of ARM 37.95.102, 37.95.103,)	
37.95.106, 37.95.108, 37.95.117,)	
37.95.121, 37.95.127, 37.95.139,)	
37.95.141, 37.95.160, 37.95.161,)	
37.95.162, 37.95.172, 37.95.173,)	
37.95.183, 37.95.184, 37.95.602,)	
37.95.606, 37.95.622, 37.95.623,)	
37.95.703, 37.95.705, 37.95.706,)	
37.95.730, 37.95.1005, and the)	
repeal of ARM 37.95.145, 37.95.150,)	
37.95.166, and 37.95.174, pertaining)	
to the federal Child Care and)	
Development Block Grant)	
Reauthorization Act, disaster and)	
emergency planning, and health and)	
safety requirements for child care)	
facilities)	

TO: All Concerned Persons

1. On November 24, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-811 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 2141 of the 2017 Montana Administrative Register, Issue Number 22.

2. The department has adopted the following rules as proposed: New Rule II (37.95.163). The department has amended the following rules as proposed: ARM 37.95.103, 37.95.108, 37.95.117, 37.95.121, 37.95.127, 37.95.139, 37.95.141, 37.95.160, 37.95.161, 37.95.173, 37.95.184, 37.95.602, 37.95.705, 37.95.706, and 37.95.730. The department has repealed the following rules as proposed: ARM 37.95.145, 37.95.150, 37.95.166, and 37.95.174.

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

NEW RULE I (37.95.126) CHILD CARE FACILITIES: EMERGENCY
DISASTER AND ACTION PLANS (1) and (2) remain as proposed.

(3) The facility must conduct ~~eight~~ ten emergency drills per year to include:

(a) ~~six~~ eight fire drills; and

(b) and (4) remain as proposed.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-734, MCA

NEW RULE III (37.95.621) CHILD CARE CENTERS: DIRECTOR QUALIFICATIONS AND RESPONSIBILITIES (1) remains as proposed.

(2) The director must meet the following minimum requirements:

(a) through (c) remain as proposed.

(d) have one of the following:

(i) and (ii) remain as proposed.

(iii) current ECP Practitioner Registry level 2, plus three years of experience in a licensed child care facility or Head Start; ~~or~~

(iv) a bachelor degree or higher ~~in a non-child care field according to ECP criteria in any field~~, plus completion of the 60 hour infant-toddler training and the 60 hour preschool course, or 120 hours of alternate training approved by the department-; or

(v) a combination of education and experience may be considered. This option must be approved by the CCLP manager.

(3) The director must complete the program management essentials course within 60 days of becoming a director or successfully complete an approved new director orientation such as program essentials.

(3) remains as proposed, but is renumbered (4).

(4) (5) The director or other authorized staff person shall review every incident or accident causing injury to a child, resulting in medical or dental care, and document the appropriate corrective action taken to avoid a reoccurrence.

(5) through (7) remain as proposed, but are renumbered (6) through (8).

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

NEW RULE IV (37.95.704) GROUP AND FAMILY CHILD CARE: STAFFING QUALIFICATIONS AND RESPONSIBILITIES (1) through (3) remain as proposed.

(4) Substitute teachers who work less than 500 hours per year must meet all the requirements of this rule except for (2)(c).

(5) remains as proposed.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

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

37.95.102 DEFINITIONS (1) through (13) remain as proposed.

(14) "Facility overview on-the-job training" is a an on-the-job training provided by the facility director or designee to orient a new staff member to facility-specific policies, procedures, and department requirements pertaining to their role.

(15) through (26) remain as proposed.

(27) "Montana ECP Practitioner Registry" or "Practitioner Registry" ~~is an early childhood professional recognition system and career path in Montana.~~ is a statewide registry that is used to help develop and track a knowledgeable and skilled early childhood work force based on an individual's verified professional achievements.

(28) "Night care" or "non-traditional hours" means care provided for a child between the hours of 8 p.m. and 5 a.m.

(29) through (57) remain as proposed.

AUTH: 52-2-704, 53-4-212, 53-4-503, MCA

IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-211, 53-4-212, 53-4-601, 53-4-611, 53-4-612, MCA

37.95.106 CHILD CARE FACILITIES, REGISTRATION, OR LICENSING

(1) and (2) remain as proposed.

(3) Before a regular child care center license may be granted, the applicant must have the following:

(a) through (e) remain as proposed.

(f) a signed health ~~statement for licensure form~~ attestation for each staff member who has direct contact with the children in care;

(g) through (8) remain as proposed.

AUTH: 52-2-704, 53-4-503, MCA

IMP: 52-2-704, 52-2-722, 52-2-723, 52-2-731, 53-4-504, 53-4-507, MCA

37.95.162 CHILD CARE FACILITIES: REQUIRED ANNUAL TRAINING

(1) remains as proposed.

(2) The training ~~may be obtained through~~ must be approved through MTECP in one of three ways:

(a) sponsors ~~approved~~ verified through the Montana professional development ~~approval~~ system;

~~(b) institutions of higher education that are regionally accredited; or~~

~~(c) (b)~~ successful completion of college-level course work in early childhood, education, or child development by institutions of higher education that are regionally accredited; or

(c) individual request.

(3) remains as proposed.

(4) ~~Any person~~ A substitute who provides care to children in a child care facility for less than 500 hours a year is not required to complete annual training or be current on the ECP Practitioner Registry.

(5) ~~Teachers and assistant teachers~~ ECTs at facilities that provide care exclusively to school-age children must complete at least eight hours of continuing education annually and are not required to be on the ECP Practitioner Registry.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.172 CHILD CARE FACILITIES: SUPERVISION AT ALL TIMES

(1) remains as proposed.

(2) The provider, director, and all ~~teachers and assistant teachers~~ ECTs must be responsible for direct care, protection, supervision, and guidance of children through active involvement or direct observation.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.183 CHILD CARE FACILITIES: FIRST AID REQUIREMENTS

(1) through (5) remain as proposed.

(6) The facility must submit a report to the Child Care Licensing Program (CCLP) within 24 hours after the following ~~types of occurrences~~ events, involving the child care facility, occur on or away from the premises:

(a) and (b) remain as proposed.

