

# MONTANA ADMINISTRATIVE REGISTER

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# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 13

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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) 438-6122.

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BEFORE THE MONTANA TAX APPEAL BOARD  
DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 2.51.201, 2.51.307, and ) AMENDMENT  
2.51.403 pertaining to model )  
procedural rules, orders of the board, ) NO PUBLIC HEARING  
and decision by the board ) CONTEMPLATED

TO: All Concerned Persons

1. On September 23, 2023, the board proposes to amend the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m. on July 19, 2023, to advise us of the nature of the accommodation that you need. Please contact Heather Hardman, Department of Administration, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2922; Montana Relay Service 711, facsimile (406) 841-2930; or email to [hhardman@mt.gov](mailto:hhardman@mt.gov).

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

2.51.201 MODEL PROCEDURAL RULE (1) The ~~state~~ Montana Tax Appeal Board has ~~herein~~ adopted and incorporated the attorney general's model procedural rules one through 28, by reference to such rules as stated in ARM 1.3.101 through ARM 1.3.233.

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

GENERAL STATEMENT OF REASONABLE NECESSITY: The 2021 Montana Legislature enacted Chapter 142, Laws of 2021 (Senate Bill 205), which changed the name of the State Tax Appeal Board to the Montana Tax Appeal Board. Senate Bill 205 was signed by the Governor on April 8, 2021, and became effective October 1, 2021. The board determined it is necessary to amend ARM 2.51.201, 2.51.307, and 2.51.403, to update the name of the board.

In addition, the board proposes to remove the citation 15-10-304, MCA from ARM 2.51.307 as it was repealed in 1993.

2.51.307 ORDERS OF THE BOARD (1) The final action of a county tax appeal board upon applications shall be entered in the record by order on forms

prescribed by the state Montana Tax Appeal Board. The orders shall specify the changes to be made in the assessment roll.

(2) remains the same.

(3) With respect to personal property, the decision of the county tax appeal board shall be final and binding on all interested parties for the tax year in question unless reversed or modified upon review by the state Montana Tax Appeal Board.

(4) With respect to taxable real property and improvements thereon, the decision of a county tax appeal board shall be final and binding unless reversed or modified upon review by the state Montana Tax Appeal Board. If the decision of the county tax appeal board is not reviewed by the state Montana Tax Appeal Board, it shall be final and binding on all interested parties for all subsequent tax years unless there is a change in the property itself or circumstances surrounding the property which affect its value. Statutory reappraisal by the Department of Revenue pursuant to 15-7-111, MCA, is a circumstance affecting the value of real property and improvements thereon.

AUTH: 15-2-201, MCA

IMP: 15-2-201, 15-2-301, ~~15-10-304~~, 15-15-103, MCA

2.51.403 DECISION BY THE BOARD (1) With respect to personal property, the decision of the state Montana Tax Appeal Board shall be final and binding upon the parties to the appeal for the tax year in question unless it is reversed or modified by the district court upon judicial review.

(2) With respect to taxable real property and improvements thereon, the decision of the state Montana Tax Appeal Board shall be final and binding unless reversed or modified by the district court upon judicial review. If the decision of the state Montana Tax Appeal Board is not reviewed by a district court, it is final and binding for subsequent tax years unless there is a change in the property itself or circumstances surrounding the property which affects its value. Statutory reappraisal by the Department of Revenue pursuant to 15-7-111, MCA, is a circumstance affecting the value of real property and improvements thereon.

AUTH: 15-2-201, MCA

IMP: 15-2-201, 15-2-301, 15-15-104, MCA

4. Concerned persons may present their data, views, or arguments concerning the proposed action to the person listed in paragraph 2 above. Comments must be received no later than 5:00 p.m., August 4, 2023.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in paragraph 2 no later than 5:00 p.m., July 19, 2023.

6. If the board receives requests for a public hearing on the proposed action from 25 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 greater than 25 based on the number of citizens in Montana.

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

8. The department 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 that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to the person listed in paragraph 2 above or may be made by completing a request form at any rules hearing held by the commission.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email and regular mail on June 27, 2023.

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

/s/ Dave McAlpin  
Dave McAlpin  
Chair  
Montana Tax Appeal Board

/s/ Amie Zendron  
Amie Zendron  
Rule Reviewer  
Montana Tax Appeal Board

Certified to the Secretary of State June 27, 2023.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 2.59.104 pertaining to bank ) AMENDMENT  
semiannual assessments )  
) NO PUBLIC HEARING  
) CONTEMPLATED

TO: All Concerned Persons

1. On September 23, 2023, the Department of Administration proposes to amend the above-stated rule.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on July 19, 2023, to advise us of the nature of the accommodation that you need. Please contact Heather Hardman, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2922; Montana Relay Service 711; facsimile (406) 841-2930; or email to [banking@mt.gov](mailto:banking@mt.gov).

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

2.59.104 SEMIANNUAL ASSESSMENT (1) The department invoices banks, investment companies, and trust companies for semiannual assessments every June and December. The assessment is based on each institution's total assets provided in its previous March and September call reports.

(2) The fee is calculated based on the total assets of the bank, investment company, or trust company multiplied by .0000375, plus the flat fee listed below.

Total Assets	Flat Fee (\$)
\$0 to \$50 million	\$0
Over \$50 to \$100 million	\$3,000
Over \$100 to \$250 million	\$5,000
Over \$250 million to \$1 billion	\$7,500
Over \$1 billion	\$15,000

Example: Bank A reports total assets of \$58,873,000 x .0000375 plus \$3,000 equals \$5,207.74.

(3) The assessment is due 30 days after each invoice date, or July 31 and January 31, whichever is later.

(4) The fee shall not exceed ~~\$300,000~~ \$400,000 for each semiannual assessment.

(5) In the event of a merger between Montana state-chartered banks, investment companies, or trust companies during the second or fourth quarter of the year, the assessment fee for the acquired institution must be paid by the surviving institution.