(c) suspected sexual, physical, or emotional abuse by staff, other children, family members, or other adults ~~while they are on the premises;~~

(d) through (i) remain as proposed.

(j) fire involving the ~~child care facility or on the premises~~ fire department.

(7) remains as proposed.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.606 CHILD CARE CENTERS, GUIDANCE AND DISCIPLINE

(1) Early childhood teachers must use appropriate forms of guidance and discipline. Physical punishment, including spanking or other forms of corporal punishment, is strictly prohibited in child care facilities. Discipline must include positive guidance, redirection, and the setting of clear limits that foster the child's ability to become self-disciplined. In addition, all staff must model appropriate behaviors for children in the facility.

(2) through (4) remain as proposed.

AUTH: 52-2-704, 53-4-503, MCA

IMP: 52-2-723, 52-2-731, 53-4-504, 53-4-508, MCA

37.95.622 CHILD CARE CENTERS: STAFFING QUALIFICATIONS

(1) remains as proposed.

(2) An early childhood lead teacher must meet the following requirements:

(a) remains as proposed.

(b) complete facility overview on-the-job training;

(c) through (f) remain as proposed.

(3) An early childhood assistant teacher must:

- (a) ~~be supervised by an early childhood lead teacher or director~~ receive oversight and guidance from an onsite ECLT or director;
- (b) through (6) remain as proposed.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.623 CHILD CARE CENTERS: CHILD-TO-STAFF RATIOS

- (1) The child-to-staff ratio and maximum group size for a child care center are:
 - (a) 4:1 for children ~~zero months~~ newborn through 23 months with a maximum group size of 12;
 - (b) remains as proposed.
 - (c) 10:1 for children four years ~~through five years~~ with a maximum group size of 24; and
 - (d) 14:1 for ~~six~~ five years and over with a maximum group size of 32.
- (2) When children of different ages are mixed, the ratio and group size for the youngest child in the group must be maintained.
- (3) remains as proposed.
- (4) Group sizes must be maintained except for mealtimes, ~~or periods when children are using their rest equipment~~ outdoor play, rest periods, or ~~when during~~ large group activities, such as educational assemblies, ~~occur~~.

AUTH: 52-2-704, MCA

IMP: 52-2-703, 52-2-704, 52-2-723, 52-2-731, MCA

37.95.703 GROUP AND FAMILY CHILD CARE FACILITIES: DIRECTOR RESPONSIBILITIES AND QUALIFICATIONS

- (1) remains as proposed.
- (2) The director must meet the following requirements:
 - (a) through (d) remain as proposed.
 - (e) successfully complete a program management course within 60 days of becoming a director;
 - (f) through (5) remain as proposed.
- (6) The director or designee must review every incident or accident causing injury to a child resulting in medical or dental care, and document the appropriate corrective action taken to avoid a reoccurrence.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.1005 INFANT AND TODDLER, SLEEPING

- (1) remains as proposed.
- (2) Unless the parent has provided medical documentation from a health care provider ordering otherwise, infants must be placed on their back and on a firm surface with no incline to reduce the risk of Sudden Infant Death Syndrome (SIDS).
- (3) Each infant must be provided with a crib or play pen for sleeping. At the discretion of the parent and provider, a cot or mat may be used once a child turns one year of age as long as a safe sleep environment is provided. Children one year

of age through 18 months who are placed on a mat must have a signed permission statement in the file indicating that the parent has given permission for their child to be placed on a mat. ~~In addition~~ When cots or mats are used, an early childhood teacher must remain with the child while they are sleeping.

(a) Infants and toddlers must not be ~~routinely~~ allowed to sleep in a car seat, infant swing, or other infant apparatus.

(b) through (6) remain as proposed.

(7) All pillows, quilts, comforters, heavy blankets, sheepskins, bumper pads, stuffed toys, and other soft products must be removed from the crib and play pen when an infant is laid down for sleep.

(a) ~~If a lightweight blanket is used, the child's feet must be placed at the foot of the crib or play pen and the blanket must be tucked along the sides and foot of the mattress. the blanket should not come up higher than the child's chest~~ Blankets of any weight must be removed when infants 12 months of age or under are laid down for sleep.

(b) Sleep sacks and similar safe sleep clothing may be used if the item does not restrict the infant's arms.

(c) Infants under 3 months of age may only be swaddled if medical documentation from a health care provider is on file at the facility.

(d) Infants over 3 months of age must not be swaddled.

~~(8) Each infant and t~~ Toddlers ~~must have been be~~ be provided by the parent with a clean washable blanket or other suitable covering for their use while sleeping. ~~Each infant's and toddler's~~ child's bedding must be stored separate from bedding used by other children.

(9) through (11) remain as proposed.

AUTH: 52-2-704, MCA

IMP: 52-2-731, MCA

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

COMMENT #1: One commenter requested clarification on New Rule I with regards to the number of fire drills required citing that local fire marshals require more.

RESPONSE #1: The department agrees some facilities will be required by the fire department to have more fire drills than what is required by the department. All child care centers must follow rules set forth by building codes in addition to administrative child care rules. The fire code requires Group E (educational) occupancies to have monthly fire drills. There is an exception that allows the fire code official to modify the monthly drills due to extreme weather. If the child care facility is classified as a Group I (institutional) occupancy, they are required to have quarterly inspections for staff only. Child care facilities could be classified as either a Group E or I occupancy depending on the age and number of children in the daycare. In order to minimize the difference in requirements, the department will

increase the number of fire drills to eight. The adopted rule has been revised to reflect this change.

COMMENT #2: One commenter proposed that ARM 37.95.623 be changed to include 5 year old children in the 14:1 ratio.

RESPONSE #2: The department agrees with the comment. It is developmentally appropriate and recommended that 5 year old children who attend school participate with other age groups that are in school. The adopted rule has been revised to reflect this change.

COMMENT #3: One commenter recommended that all potential child care workers undergo drug testing before working in a child care facility.

RESPONSE #3: Statute does not give the department the authority to require drug testing without reasonable belief that the person has engaged in behaviors that may place children at risk of harm (See ARM 37.95.168). In addition, the commenter indicates that CFSD may remove children from parents if the parent is addicted to drugs. However, there is no law that requires all parents to be drug tested and there must be a reason to require the parent to be drug tested. The same is true for child care staff. If a criminal or CPS investigation reveals drug use, the individual may not be approved to work or live in a child care facility. The references for these are found in ARM 37.95.161, 37.95.171, 37.95.173, 37.95.174, and 37.95.176.

COMMENT #4: Several comments were received requesting clarification about whether group size requirements apply to outdoor play environments.

RESPONSE #4: The department agrees with the comment. The group size rule is intended for the indoor environment and does not intend to include outdoor play time. The adopted rule has been revised to reflect this change.

COMMENT #5: Several comments were received requesting clarification of defined space in group sizes.

RESPONSE #5: The department recognizes that the group size definition is broad. However, this requirement needs to be broad as it is new to the child care rules, and must be adaptable to accommodate the many different existing programs and floor plans. Refinements and adjustments will likely be necessary over time. Therefore, interpretive guidelines and individualized plans will be developed to help existing facilities come into compliance without significant financial burden.

COMMENT #6: Two commenters suggested that the term discipline be changed to guidance in ARM 37.95.606. One of the commenters further proposed that the title of ARM 37.95.606 be changed to Guidance and Discipline.

RESPONSE #6: The department agrees with the comments. The adopted rule has been revised to reflect this suggestion.

COMMENT #7: One commenter recommended that the language in ARM 37.95.106 and 37.95.160 referencing staff health statements be made consistent. The commenter proposed that the department use the term "health statement."

RESPONSE #7: The department agrees with the comment. The adopted rule has been revised to reflect this suggestion.

COMMENT #8: Several comments were received regarding the number of annual training hours and current ECP requirements and role type requirements. These comments expressed concern with the connection between MTECP and the proposed changes to the ECP registry.

RESPONSE #8: The department appreciates the comment, but the MTECP is contracted by the department and the department has the authority to guide their work, including setting annual training hours.

COMMENT #9: Two commenters suggested that the language for ARM 37.95.162 be changed to better align with the method that is used to approve training by ECP.

RESPONSE #9: The department agrees with the comment. The adopted rule has been revised to reflect this suggestion.

COMMENT #10: One commenter proposed that only certain types of incidents or accidents are required to have a plan of correction and the rule be changed to identify which types.

RESPONSE #10: The department agrees that not every incident and accident needs a plan of correction. The adopted rule has been revised to reflect this suggestion.

COMMENT #11: Two commenters requested that substitute teachers be exempt from the orientation training specified in New Rule II.

RESPONSE #11: The department appreciates the comment. CCDF requirement requires this for all staff that provide care to children, including substitutes. The department has worked to find ways to ease the burden to providers by offering most the orientation trainings on-line and at no cost.

COMMENT #12: Two commenters requested that programs that serve only children age two and older be excluded from the requirement to take safe sleep and shaken baby syndrome/abusive head trauma training as noted in New Rule II.

RESPONSE #12: The department appreciates the comments. The CCDF State plan states that all early childhood professionals complete this training. Safe sleep and shaken baby syndrome/abusive head trauma training are two of the 11 areas

outlined in the CCDF State Plan which has been federally approved. The department offers both trainings on-line and at no cost.

COMMENT #13: One commenter proposed mandatory inspections for Family, Friend and Neighbor (FFN) homes under ARM 37.95.103.

RESPONSE #13: The department does not agree. The department recognizes the importance of inspections; however, the CCDBG Reauthorization Act authorizes limited exclusions from inspection, and the department contends that the CCDBG and current rules provide the necessary amount of inspection enforcement for all licensed or registered facilities.

COMMENT #14: Several commenters requested that current directors, and other role types be "grandfathered" and not be required to meet the qualifications specified in proposed rules.

RESPONSE #14: While the department will not exempt existing role types from new qualifications, existing role types will be provided time and guidance to transition into full compliance.

COMMENT #15: One commenter stated concern over New Rule I pertaining to the requirement of emergency supply of blankets, water, food, and supplies. The commenter requested that an exception be made for school age programs as they are often located in gyms and lack sufficient storage space.

RESPONSE #15: The department believes that these comments pertain to implementation of the proposed rule and that it is more appropriate for implementation procedures to be set forth through interpretive guidelines, policy, and training. The department will consider any emergency plans that show the intent of the rule is met within the resources available to the facility.

COMMENT #16: One commenter requested additional role types with different qualifications be added to line up with the needs of school age programs.

RESPONSE #16: The department recognizes that not all staff role types will match up with every facility and their unique circumstances. The department has attempted to align role types with titles commonly used in the early childhood development profession. The department believes that school-age programs would benefit from a separate license type with more age appropriate rules, staff requirements and role types; a change to the Montana Child Care Act within statute will be required. The department will work with school age programs to identify appropriate role types for the setting.

COMMENT #17: One commenter proposed role types be aligned with MTECP role types.

RESPONSE #17: The department disagrees with this comment. While the department has attempted to align role types with MTECP terms as much as possible, MTECP is intended to be a tool to approve and track training. Therefore, in some cases, MTECP does not differentiate role types based on the varying responsibilities that are required in rule by the department.

COMMENT #18: Several comments were received regarding time frames for implementation of the rule changes.

RESPONSE #18: The proposed changes will go into effect on the date of adoption. The department will consider requests for transition plans and will communicate time frames with providers following the adoption. Providers will be allowed time and guidance.

COMMENT #19: Two commenters expressed concern with ARM 37.95.1005 and recommended that the department clarify the language regarding supervision of napping infants.

RESPONSE #19: The department agrees with the comment. The adopted rule has been revised to reflect this suggestion.

COMMENT #20: One commenter recommends that the department consider following national standards which recommend no blankets for napping infants. ARM 37.95.1005 allows for a lightweight blanket.

RESPONSE #20: The department agrees with the comment. The adopted rule has been revised to reflect this suggestion.

COMMENT #21: One commenter requested clarification regarding the reporting requirements for incidents that happen outside of the facility noting that ARM 37.95.183 is silent in this area.