~~(6) The assessment billed in December 2022 and collected in January 2023 is waived.~~

AUTH: 32-1-213, 32-1-218, MCA

IMP: 32-1-213, 32-1-218, MCA

STATEMENT OF REASONABLE NECESSITY: The Division of Banking and Financial Institutions (division) evaluates its bank, investment company, and trust company assessments every year, with an eye to keeping assessments commensurate with expenses of the bank supervision program. The cost of regulating banks has increased as the assets of Montana banks have grown significantly and currently exceeds projected revenue from the semiannual assessments. In reviewing program expenses, the bulk of the increase in examiner time and resources can be traced to the time spent coordinating with the federal agencies and examination activities focused on regional banks headquartered in the state.

Our two regional banking organizations have grown appreciably through mergers and organic growth over the last few years. While this is beneficial for all concerned, it does require additional regulatory resources to properly supervise these larger institutions.

Considering this new dynamic, the division has chosen to increase the cap on assessments from \$300,000 to \$400,000 per assessment period. There are two institutions in Montana that will be affected by this—our two regional banking organizations. This will increase the assessment paid by these two institutions by \$200,000 per year and bring in an additional \$400,000 to the division per fiscal year. It will ensure that the expenses of the division's regional bank supervision program will not exceed the assessment revenue.

The division has carefully monitored these fees and has extended regulatory relief to state-chartered banks by reducing or waiving certain semi-annual assessments. During the past four fiscal years alone, the fees from semiannual assessments have reduced by almost \$4.5 million. This includes \$2.4 million in assessment fees that would have been paid by the two largest banks in the state.

4. Concerned persons may present their data, views, or arguments concerning the proposed action to the person listed in paragraph two above. Comments must be received no later than 5:00 p.m., August 4, 2023.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written

comments to the person listed in paragraph two above no later than 5:00 p.m., July 19, 2023.

6. If the division 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 three persons based on the 36 existing state-chartered banks.

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

8. The division maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to the person listed in paragraph two 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. The department has determined that under 2-4-111, MCA, the proposed amendment of the above-stated rule will not significantly and directly impact small businesses.

/s/ Misty Ann Giles  
Misty Ann Giles, Director  
Department of Administration

/s/ Don Harris  
Don Harris, Rule Reviewer  
Department of Administration

Certified to the Secretary of State June 27, 2023.

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On September 23, 2023, the Department of Administration proposes to amend the above-stated rule.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on July 19, 2023, to advise us of the nature of the accommodation that you need. Please contact Heather Hardman, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2922; Montana Relay Service 711; facsimile (406) 841-2930; or email to [banking@mt.gov](mailto:banking@mt.gov).

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

2.59.1738 RENEWAL FEES (1) Licenses issued under Title 32, chapter 9, part 1, MCA, expire December 31. Licensees shall submit their renewal applications by December 1 of each year to ensure issuance of the license to qualified renewal applicants by January 1 of the following year. The renewal fees for the license period after January 1, 2022, are:

- (a) Mortgage Broker Entity, \$125.00;
- (b) Mortgage Broker Branch, \$62.50;
- (c) Mortgage Lender Entity, ~~\$487.50~~ \$750.00;
- (d) Mortgage Lender Branch, \$62.50;
- (e) Mortgage Loan Originator, \$100.00;
- (f) Mortgage Servicer Entity, ~~\$487.50~~ \$750.00;
- (g) Mortgage Servicer Branch, \$62.50.

AUTH: 32-9-117, 32-9-130, 32-9-134, MCA  
IMP: 32-9-117, 32-9-130, 32-9-134, MCA

STATEMENT OF REASONABLE NECESSITY: The Division of Banking and Financial Institutions (division) is funded through assessments and licensing fees and strives to keep these fees consistent with each program's expenditures. The mortgage program is currently not generating enough revenue to keep up with its expenditures.

Pursuant to 32-9-117, MCA, renewal fees must be commensurate with program costs. The division has not seen an increase in workload from individual mortgage loan originators or mortgage brokers. In fact, due to increases in interest rates, the number of mortgage loan originators has declined by 26% since May 15, 2022.

The majority of the division's time regulating the mortgage industry is allocated to the supervision of lenders and servicers. Therefore, the division is proposing to increase the renewal fees for mortgage lender and mortgage servicer entities to 100% of the initial license fee for these entity types. These rates were last utilized by the division for the 2015 renewal fees. All other mortgage renewal fees will remain the same as last year.

In Montana, there are currently 288 mortgage lender entities and 207 mortgage servicer entities. The division expects that not all the current licensees will renew their licenses for 2024. Based on prior years' renewals, the division predicts approximately 90% of mortgage companies will renew their licenses for 2024. Therefore, 259 lenders and 186 servicers are expected to renew their licenses.

The license renewal fee will be increased by \$562.50 which raises the entity fees from \$187.50 to \$750 for both lenders and servicers. Projected additional revenue is expected to be \$252,312 (259 lender licenses x \$562.50 + 186 servicers x \$562.50). This increase will be adequate to cover the projected deficit in the mortgage program.

4. Concerned persons may present their data, views, or arguments concerning the proposed action to the person listed in paragraph two above. Comments must be received no later than 5:00 p.m., August 4, 2023.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in paragraph two above no later than 5:00 p.m., July 19, 2023.

6. If the division 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 49 persons based on the 288 mortgage lenders and 207 mortgage servicers.

7. An electronic copy of this proposal notice is available through the department's website at [doa.mt.gov/administrativerules](http://doa.mt.gov/administrativerules). The department strives to make its online version of the notice conform to the official published version, but

advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

8. The division maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name, mailing address, and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to the person listed in paragraph two 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. The department has determined that under 2-4-111, MCA, the proposed amendment of the above-stated rule will not significantly and directly impact small businesses.

/s/ Misty Ann Giles  
Misty Ann Giles, Director  
Department of Administration

/s/ Don Harris  
Don Harris, Rule Reviewer  
Department of Administration

Certified to the Secretary of State June 27, 2023.

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

In the matter of the amendment of	)	AMENDED NOTICE OF PROPOSED
ARM 6.6.4802 pertaining to Fire	)	AMENDMENT
Premium Allocation and ARM	)	
6.6.4803 pertaining to Presumptively	)	NO PUBLIC HEARING
Reasonable Allocations	)	CONTEMPLATED

TO: All Concerned Persons

1. On May 26, 2023, Commissioner of Securities and Insurance, Office of Montana State Auditor published MAR Notice No. 6-276 regarding the proposed amendment of the above-stated rules, at page 460 of the 2023 Montana Administrative Register, Issue No. 10.

2. It was subsequently discovered that the proposal notice had not been sent to all interested persons as required by the Montana Administrative Procedure Act. Therefore, the department is issuing this amended notice to extend the time for public comment.

3. CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact CSI no later than 5:00 p.m. on July 18, 2023, to advise us of the nature of the accommodation that you need. Please contact Sam Loveridge, Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3413; TDD (406) 444-3246; or e-mail [csi@mt.gov](mailto:csi@mt.gov).

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

6.6.4802 FIRE PREMIUM ALLOCATION PROCEDURE (1) Insurers paying fire premium tax required by 50-3-109(1), MCA, shall provide to the CSI the calculation of fire premium separately for each line of business identified in 50-3-109(2), MCA.

(2) For each line of business identified in 50-3-109(2), MCA, the following apply to an insurer's reporting obligation under (1):

(a) If the percentage of fire premium reported is at or above the presumptively reasonable allocation, the insurer need not provide any other documentation to justify that fire premium;

(b) If the percentage of fire premium reported is below the presumptively reasonable allocation, the insurer shall provide the basis for the calculation of fire premium along with any supporting documentation to the CSI. If the CSI accepts the insurer's calculation of fire premium, and in subsequent years the percentage of fire premium remains the same, the insurer is not required to provide such justification to the CSI; or

(c) Unless the presumptively reasonable allocation for a line of business is 0% as provided in ARM 6.6.4803(1), if If the fire premium reported is zero, the insurer shall provide the policy terms which show that risk of fire is excluded from the policy. If the CSI accepts the insurer's calculation of fire premium, and in subsequent years the calculation and policy terms remain the same, the insurer is not required to provide such policy terms to the CSI.

(3) If a rider, schedule, or addition to a policy:

(a) exclusively includes risk of fire, then all premium collected under such rider, schedule, or addition must be included in the fire line of business at 100% fire premium; or

(b) includes risk of fire as well as other risks, then all premium collected under such rider, schedule, or addition must be included in the line of business of the policy.

AUTH: 33-1-313, MCA

IMP: 33-2-705, MCA

6.6.4803 PRESUMPTIVELY REASONABLE ALLOCATIONS (1) For purposes of 33-2-705(3) and 50-3-109(2), MCA, the presumptively reasonable allocations for the following lines of business are ~~The presumptively reasonable allocation for each line of business identified in 50-3-109(2), MCA, is as follows:~~

- (a) for fire, 100%;
- (b) for allied lines, 30%;
- (c) for farmowners multi-peril, 40%;
- (d) for homeowners multi-peril, 40%;
- (e) for commercial multi-peril (nonliability), 50%;
- (f) for commercial multi-peril (liability), 0%~~35%~~;
- (g) for ocean marine, 12%;
- (h) for inland marine, 15%;
- (i) for other private passenger auto liability, 0%~~9%~~;
- (j) for other commercial auto liability, 0%~~9%~~;
- (k) for private passenger auto physical damage, 9%;
- (l) for commercial auto physical damage, 9%;
- (m) for aircraft, 15%;
- (n) for burglary and theft, 0%~~20%~~; and
- (o) for boiler and machinery, 0%~~15%~~.

AUTH: 33-1-313, MCA

IMP: 33-2-705, MCA

5. REASON: As part of the biannual review of CSI's rules as required by 2-4-314, MCA, State Auditor Troy Downing (commissioner) identified the above-stated rules for revision to reduce the presumptive premium tax allocation for certain lines of insurance which experience has shown are relatively unproductive lines.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Sam Loveridge, CSI Communications

Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3413; TDD (406) 444-3246; or e-mail CSI@mt.gov, and must be received no later than 5:00 p.m., July 21, 2023.

7. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Sam Loveridge at the above address no later than 5:00 p.m., July 21, 2023.

8. If the agency receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed actions; 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 38 people based on a conservative estimate of how frequently CSI receives questions concerning the above-stated rules per year.

9. CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must 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 paragraph 6 or may be made by completing a request form at any rules hearing held by CSI.

10. An electronic copy of this proposal notice is available through the Secretary of State's website at <http://sosmt.gov/ARM/Register>.

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

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

/s/ Mark Mattioli

Mark Mattioli  
Rule Reviewer

/s/ Ole Olson

Ole Olson  
Chief Legal Counsel  
Commissioner of Securities and Insurance,  
Office of the Montana State Auditor

Certified to the Secretary of State June 27, 2023.

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

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 6.6.5050 pertaining to Status of ) AMENDMENT  
Carriers as Small Insurer Health )  
Carriers ) NO PUBLIC HEARING  
) CONTEMPLATED

TO: All Concerned Persons

1. On January 1, 2024, the Commissioner of Securities and Insurance, Office of the Montana State Auditor (CSI) proposes to amend the above-stated rule.

2. CSI will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact CSI no later than 5:00 p.m. on July 18, 2023, to advise us of the nature of the accommodation that you need. Please contact Sam Loveridge, Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail [csi@mt.gov](mailto:csi@mt.gov).

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

6.6.5050 STATUS OF CARRIERS AS SMALL EMPLOYER CARRIERS - PERMISSION TO REENTER - ANNUAL REPORTING REQUIREMENTS (1) and (2) remain the same.

~~(3) If a carrier opts to discontinue operating as a small employer carrier in this state, the carrier may continue to provide coverage under health benefit plans previously issued to small employers in this state as provided in 33-22-1811(1)(c), MCA.~~

(3) If a small employer carrier opts to discontinue offering a particular type or all group health insurance coverage in the small group market, the provisions of 33-22-524 and 33-22-1810, MCA, apply.

(4) A carrier that has been prohibited from writing coverage for small employers in this state pursuant to 33-22-1810(1)(g), MCA, may not resume offering health benefit plans to small employers in this state until the carrier has received permission from the commissioner to reenter the small employer market as a small employer carrier.