RESPONSE #21: The department agrees with the comment. The adopted rule has been revised to reflect this suggestion.

COMMENT #22: One commenter stated that ARM 37.95.183 does not take into consideration the situation of a parent refusing to consent to OTC sunscreen and bug spray. The rule requires providers to take precautions to prevent West Nile virus and sunburn. The commenter also expressed concern about self-reporting and getting cited for doing so.

RESPONSE #22: The department disagrees with this comment. If the parent does not give written consent to OTC sunscreen and bug spray, and the facility chooses to enroll the child, the facility must find alternative methods for protecting the child from West Nile virus and sunburn. With regard to self-reporting, the department has a responsibility to investigate regardless of the source. It is the provider's responsibility to report although it may result in a deficiency.

COMMENT #23: One commenter stated that ARM 37.95.172 pertaining to supervision should be more specific and contain examples. Commenter further recommends that training on supervision be added to new provider orientation requirements.

RESPONSE #23: The department appreciates the comment. Supervision in child care facilities is critical; however, the department believes that this is reflected in the proposed rule. The department is currently revising orientation curriculum, adding additional guidance on supervision practices.

COMMENT #24: One commenter requested clarification on supervision of ECAT.

RESPONSE #24: The department agrees with the comment. The adopted rule has been revised to reflect this change and further clarification will be provided through interpretive guidelines.

COMMENT #25: One commenter requested clarification of "disposal of body fluids" in New Rule II.

RESPONSE #25: The department appreciates the comment. Further clarification should be addressed in orientation training.

COMMENT #26: Several comments were received recommending proposing consistency of role types throughout child care rules.

RESPONSE #26: The department agrees with this comment. The adopted rule has been revised to reflect this change. It should be noted that in definition, ECT encompasses "any staff that provides direct care to children." This includes family and group child care staff as well ECAT and ECLT in centers.

COMMENT #27: Two commenters requested clarification about the term "chapter."

RESPONSE #27: Chapter 95 is where all childcare licensing rules are located within Title 37 of the Administrative Rules of Montana. For example, ARM 37.95.101 is located in Title 37, chapter 95, subchapter 1.

COMMENT #28: One commenter expressed concern about the emergency preparedness and response in the orientation training in New Rule II. Commenter noted that providers have previously been allowed to develop their own emergency preparedness programs and train staff; it was requested that they be able to continue to do so.

RESPONSE #28: The department appreciates the comment. The orientation training has been federally approved through the CCDF State Plan and therefore all teachers will be required to take the approved training.

COMMENT #29: One commenter suggested that experience be documented in hours vs. months and years.

RESPONSE #29: The department disagrees with this comment. CCLP tracks staff based on hire dates and has no method for capturing and tracking the number of hours every staff person works.

COMMENT #30: One commenter requested the removal of "non-child care" from section (2)(d)(iv) in New Rule III, and further suggest removal of the (iv) in the same section. This section offers alternative pathways for meeting the director qualifications.

RESPONSE #30: The department agrees with the first part of this comment. The adopted rule has been revised to reflect this suggestion. The department declines to remove subsection (iv) as this section allows CCLP to consider director qualifications outside of the ECP Practitioner Registry Level.

COMMENT #31: Two commenters proposed to change the term "night care" to "non-traditional hours."

RESPONSE #31: The department agrees in part with this comment. It should be noted that there are rules within this chapter that apply only to care provided at night and do not apply to other non-traditional hours such as weekend care during the day. Therefore, the adopted rule has been revised to include "non-traditional hours" as an alternative term.

COMMENT #32: One commenter proposed that qualifications for group and family child care directors be the same as for child care center directors.

RESPONSE #32: The department disagrees with this comment. The department believes that the expectations and responsibilities in a child care center are much greater than a group or family child care setting. The proposed rule is increasing the qualification for both types of director. In addition, research had shown that Montana needs more child care facilities. The department estimates that this would limit the number of group and family facilities that would be registered and create a child care crisis.

COMMENT #33: Two commenters proposed to change the definition "MTECP Practitioner Registry."

RESPONSE #33: The department agrees in part with this comment. The proposed language includes information not needed in a rule definition. Therefore, the department has paraphrased the proposed language. The adopted rule has been revised to reflect this suggestion.

COMMENT #34: The department received many comments outside the scope of the rulemaking regarding statutory provisions and aspects of federal law.

RESPONSE #34: While the department appreciates the comments, the department does not respond to such comments because they are outside the rulemaking process.

/s/ Flint Murfitt
Flint Murfitt, Attorney
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State January 30, 2018.

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

In the matter of the adoption of New	)	NOTICE OF ADOPTION,
Rules I through XX, the amendment	)	AMENDMENT, AND REPEAL
of ARM 37.107.110, 37.107.111,)	
37.107.115, 37.107.117, 37.107.119,)	
37.107.127, and 37.107.128 and the)	
repeal of ARM 37.107.113,)	
37.107.116, 37.107.121, 37.107.123,)	
37.107.125, 37.107.129, 37.107.132,)	
37.107.133, 37.107.135 pertaining to)	
the Montana medical marijuana)	
program)	

TO: All Concerned Persons

1. On November 9, 2017, the Department of Public Health and Human Services published MAR Notice No. 37-820 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 2037 of the 2017 Montana Administrative Register, Issue Number 21.

2. The department has adopted the following rules as proposed: New Rule I (37.107.102), New Rule II (37.107.130), New Rule IV (37.107.105), New Rule IX (37.107.405), New Rule XI (37.107.410), New Rule XV (37.107.206), New Rule XVIII (37.107.420), New Rule XIX (37.107.415), and New Rule XX (37.107.425). The department has amended the following rules as proposed: ARM 37.107.111, 37.107.127, and 37.107.128. The department has repealed the following rules as proposed: ARM 37.107.113, 37.107.116, 37.107.121, 37.107.123, 37.107.125, 37.107.129, 37.107.132, 37.107.133, 37.107.135.

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

NEW RULE III (37.107.120) MARIJUANA EMPLOYEE PERMIT

(1) and (2) remain as proposed.