~~(6) No later than March 1 of each year, each carrier shall file with the commissioner the following information related to health benefit plans issued or marketed by that carrier to small employers in this state:~~

~~(a) The number of small employers that were issued health benefit plans in the previous calendar year, indicating the number of newly issued plans and the number of renewals;~~

- ~~(b) The number of small employers that were issued basic health benefit plans and the number of small employers that were issued standard health benefit plans in the previous calendar year, arranged separately, showing the number of newly issued plans and the number of renewals as to each class of business;~~
- ~~(c) The number of small employer health benefit plans in force in each county of the state as of December 31 of the previous calendar year;~~
- ~~(d) The number of small employer health benefit plans that were voluntarily not renewed by small employers in the previous calendar year;~~
- ~~(e) The number of small employer health benefit plans that were terminated or nonrenewed, for reasons other than nonpayment of premium, by the carrier in the previous calendar year;~~
- ~~(f) The number of small employer health benefit plans that were issued to small employers that were uninsured for at least 3 months prior to issue; and~~
- ~~(g) A list of all health benefit plans being actively marketed by the carrier in the small employer market, together with a list of all form numbers used in connection with those plans and the date of approval for each such form. In the case that a health benefit plan is not being actively marketed, the list must specify the date on which the carrier notified the commissioner that the carrier ceased actively marketing the plan.~~

AUTH: 33-1-313, 33-22-143, 33-22-1822, MCA

IMP: 33-22-1802, 33-22-1810, 33-22-1811, 33-22-1812, 33-22-1814, MCA

4. REASON: As part of the biannual review of CSI's rules as required by 2-4-314, MCA, Montana State Auditor Troy Downing (commissioner) identified ARM 6.6.5050 for revision to eliminate the reporting by companies or collection by this office of data which is no longer used by this office as set forth in (6). The commissioner has determined that eliminating this provision of the rule in turn eliminates both the burden on companies to collect and report the data, and the need for this office to maintain it, thereby improving efficiency for industry and government alike.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Sam Loveridge, CSI Communications Director, 840 Helena Avenue, Helena, Montana, 59601; telephone (406) 444-2040 or 1-800-332-6148; fax (406) 444-3497; TDD (406) 444-3246; or e-mail CSI@mt.gov, and must be received no later than 5:00 p.m., August 4, 2023.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Sam Loveridge at the above address no later than 5:00 p.m., August 4, 2023.

7. If the agency receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed actions; 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 14 persons based on the potential for the actions to impact small employer carriers.

8. CSI maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list must 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 CSI.

9. An electronic copy of this proposal notice is available through the Secretary of State's website at <http://sosmt.gov/ARM/Register>.

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, CSI has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Kirsten Madsen  
Kirsten Madsen  
Rule Reviewer

/s/ Ole Olson  
Ole Olson  
Chief Legal Counsel  
Commissioner of Securities and Insurance,  
Office of the Montana State Auditor

Certified to the Secretary of State, June 27, 2023.

BEFORE THE FISH AND WILDLIFE COMMISSION  
OF THE STATE OF MONTANA

In the matter of the repeal of ARM        ) NOTICE OF PUBLIC HEARING ON  
12.9.202 pertaining to the brinkman     ) PROPOSED REPEAL  
game preserve                                )

TO: All Concerned Persons

1. On August 4, 2023, at 10:00 a.m., the Fish and Wildlife Commission will hold a public hearing via the ZOOM meeting platform to consider the proposed repeal of the above-stated rule. There will be no in-person hearing. Interested parties may access the telephonic public hearing in the following way:

Dial by telephone: +1 646 558 8656  
Meeting ID: 885 4712 0951  
Passcode: 900427

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Fish, Wildlife and Parks (FWP) no later than 5:00 p.m., on July 21, 2023, to advise us of the nature of the accommodation that you need. Please contact Christina Bell, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-4594; or e-mail cbell@mt.gov.

3. The rule proposed to be repealed is as follows:

12.9.202 BRINKMAN GAME PRESERVE

AUTH: 87-1-301, 87-5-402 MCA  
IMP: 87-1-305, 87-5-401 MCA

REASON: On April 19, 2023, petitioner Edward Cole submitted a petition for rulemaking to the Department of Fish, Wildlife and Parks. Pursuant to 2-4-315, MCA, an "interested person...may petition an agency requesting the promulgation, amendment, or repeal of a rule." Petitioner Cole's petition seeks the repeal of ARM 12.9.202, which establishes the Brinkman Game Preserve. If ARM 12.9.202 is repealed, the Brinkman Game Preserve will be abolished. Mr. Cole seeks the repeal of ARM 12.9.202, as the Brinkman Game Preserve includes large swaths of private property, impacting his family's use and enjoyment of the land. On June 8, 2023, the Fish and Game Commission granted Mr. Cole's petition. Therefore, the department is required to file this notice with the Secretary of State and initiate the rulemaking process.

4. Concerned persons may submit their data, views, or arguments orally at the telephonic hearing. Written data, views, or arguments may also be submitted to:

Brian Wakeling, Department of Fish, Wildlife and Parks, P.O Box 200701, Helena, Montana, 59620-0701; or email [brian.wakeling@mt.gov](mailto:brian.wakeling@mt.gov) and must be received no later than 5:00 p.m., August 7, 2023.

5. Christina Bell or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing or email address of the person to receive the notice. Such written request may be mailed or delivered to: Department of Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to [cbell@mt.gov](mailto:cbell@mt.gov).

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

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

/s/ Kevin Rechhoff  
Kevin Rechhoff  
Rule Reviewer

/s/ Lesley Robinson  
Lesley Robinson  
Chair  
Fish and Wildlife Commission

Certified to the Secretary of State June 27, 2023.