(3) ~~A marijuana employee permit will not be issued to any individual that has been convicted of a drug offense~~ The department will issue providers two department-issued volunteer badges to be used for no more than 300 hours per volunteer per year.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-311, MCA

NEW RULE V (37.107.118) MARIJUANA AND MARIJUANA-INFUSED PRODUCTS PROVIDER LICENSEE REQUIREMENTS (1) remains as proposed.

(2) All licensee employees must wear a department-issued identification badge or clothing that easily identifies the individual as an employee.

(3) A licensee must maintain a daily log of all visitor activity ~~to a limited access area~~ on a registered premises. The log must contain the visitor's first and last name and date of visit.

(4) remains as proposed.

(5) A licensee must post signs inside the registered premises in a conspicuous location ~~where the signs can be easily read by individuals on the registered premises~~ that read:

(a) "No Minors Permitted ~~Anywhere~~ on This Premises Except When Accompanied By An Adult"; and

(b) "No On-Site Consumption of Marijuana"; and

(c) ~~At all areas of ingress or egress to a limited access area a sign that reads: "Do Not Enter — Limited Access Area — Access Limited to Authorized Personnel and Escorted Visitors."~~

(6) A licensee may have up to 50 square feet of canopy space per registered cardholder:

(a) remains as proposed.

(b) a licensee may designate multiple grow ~~canopy~~ areas at a registered premises but those spaces must be separated by a physical boundary such as an interior wall or by at least eight feet of open space;

(c) through (7) remain as proposed.

(8) A licensee must have a written security plan maintained on the registered premises that ~~adequately~~ safeguards against theft, diversion, or tampering of marijuana items both on the registered premises and during transit.

(9) remains as proposed.

(10) A licensee must ensure general sanitary requirements are met on a registered premises to include:

(a) ~~adequate and convenient~~ hand-washing facilities;

(b) proper and timely removal of all litter and waste; and

(c) ~~adequate and readily accessible~~ toilet facilities that are maintained in a sanitary condition and good repair;

(d) ~~prohibiting a licensee or licensee employee with a communicable disease, open or draining skin lesions, or any illness accompanied by diarrhea or vomiting from working on a registered premises until the condition is corrected if the individual has a reasonable possibility of contacting marijuana items; and~~

(e) ~~licensee or licensee employees wash hands thoroughly before starting work, prior to having contact with a marijuana item, and at any other time when the hands may have become soiled or contaminated.~~

(11) ~~On-site consumption of intoxicants by any individual is strictly prohibited.~~

(12) through (19) remain as proposed but are renumbered (11) through (18).

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-312, 50-46-319, 50-46-326, 50-46-328, 50-46-329, 50-46-330, MCA

NEW RULE VI (37.107.204) PRODUCING MARIJUANA-INFUSED PRODUCTS, CONCENTRATES, AND EXTRACTS (1) remains as proposed.

(2) A licensee with a chemical manufacturing endorsement must:

(a) only use hydrocarbon-based solvents that are at least 99 percent purity pure, except when using solvents outlined in (3);

(b) through (5) remain as proposed.

(6) All licensees using solvent-based or solvent-free extraction processes authorized under this rule must obtain a chemical manufacturing endorsement.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-312, 50-46-328, 50-46-329, 50-46-330, MCA

NEW RULE VII (37.107.401) LABELING OF MARIJUANA ITEMS (1) Prior to marijuana items being sold or transferred to a registered cardholder the container holding the usable marijuana items must have a label that has the following information:

(a) through (d) remain as proposed.

(e) concentration by weight or volume of THC, THCA, CBD, and CBDA; and

~~(f) amount suggested for use by the registered cardholder at any one time;~~
and

(g) remains as proposed but is renumbered (f).

(2) through (10) remain as proposed.

(11) A label may not:

(a) remains as proposed.

(b) be attractive to minors. For the purpose of this rule, "attractive to minors" means packaging, labeling and marketing that features:

(i) cartoons;

(ii) designs, brands, or names that resemble a non-cannabis consumer product of the type that is typically marketed to minors;

(iii) symbols or celebrities that are commonly used to market products to minors;

(iv) images of minors; or

(v) words that refer to products that are commonly associated with minors or marketed by minors.

(12) and (13) remain as proposed.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-326, MCA

NEW RULE VIII (37.107.402) PACKAGING FOR SALE TO CONSUMER

(1) remains as proposed.

(2) Marijuana items for final sale to a consumer must be:

(a) packaged in a container that is child-resistant ~~as certified by a qualified third-party child-resistant package testing firm; or~~

~~(b) placed within an exit package that is certified by a qualified third-party child-resistant package testing firm prior to final sale to consumer; and~~

~~(c) packaged in a container or placed in an exit package that is capable of being resealed and made child resistant again after it has been opened if the item is designed for multiple use as defined in ARM 37.107.110; and~~

(d) remains as proposed, but is renumbered (b).

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-326, MCA

NEW RULE X (37.107.407) QUALITY ASSURANCE TESTING

REQUIREMENTS (1) Except as provided in (10), A licensee must submit for testing every test batch from a harvest lot of marijuana and process lots of marijuana-infused product, extracts, and concentrates intended for use by a registered cardholder prior to selling or transferring the marijuana item to a registered cardholder.

(2) Usable marijuana lots consisting of dried leaves and flowers must be tested for the following:

(a) through (c) remain as proposed.

(d) microbiological screening; and

~~(e) heavy metals screening; and~~

(f) remains as proposed, but is renumbered (e).

(3) Marijuana concentrate and extract lots must be tested for the following:

(a) and (b) remain as proposed.

~~(c) heavy metals screening;~~

(d) and (e) remain as proposed, but are renumbered (c) and (d).

(4) and (5) remain as proposed.

(6) The sample and related lot or test batch fail quality assurance testing for moisture analysis if the results exceed the following limits:

~~(a) water activity rate of more than 0.65 a_w ; and~~

~~(b) (a) moisture content no more than ~~fifteen~~ twelve percent.~~

(7) The sample and related lot or test batch fail quality assurance testing for foreign matter screening if the results exceed the following limits:

(a) ~~two~~ five percent of stems 3mm or more in diameter; and

(b) ~~five~~ two percent of seeds or other foreign matter.

(8) and (9) remain as proposed.

(10) Heavy metals will be tested at random. A sample and related lot or test batch fail quality assurance testing for heavy metals if the results exceed the limits provided in the table below.

Heavy Metals		
	Limits; Unprocessed/Dry Flower	Limits; Extract
Inorganic arsenic	2.0 µg/g	4 <u>10</u> µg/g
Cadmium	0.82 µg/g	4.1 µg/g
Lead	1.2 µg/g	6.0 µg/g

Mercury	0.4 µg/g	2.0 µg/g
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(11) A sample and related lot or test batch fail quality assurance testing for pesticides if the results exceed the limits provided in the table below.

Pesticides			
Analyte	Chemical Abstract Services (CAS) Registry Number	Action Level ppm; Unprocessed/Dry Flower	Action Level ppm; Extract
Abamectin	71751-41-2	0.5	2.5
Accephate	30560-19-4	0.4	2
Acequinocyl	57960-19-7	2	10
Acetamiprid	135410-20-7	0.2	4
Aldicarb	416-06-3	0.4	2
Azoxystrobin	131860-33-8	0.2	4
Bifenazate	149877-41-8	0.2	1
Bifenthrin	82657-04-3	0.2	1
Boscalid	188425-85-6	0.4	2
Carbaryl	63-25-2	0.2	4
Carbofuran	1563-66-2	0.2	4
Chlorantraniliprole	500008-45-7	0.2	4
Chlorfenapyr	122453-73-0	4	5
Chlormequat chloride	999-81-5	1	5
Chlorpyrifos	2921-88-2	0.2	4
Clofentezine	74115-24-5	0.2	4
Cyfluthrin	68359-37-5	1	5
Cypermethrin	52315-07-8	4	5
Daminozide	1596-84-5	1	5
DDVP (Dichlorvos)	62-73-7	0.1	0.5
Diazinon	333-41-5	0.2	4
Dimethoate	60-51-5	0.2	4
Ethoprophos	13194-48-4	0.2	4
Etofenprox	80844-07-4	0.4	2
Etoxazole	153233-91-1	0.2	1
Fenoxycarb	72490-01-8	0.2	1
Fenpyroximate	134098-61-6	0.4	2
Fipronil	120068-37-3	0.4	2
Flonicamid	158062-67-0	4	5
Fludioxonil	131341-86-4	0.4	2

Hexythiazox	78587-05-0	1	5
Imazalil	35554-44-0	0.2	1
Imidacloprid	138261-41-3	0.4	2
Kresoxim-methyl	143390-89-0	0.4	2
Malathion	121-75-5	0.2	1
Metalaxyl	57837-19-1	0.2	1
Methiocarb	2032-65-7	0.2	1
Methomyl	16752-77-5	0.4	2
Methyl parathion	298-00-0	0.2	1
MGK-264	113-48-4	0.2	1
Myclobutanil	88671-89-0	0.2	0.6
Naled	300-76-5	0.5	2.5
Oxamyl	23135-22-0	1	5
Paclobutrazol	76738-62-0	0.4	2
Permethrins*	52645-53-1	0.2	1
Phosmet	732-11-6	0.2	1
Piperonyl_butoxide	51-03-6	2	10
Prallethrin	23031-36-9	0.2	1
Propiconazole	60207-90-1	0.4	2
Propexur	114-26-1	0.2	1
Pyrethrins†	8003-34-7	1	5
Pyridaben	96489-71-3	0.2	1
Spinosad	168316-95-8	0.2	1
Spiromesifen	283594-90-1	0.2	1
Spirotetramat	203313-25-1	0.2	1
Spiroxamine	118134-30-8	0.4	2
Tebuconazole	80443-41-0	0.4	2
Thiacloprid	111988-49-9	0.2	1
Thiamethoxam	153719-23-4	0.2	1
Trifloxystrobin	141517-21-7	0.2	1

* Permethrins should be measured as cumulative residue of cis- and trans-permethrin isomers (CAS numbers 54774-45-7 and 51877-74-8).

† Pyrethrins should be measured as the cumulative residues of pyrethrin 1, cinerin 1 and jasmolin 1 (CAS numbers 121-21-1, 25402-06-6, and 4466-14-2 respectively).

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-311, 50-46-326, MCA

NEW RULE XII (37.107.305) MARIJUANA TESTING LABORATORY
LICENSEE REQUIREMENTS (1) through (4) remain as proposed.

(5) All licensee employees must wear a department-issued identification badge ~~or clothing that easily identifies the individual as an employee.~~

(6) A licensee must maintain a daily log of all visitor activity ~~to a limited access area~~ on a registered premises. The log must contain the first and last name and the date they visited.

(7) and (8) remain as proposed.

(9) A licensee must have a written security plan maintained on the premises that ~~adequately~~ safeguards against theft, diversion, or tampering of marijuana items both on the premises and during transit.

(10) remains as proposed.

(11) A licensee must ensure general sanitary requirements are met on the premises to include:

(a) ~~adequate and convenient~~ hand-washing facilities;

(b) proper and timely removal of all litter and waste; and

(c) ~~adequate and readily accessible~~ toilet facilities that are maintained in a sanitary condition and good repair;

(d) ~~prohibiting a licensee or licensee employee with a communicable disease, open or draining skin lesions, or any illness accompanied by diarrhea or vomiting from working on a premises until the condition is corrected if the individual has a reasonable possibility of contacting marijuana items; and~~

(e) ~~assurance that the licensee or licensee employees wash hands thoroughly before starting work, prior to having contact with a marijuana item, and at any other time when the hands may have become soiled or contaminated.~~

(12) through (14) remain as proposed.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-311, 50-46-312, 50-46-326, 50-46-328, 50-46-329, MCA

NEW RULE XIII (37.107.306) MARIJUANA TESTING LABORATORIES ACCREDITATION (1) A laboratory licensee must ~~be~~ have processes that are ISO 17025 accredited.