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I and II; the amendment of	)	PROPOSED ADOPTION,
ARM 18.7.203, 18.7.204 and	)	AMENDMENT, AND REPEAL
18.7.207; and the repeal of 18.7.205	)	
and 18.7.221 pertaining to Utility and	)	
Eligible Project Right-of-Way	)	
Occupancy	)	

TO: All Concerned Persons

1. On August 4, 2023, at 10:00 a.m., the Department of Transportation will hold a public hearing via remote conferencing to consider the proposed adoption, amendment, and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following way:

Registration with Zoom may be made at the following link:

(a) <https://mt-gov.zoom.us/meeting/register/tZlvcuGspzsoE9WxxYMTyxmtFY2S0d1QOWqv>

2. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require accommodation, contact the Department of Transportation no later than 5:00 p.m. on July 28, 2023, to advise us of the nature of the accommodation that you need. Please contact Chad Newman, Broadband Coordinator, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6350; fax (406) 444-7254; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail [chnewman@mt.gov](mailto:chnewman@mt.gov).

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

NEW RULE I ELIGIBLE PROJECTS FOR LONGITUDINAL INTERSTATE

USE (1) A right-of-way use agreement is a lease as per 23 CFR 710.105.

(2) An applicant must apply for a right-of-way use agreement from the department's Utility Permitting Administration System (UPAS) through the department's website at [www.mdt.mt.gov](http://www.mdt.mt.gov) or [www.mdtupas.com](http://www.mdtupas.com). The procedures and conditions for all eligible project facility installations and maintenance are set forth in the right-of-way use agreement terms and conditions, ARM Title 18, chapter 7, subchapter 2, and the department's right-of-way utilities manual.

(3) An electronic use convenience fee is due upon submission of each UPAS application. Applications shall be reviewed in the order they are received. The department shall consider all relevant factors, including but not limited to:

- (a) the maximum occupancy of facilities and remaining availability of interstate right-of-way at the proposed project location;
  - (b) the feasibility of the proposed project location and the impact to the traveling public's safety and convenience;
  - (c) conflicts with existing or future highway projects;
  - (d) the maintenance area necessary for the proposed project location; and
  - (e) the requirements set forth in 60-4-601, MCA.
- (4) All appropriate underground or above-ground requirements in state and federal statute, regulations, and rules must be met including, but not limited to:
- (a) the department shall enter right-of-way use agreements in a manner so as to reserve, where possible, sufficient underground right-of-way for eligible projects as defined in 60-4-601, MCA;
  - (b) above-ground facilities or infrastructure must be located outside the clear recovery area without reduction in safety for the traveling public and without any impacts to standard maintenance operations unless otherwise approved by the department;
  - (c) each facility owner must obtain a separate UPAS permit; and
  - (d) each facility's dedicated power source must obtain a separate UPAS permit.
- (5) Right-of-way use agreement terms shall include an application fee of \$100, due upon department notification to applicant.
- (6) The department shall deposit the revenues derived from the right-of-way use agreement and related fees in the state special revenue highway restricted account established in 15-70-126, MCA.
- (7) The applicant shall not commence construction work within the interstate right-of-way until the right-of-way use agreement and the UPAS permit have been approved by the department.
- (8) Facilities installed under a right-of-way use agreement must comply with ARM Title 18, chapter 7, subchapter 2 for general utility installation and maintenance requirements.
- (9) Assignment of a right-of-way use agreement is not binding until approved by the department. An assignment may only be denied for good cause, which reasons may include, but are not limited to:
- (a) all payments due have not been received; or
  - (b) the terms of the right-of-way use agreement have been violated.
- (10) If a facility owner disagrees with the department's decision to deny an application or refuse to renew a right-of-way use agreement, the facility owner must submit a written request for a formal hearing that must be received by the department within 30 days of the date on the department's notice. A formal hearing consists of a contested case proceeding under the Montana Administrative Procedure Act.

AUTH: 60-2-201, 60-3-101, 60-4-601, MCA

IMP: 60-2-201, 60-4-601, 60-5-101, 60-5-104, MCA

REASON: The 2023 Legislature enacted Chapter 694, Laws of 2023 (Senate Bill 521), amending 60-4-501 and 60-4-601, MCA, generally revising laws related to

broadband deployment on state highways or interstate rights-of-way. The bill became effective May 19, 2023. Proposed New Rule I is necessary to begin accommodation of eligible project pipeline, fiber optic, or other communications-type cables, wireless, and associated infrastructure and dedicated power sources within full access control (interstate) highway right-of-way.

Proposed New Rule I is necessary to provide information on the application process to be used for eligible project facilities, including requirement of right-of-way use agreements, and other relevant factors. The department projects the proposed application fees for SFY 2024 will impact approximately 100 applicants, resulting in a projected revenue increase of approximately \$10,000.

NEW RULE II NON-REGULATED TELECOMMUNICATIONS – FIBER OPTIC – BROADBAND – WIRELESS FACILITIES IN NON-INTERSTATE

HIGHWAYS (1) The department may issue utility encroachment permits with applicable terms for use of non-interstate federal-aid highway system rights-of-way to non-regulated telecommunications, fiber optic, broadband, and wireless facility owners for the purpose of installation of appropriate equipment and associated infrastructure within state highway rights-of-way.

(2) Any facilities placed on the non-interstate federal-aid system highway right-of-way must be placed in accordance with existing statutes, rules, and standards of the department. A facility's power source not owned by the applicant must obtain a separate UPAS utility permit.

(3) Any relocation of facilities occupying the right of way is subject to 60-4-403, MCA.

(4) The department shall review applications to ensure the proposed facilities, their operation, and maintenance do not conflict with the operation or maintenance of facilities owned by other entities previously issued a utility encroachment permit or occupancy agreement and are not dangerous to persons or property using or occupying the right-of-way. The applicant must determine the existence and location of all facilities within the non-interstate highway right-of-way prior to project construction.

(5) If a facility owner disagrees with the department's decision to deny an application or revoke or refuse to renew a utility encroachment permit, the owner must submit a written request for a formal hearing that must be received by the department within 30 days of the date on the department's notice. A formal hearing consists of a contested case proceeding under the Montana Administrative Procedure Act.