(2) An applicant, after providing written evidence of pending ISO 17025 accreditation:

(a) remains as proposed.

(b) is eligible for a provisional license not to exceed ~~six~~ 12 months.

(3) A licensed laboratory must maintain ISO accreditation at all times.

(4) If a laboratory's process accreditation lapses or is revoked, the laboratory may not perform any activities until it is reinstated.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-311, 50-46-312, MCA

NEW RULE XIV (37.107.205) INVENTORY TRACKING SYSTEM USER REQUIREMENTS (1) A licensee must have ~~an~~ a department inventory tracking system account activated and functional prior to operating or exercising any privileges of the license and must maintain an active account while licensed.

(2) through (13) remain as proposed.

~~(14) A licensee may not transport any marijuana items to another registered premises until access is restored and all information is recorded into the inventory tracking system.~~

(15) remains as proposed, but is renumbered (14).

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-311, 50-46-319, 50-46-326, 50-46-329, MCA

NEW RULE XVI (37.107.124) TRANSPORTATION AND DELIVERY OF MARIJUANA ITEMS (1) Marijuana items may only be transported between a registered premises, or licensed testing laboratories, or a registered cardholder's home by a licensee or licensee employee.

(2) through (10) remain as proposed.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-311, 50-46-319, 50-46-326, 50-46-329, MCA

NEW RULE XVII (37.107.413) WASTE MANAGEMENT

(1) and (2) remain as proposed.

(3) The allowable method to render marijuana plant waste unusable is by grinding and incorporating the marijuana plant waste with other ground materials so the resulting mixture is at least fifty percent nonmarijuana waste by volume. Material used to grind with the marijuana falls into two categories: compostable waste and noncompostable waste.

(a) Compostable mixed waste is marijuana waste to be disposed as compost feedstock or in another organic waste method, such as an anaerobic digester, mixed with food waste, yard waste, or vegetable based grease or oils.

(b) Noncompostable mixed waste is marijuana waste to be disposed in a landfill or another disposal method, such as an incinerator, mixed with paper waste, cardboard waste, plastic waste, or soil.

(3) through (5) remain as proposed, but are renumbered (4) through (6).

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-311, MCA

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

37.107.110 DEFINITIONS (1) and (2) remain as proposed.

(3) "Batch" means:

(a) a quantity of usable marijuana from a harvest lot; or

(b) a quantity of cannabinoid concentrate or extract or cannabinoid product from a process lot.

(3) and (4) remain as proposed, but are renumbered (4) and (5).

(6) "Child resistant" means designed or constructed to be significantly difficult for children under five years of age to open and not difficult for adults to use

properly. The standard for child-resistant packaging is set by the federal consumer product safety commission (CPSC) and the testing procedures found in 16 CFR 1700.20 (2012).

(5) through (8) remain as proposed, but are renumbered (7) through (10).

(11) "Financial interest" means any interest or ownership in the business or entity.

(9) and (10) remain as proposed, but are renumbered (12) and (13).

~~(14)~~ (14) "Harvest lot" means a specifically identified quantity of marijuana that is cultivated utilizing the same growing practices, harvested within a 48 72 hour period at the same location, and cured under uniform conditions. A harvest lot may contain multiple strains.

(12) through (25) remain as proposed, but are renumbered (15) through (28).

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-307, 50-46-308, 50-46-310, 50-46-318, 50-46-344, MCA

37.107.115 LICENSE AND ENDORSEMENT APPLICATION PROCESS

(1) through (3) remain as proposed.

(4) Applicants include, but are not limited to:

(a) any individual or legal entity who holds or controls an interest, ownership, or partnership ~~of ten percent or more~~ in the business or entity;

(b) through (17) remain as proposed.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-308, 50-46-309, 50-46-344, MCA

37.107.117 FEES (1) An applicant must submit to the department the following fees with the initial application and renewal application:

(a) remains as proposed.

(b) provider or marijuana-infused product provider with:

(i) ten or fewer registered cardholders, an application fee of \$1,000;

~~(c) (ii) provider or marijuana-infused product provider with more than ten~~ 11 to 49 registered cardholders, an application fee of \$5,000 \$2,500;

~~(d) a combined provider and marijuana-infused product provider with ten or fewer registered cardholders, an application fee of \$1,000;~~

(iii) 50 or more registered cardholders, an application fee of \$5,000.

(e) through (h) remain as proposed, but are renumbered (c) through (f).

~~(i) (g) marijuana employee permit fee of \$50~~ \$10 for each individual licensee employee listed on application and any subsequent hires; or

~~(j) for amending or changing a registry identification card, a fee of \$10.~~

(h) a caretaker relative, caretaker custodial parent, or legal guardian provider fee of \$100.

(2) and (3) remain as proposed.

AUTH: 50-46-344, MCA

IMP: 50-46-344, MCA

37.107.119 FINGERPRINT AND BACKGROUND CHECK REQUIREMENTS

(1) A fingerprint background check by the Montana Department of Justice and Federal Bureau of Investigation is required for the following:

- (a) all individuals listed on the application; and
- ~~(b) employees defined in 50-46-302, MCA; and~~
- (c) remains as proposed, but is renumbered (b).

(2) through (4) remain as proposed.

(5) Results of background checks must be received prior to: approval of any application.

- ~~(a) approval of any application; and~~
- ~~(b) issuance of a marijuana employee permit.~~
- (6) remains as proposed.

AUTH: 50-46-344, MCA

IMP: 50-46-303, 50-46-307, 50-46-308, 50-46-311, 50-46-344, MCA

5. 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 many comments about employees including the employee badge, employee fingerprinting, employee clothing, volunteers, and employees with drug convictions, and related general sanitary requirements.

RESPONSE #1: The department agrees with the comments and revised New Rules III and XII to remove the requirement that employees will not be issued an employee permit if they have been convicted of a drug offense. The department also removed the requirement for employee fingerprinting in ARM 37.107.119. The department has also provided more clarification regarding volunteers. The department has also removed the requirement that employees have special clothing to identify them as an employee. The department revised general sanitary requirements. The department does not agree that employees do not need to have an employee permit. Issuing permits to all employees allows the department to effectively regulate the program.