AUTH: 60-2-201, 60-3-101, MCA

IMP: 60-2-201, 60-5-101, 60-5-104, MCA

REASON: Proposed New Rule II is necessary to allow installation of non-regulated communications, fiber optic, broadband, or wireless facilities in non-interstate state highway right-of-way. New Rule II is necessary to establish application processes and requirements for issuance of utility encroachment permits for these facilities or utilities.

New Rule II is also necessary to establish the utility encroachment permit holder's compliance with relocation statutes, requirements for installation standards, and responsibility for maintenance of the facilities.

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

18.7.203 SCOPE AND APPLICATION (1) These regulations apply to all portions of federal-aid highway systems in Montana. ~~They~~ and establish requirements for occupancy of highway rights-of-way by:

(a) and (b) remain the same.

(2) Except as noted in ~~subsection (3) of this rule~~, these regulations shall apply to:

(a) New utility facilities as herein defined. Specific regulations governing these facilities are covered in ARM ~~18.7.221 through 18.7.232~~ Title 18, chapter 7, subchapter 2.

(b) through (e) remain the same.

(f) ~~Occupancy by utility type facilities that do not have a statutory right to occupy highway right-of-way, but are allowed under established use and~~ Occupancy by facilities which are not public utilities but may be allowed under utility encroachment permits granted and administered by the department. Longitudinal occupancy of highway right-of-way by a non-utility is contrary to department policy. Where such longitudinal occupancy is approved by the district administrator, it will only be by a revocable encroachment permit.

(g) Occupancy of non-interstate right-of-way is subject to [New Rule II].

(h) Longitudinal occupancy of interstate right-of-way is subject to ARM 18.7.204 and [New Rule I].

(3) remains the same.

(4) ~~Lands administered by the department in excess of highway right-of-way are not subject to occupancy under these regulations. Easements or permits for use of such lands are obtained~~ Other uses of real property administered by the department must be requested through the department's right-of-way bureau, land section supervisor, Helena, Montana.

AUTH: 60-2-201, 60-3-101, 60-4-402, 60-4-601, MCA

IMP: 60-2-201, 60-3-101, 60-4-402, 60-4-601, 60-5-101, 60-5-104, MCA

REASON: The proposed amendments to ARM 18.7.203 are necessary to make the rule consistent with 60-4-601, MCA, and SB 521, allowing longitudinal use of interstate rights-of-way for eligible projects. The proposed amendments are also necessary to set forth the method by which the department will review applications for longitudinal use of non-interstate state highways. The proposed amendments are necessary to revise outdated language to be consistent with the rule definitions of public and non-public utilities.

18.7.204 OCCUPANCY OF FULL CONTROLLED-ACCESS FACILITY

RIGHT-OF-WAY (1) Occupancy of full controlled-access facility right-of-way is ~~contrary to department policy, however, occupancy under right-of-way use agreements (UPAS interstate permit) may be permitted in special cases~~ where the utility facility owner shows that:

~~(a) all requirements of 60-4-601, MCA, and [NEW RULE I] are met;~~

~~(a) (b) the accommodation will not adversely affect the safety, design, construction, operation, maintenance, or stability of the full controlled-access facility; and~~

~~(b) (c) the accommodation will not be constructed or serviced by direct access from through traffic roadways or connecting ramps;~~

~~(c) the accommodation will not interfere with or impair the present use or future expansion of the full controlled-access facility;~~

~~(d) any alternative location would be contrary to the public interest. This determination includes an evaluation of the direct and indirect environmental and economic effects which would result from disapproval of the use of such right-of-way for the accommodation of such utility.~~

(2) remains the same.

(3) Utilities ~~can~~ may be installed within the right-of-way of a crossroad over or under the full controlled-access facility, provided such installation is in compliance with all applicable rules, and provided the installation and servicing ~~can~~ may be accomplished without access from the through traffic facilities of the full controlled-access facility roadway or ramps.

AUTH: 60-3-101, 60-4-402, MCA

IMP: 60-3-101, 60-4-402, 60-4-601, MCA

REASON: The proposed amendments to ARM 18.7.204 are necessary to make the rule consistent with 60-4-601, MCA (SB 521), allowing longitudinal use of interstate right-of-way for eligible projects.

18.7.207 ELECTRONIC UTILITY PERMIT APPLICATION PROCESS

(1) through (2)(d) remain the same.

(e) be accompanied by a ~~\$100~~ non-refundable electronic convenience fee.

(3) through (6) remain the same.

AUTH:60-4-402, MCA

IMP: 60-4-402, 60-4-403, MCA

REASON: The proposed amendment to ARM 18.7.207 is necessary to allow changes to the electronic convenience fee which is charged by and remitted to the UPAS software vendor to allow for increased costs for UPAS software hosting and professional services.

5. The following rules are proposed to be repealed:

18.7.205 SUPERSEDED REGULATIONS AND PERMITS

AUTH: 60-3-101, 60-4-402, MCA  
IMP: 60-3-101, 60-4-402, MCA

REASON: The repeal of ARM 18.7.205 is necessary because the superseded regulations and permits cited in the rule no longer exist, and the rule is therefore archaic.

18.7.221 STANDARDS AND PROCEDURES

AUTH: 60-3-101, 60-4-402, MCA  
IMP: 60-3-101, 60-4-402, MCA

REASON: The repeal of ARM 18.7.221 is necessary because the rule is archaic and refers to procedures which were superseded in 1972.

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 Chad Newman, Broadband Coordinator, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; fax (406) 444-7254 or e-mail [chnewman@mt.gov](mailto:chnewman@mt.gov), and must be received no later than 5:00 p.m., August 4, 2023.

7. A Department of Transportation designee will 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 paragraph 6 or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available on the Department of Transportation website at [www.mdt.mt.gov](http://www.mdt.mt.gov).

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of SB 521 was contacted by email and U.S. Mail on April 3, 2023.

11. 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.

12. With regard to the requirements of 2-15-142, MCA, the department has determined that the adoption, amendment, and repeal of the above-referenced rules will not have direct tribal implications.

/s/ Valerie A. Balukas  
Valerie A. Balukas  
Rule Reviewer

/s/ Malcolm D. Long  
Malcolm D. Long  
Director  
Department of Transportation

Certified to the Secretary of State June 27, 2023.

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

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through XIV and the repeal of	)	PROPOSED ADOPTION AND
ARM 37.104.101, 37.104.102,	)	REPEAL
37.104.105, 37.104.106, 37.104.107,	)	
37.104.108, 37.104.109, 37.104.110,	)	
37.104.111, 37.104.112, 37.104.114,	)	
37.104.115, 37.104.120, 37.104.201,	)	
37.104.202, 37.104.203, 37.104.204,	)	
37.104.205, 37.104.206, 37.104.208,	)	
37.104.212, 37.104.213, 37.104.218,	)	
37.104.301, 37.104.305, 37.104.306,	)	
37.104.307, 37.104.311, 37.104.312,	)	
37.104.316, 37.104.319, 37.104.320,	)	
37.104.321, 37.104.325, 37.104.326,	)	
37.104.329, 37.104.330, 37.104.335,	)	
37.104.336, 37.104.401, 37.104.404,	)	
37.104.405, and 37.104.410	)	
pertaining to emergency medical	)	
services	)	

TO: All Concerned Persons

1. On July 31, 2023, at 2:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed adoption and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/84786068741?pwd=WlkvWC95VVZGbXhTOEdOTWxvOHdldz09>, meeting ID: 847 8606 8741, and password: 363007; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 847 8606 8741, and password: 363007. Find your local number: <https://mt-gov.zoom.us/u/kuvJ8BAzj>.

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 July 17, 2023, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, 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 [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov).

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

NEW RULE I DEFINITIONS As used in this subchapter, the following definitions apply:

- (1) "Accrediting body" means a national or international organization which:
  - (a) reviews the facilities, vehicles, equipment, and operations of an ambulance service;
  - (b) uses trained site-surveyors with experience in medical transport at the level of accreditation and license;
  - (c) provides ambulance service accreditation for no more than three consecutive years without an updated inspection and reaccreditation;
  - (d) assures that ambulance services with identified deficiency standards will implement corrective action or improvement plans to correct any deficiencies; and
  - (e) provides transparency by making publicly available its standards, policies, procedures, and a list of accredited programs.
- (2) "Advanced emergency medical technician" has the meaning provided for under 37-3-102, MCA.
- (3) "Advanced life support (ALS)" means a level of care provided by an EMT with any endorsement issued by the board, an AEMT, or a paramedic.
- (4) "Advanced life support (ALS) kit" means, at a minimum, the equipment and supplies set forth under Table 5 of the Emergency Medical Services Rule Appendix.
- (5) "Advanced life support emergency medical service" means an ambulance service or nontransporting medical unit having capacity and licensed by the department to provide advanced life support 24 hours a day, seven days a week.
- (6) "Advisory committee" means the advisory committee specified in 50-6-324, MCA.
- (7) "Ambulance service" means an emergency medical service licensed by the department to utilize an ambulance for the transportation of patients.
- (8) "Automated external defibrillator (AED)" has the meaning provided for under 50-6-501, MCA.
- (9) "Basic life support (BLS)" means a basic life support level of care provided by an EMR or EMT that does not meet Advanced Life Support qualification.
- (10) "Basic life support emergency medical service" means an ambulance service or nontransporting medical unit capable of providing care at the basic life support level and licensed as a provider under [NEW RULE VII]
- (11) "Basic life support kit" means the equipment and supplies set forth under Table 4 of the Emergency Medical Services Rule Appendix.
- (12) "Board" means the Montana Board of Medical Examiners administratively attached to the Department of Labor and Industry.
- (13) "Emergency care provider (ECP)" has the meaning provided for under 37-3-102, MCA, and for the purposes of this chapter, includes registered nurses with supplemental training.
- (14) "Emergency medical responder (EMR)" has the meaning provided for under 37-3-102, MCA.
- (15) "Emergency medical service incident" means an instance in which an ambulance service or nontransporting medical unit is requested to provide services,

including community integrated health or a mutual aid request, and with respect to which any of the following occur:

- (a) a patient was assessed;
- (b) medical care was rendered;
- (c) a patient was transported;
- (d) a patient was pronounced dead at the scene;
- (e) a patient was transferred to another licensed service;
- (f) a patient was transferred from one medical facility to another; or
- (g) the person or persons for whom emergency medical service was

dispatched refused treatment, transport, or both.

(16) "Emergency Medical Services Rule Appendix" means the department's Emergency Medical Services Rule Appendix (Version 1.0), which sets forth operational requirements for Emergency Medical Service providers. The department adopts and incorporates by reference the Appendix. A copy of the Appendix is available electronically at <https://dphhs.mt.gov/publichealth/EMSTS/ems/resources> and may also be obtained from the Department of Public Health and Human Services, Public Health and Safety Division, Emergency Medical Services and Trauma Systems Section, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(17) "Emergency medical technician (EMT)" has the meaning provided for under 37-3-102, MCA.

(a) An EMT is equivalent to the emergency medical technician-basic as required under 50-6-322, MCA.

(18) "FAA" means the Federal Aviation Administration.

(19) "Level of emergency medical service" means basic life support, basic life support with authorization for limited advanced life support, or advanced life support.

(20) "Montana ECP Practice Guidelines" means the board-approved guidelines in ARM 24.156.2701.

(21) "Montana EMS Registry" means the electronic repository of data submitted by Montana emergency medical service agencies that is administered by the department for quality improvement and public health reporting purposes.

(22) "Paramedic" has the meaning provided for under 37-3-102, MCA.

(23) "Patient care report" means an accurate and complete record of the response by an ambulance service or nontransporting medical unit to each emergency medical service incident.

(24) "Permit" means the sticker affixed to a ground ambulance or a certificate placed in an air or ground ambulance indicating the ambulance vehicle has met the requirements of these rules.

(25) "Provisional license" means a temporary emergency medical service license granted by the department that is valid for a maximum of 90 days.

(26) "RN with supplemental training" means a registered nurse who has completed the supplemental training required to work on an ambulance or nontransporting medical unit.

(27) "Safety and extrication equipment kit" means the equipment and supplies set forth under Table 6 of the Emergency Medical Services Rule Appendix.