COMMENT #2: The department received many comments concerning requirements for cardholder, provider, and testing laboratory applicant's proof of Montana residency.

RESPONSE #2: The department does not agree.

COMMENT #3: The department received many comments about licensee requirements including use of cannabis on a registered premises by cardholder, allowing minors on registered premises, requiring a badge and dress code, health and safety, signage, reporting registered premises changes, reporting operations plans, visitors logs, and canopy limits.

RESPONSE #3: The department agrees with the comments regarding use of cannabis on a registered premises by cardholders, minors on registered premises, and requiring a badge and dress code. The department has revised New Rule V to allow for cannabis use on registered premises by active cardholders. The department has also revised New Rule V to allow minors on registered premises when accompanied by an adult. The department further recognizes that many providers work from their residence and has removed the prohibition of on-site consumption of intoxicants. Badge and dress code comments are addressed in response #1. The department does not agree with the comments regarding safety requirements, excess signage, reporting registered premises changes, reporting operations plans, visitors logs, and canopy limits. These rules ensure the health and safety of providers, employees, cardholders, and visitors and allows the department to effectively regulate the program.

COMMENT #4: The department received several comments about labeling of marijuana items, language content, and packaging.

RESPONSE #4: The department disagrees that requiring all the information to be on the product label is excessive. Consistent and complete labeling ensures patient safety and encourages safe consumption of medicine. The department agrees with the comments regarding the attractive to minors labeling requirement and packaging, and has provided additional clarity in New Rules VII, VIII, and related definitions.

COMMENT #5: The department received many comments about harvest and process lot definition, frequency of testing, quality assurance testing protocols, random testing, and testing costs. There were also comments concerning errors in actual testing values for inorganic arsenic.

RESPONSE #5: The department agrees with many of the comments and has revised New Rule X to decrease the number of required pesticides for testing and to allow for random testing of heavy metals. The reduced testing requirements will decrease the cost burden to small providers and still provide safe medicine for patients. The department has corrected the testing value error for inorganic arsenic.

COMMENT #6: The department received several comments about test process accreditation and ISO certification.

RESPONSE #6: The department agrees with the comments and has revised New Rule XIII to correct that a process is certified not a lab and to allow sufficient time to acquire ISO certification.

COMMENT #7: The department received several comments about patient home delivery.

RESPONSE #7: The department agrees with the comments and has revised New Rule XVI to include patient home delivery.

COMMENT #8: The department received several comments about clarifying waste management.

RESPONSE #8: The department agrees with the comments and has clarified waste management for compostable and noncompostable waste in New Rule XVII. The department does not agree that storing waste for 72 hours is excessive.

COMMENT #9: The department received comments related to clarification of reporting requirements by cardholders and licensees.

RESPONSE #9: The department disagrees that any of the reporting requirements are excessive. The department refers the commenters to the department's response #3.

COMMENT #10: The department received several comments about inspections criteria and the consequences of failed inspections.

RESPONSE #10: The department agrees that inspection criteria needs to be available to providers and will provide guidelines for interpreting the rules in the form of survey tools on our website prior to implementing inspections. The department does not agree that failed inspections are not adequately addressed in New Rule XX, as proposed.

COMMENT #11: The department received comments about fees for licensing, cardholders, employees, caretaker or legal guardians, and change fees.

RESPONSE #11: The department agrees with the comments related to employee permit fees, fees to change providers, and licensing fees including caretaker or legal guardians, and has revised its amendments to ARM 37.107.117 upon adoption. The department does not agree that the fees are excessive as fees are used to offset the costs of running the program in accordance with Montana Medical Marijuana Act.

COMMENT #12: The department received comments about clarification of various proposed definitions including financial interest, employee, registered premises, batch, and process lot.

RESPONSE #12: The department agrees with the comments provided and has revised ARM 37.107.115 to clarify who holds or controls an interest, ownership, or partnership in the business or entity. The department also revised definitions in ARM 37.107.110 to include definitions for batch, financial interest, harvest lot, and process lot.

COMMENT #13: The department received comments about transitional time frames.

RESPONSE #13: The department agrees that requiring cardholders and providers to be in compliance on April 30, 2018 may cause problems. The department will now require cardholders and providers to license at their annual registration renewal or by December 31, 2018, whichever is sooner.

COMMENT #14: The department received several comments concerning the significant financial impact of these rules on small businesses.

RESPONSE #14: The department disagrees that the adoption of proposed new rules, amendments to existing rules, and the repeal of certain existing rules, create a significant financial impact to small businesses. The new requirements and any financial or increased regulatory impact are a result of statutory requirements, not of the rules.

COMMENT #15: The department received several comments related to mechanical extractions.

RESPONSE #15: The department has clarified in New Rule VI that all solvent and non-solvent extractors must obtain a chemical manufacturing endorsement.

COMMENT #16: The department received comments about inventory tracking system access issues relating to power outages.

RESPONSE #16: The department revised New Rule XIV to allow for business to continue in such circumstances.

COMMENT #17: The department received many comments relating to statutory provisions, existing rules not currently subject to amendment, over-regulation, taxation, advertising, choice of inventory tracking system and user requirements, and desired protection from federal law.

RESPONSE #17: While the department appreciates these comments, they are outside of the scope of this rulemaking.

6. The department intends to make these rules effective April 10, 2018.

/s/ Flint Murfitt
Flint Murfitt, Attorney
Rule Reviewer

/s/ Sheila Hogan
Sheila Hogan, Director
Public Health and Human Services

Certified to the Secretary of State January 30, 2018.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 38.5.2202 and 38.5.2302)
pertaining to pipeline safety)

TO: All Concerned Persons

1. On December 8, 2017, the Department of Public Service Regulation published MAR Notice No. 38-5-238 pertaining to the proposed amendment of the above-stated rules at page 2274 of the 2017 Montana Administrative Register, Issue Number 23.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ JUSTIN KRASKE
JUSTIN KRASKE
Rule Reviewer

/s/ BRAD JOHNSON
BRAD JOHNSON
Chairman
Department of Public Service Regulation

Certified to the Secretary of State January 29, 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.

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