(28) "Service manager" means the individual identified on the Emergency Medical Services license application as the service manager and who is responsible

for ensuring service operations are conducted in compliance with all applicable statutory and regulatory requirements.

(29) "Service medical director" means a person who meets the requirements of a medical director as provided in ARM 24.156.2701 and provides offline medical direction for an emergency medical service pursuant to ARM 24.156.2732.

(30) "Stipulations" mean those conditions specified by the department at the time of licensing which must be met by the applicant in order to be licensed as an emergency medical service.

(31) "Supplemental training" means training for registered nurses approved by the service manager of an emergency medical service licensed at the basic life support level of service, or the service medical director for all other levels of service.

(a) The training must recognize the registered nurse's education and experience and result in emergency medical competency at the emergency medical service's license level.

(32) "Temporary permit" means a written, non-transferable authorization of limited duration indicating an ambulance vehicle may be used by a licensed ambulance service until a permit can be issued.

(33) "Transportation equipment kit" means the equipment and supplies set forth under Table 7 of the Emergency Medical Services Rule Appendix.

(34) "Type of emergency medical service" means either an air ambulance fixed wing, air ambulance rotor wing, ground ambulance, or nontransporting medical unit.

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

NEW RULE II EMS AGENCY SERVICE MANAGER DUTIES (1) The service manager of an emergency medical service must ensure:

(a) when the service is a BLS service, the care provided by ECP conforms to the general standard of care promulgated by the board;

(b) when the service is an ALS service, the service medical director fulfills the requirements of offline medical direction as defined in ARM 24.156.2732 and 50-6-302, MCA;

(c) the service is operated in a manner that does not threaten or endanger the public health, safety, or welfare;

(d) required basic life support, advanced life support, transportation equipment, and safety and extrication kits are available as described in Table 3 of the Emergency Medical Services Rule Appendix;

(e) service staffing meets minimum requirements set forth under [NEW RULE VI];

(f) the service meets communication, reporting, and sanitation requirements set forth under this subchapter;

(g) the service establishes written policies and procedures and maintains written documentation for the preventive maintenance of ambulances and emergency medical equipment;

(h) the service personnel are alert and capable during an emergency response;

- (i) ambulance vehicles and all emergency medical services equipment are maintained in a safe and operating condition;
  - (j) all personnel functioning on the emergency medical service have documentation of appropriate licensure to function;
  - (k) service personnel use only that equipment and perform those skills for which they are trained, certified, or licensed and legally permitted to use or perform;
  - (l) communication items set forth in Table 2 of the Emergency Medical Services Rule Appendix are always available.
- (2) When functioning under the conditions defined in ARM 24.156.2771(7), a licensed service may use ECPs licensed in another state.
- (3) All ambulances must have at least one of the required personnel attending the patient, and when providing care at an ALS level, the person licensed at the corresponding level must attend the patient.

AUTH: 50-6-323, MCA  
IMP: 50-6-323, MCA

#### NEW RULE III EMS AGENCY SERVICE MEDICAL DIRECTOR DUTIES

- (1) The service medical director must:
- (a) perform all duties and responsibilities consistent with ARM 24.156.2732 and offline medical direction under 50-6-302, MCA;
  - (b) ensure that care provided by ECP staff conforms to the service's board-approved guidelines or the Montana ECP Practice Guidelines;
  - (c) ensure that the service is operated in a manner that does not threaten or endanger the public health, safety, or welfare; and
  - (d) ensure the minimum content requirements for the Advanced Life Support Kit are met and that the kit contains any additional supplies necessary to support the level of care and endorsements authorized by the service medical director consistent with board-approved service guidelines or the Montana ECP Practice Guidelines.

AUTH: 50-6-323, MCA  
IMP: 50-6-323, MCA

NEW RULE IV EMS AGENCY RECORDS AND REPORTS (1) Each emergency medical service must maintain a patient care record for every emergency medical service incident.

- (a) In incidents where more than one patient is encountered, one patient care record shall be completed for each patient.
  - (b) In the event more than one emergency medical service arrives at the scene of an emergency medical service incident, each service having actual contact with a patient is responsible for completing a patient care record on the patient.
- (2) Every ambulance service must electronically submit data to the department for each emergency medical service incident within 48 hours of the conclusion of the emergency medical service incident. The department may extend this timeframe in cases of unusual circumstances.
- (3) Electronic data submitted to the department must be in the format prescribed by the National Emergency Medical Services Information System

(NEMSIS) and include all NEMSIS state and national data elements. The department adopts and incorporates by reference the National Emergency Medical Services Information System (NEMSIS) Uniform Pre-Hospital Emergency Medical Services Dataset, Version 3.5.0 (March 17, 2023) published by the National Highway Traffic Safety Administration (NHTSA). A copy may be obtained at [https://nemsis.org/media/nemsis\\_v3/release-3.5.0/DataDictionary/PDFHTML/EMSDEMSTATE/NEMSISDataDictionary.pdf](https://nemsis.org/media/nemsis_v3/release-3.5.0/DataDictionary/PDFHTML/EMSDEMSTATE/NEMSISDataDictionary.pdf) or from the Department of Public Health and Human Services, Public Health and Safety Division, Emergency Medical Services and Trauma Systems Section, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(a) For ambulance services directly using the reporting system provided by the department, the data is considered submitted to the department as soon as it has been entered or updated in the department-provided system.

(b) For ambulance services using third-party software, the data is considered submitted to the department as soon as it has been uploaded or updated into the department-provided system.

(4) Ambulance services are not required to submit other NEMSIS data elements but may do so. Non-transporting medical units are not required to submit NEMSIS data but may do so.

(5) Other software may be used to submit required data, but agencies must consult with the department before purchasing such software to ensure that the system is capable of submitting data to the Montana EMS Registry.

(6) Patient care reports may be reviewed by the department.

(7) Patient care reports must be maintained by the emergency medical service for a minimum of seven years.

(8) Immediately or as soon as possible upon arrival, but no later than 24 hours after the end of the patient transport, an ambulance service must provide a copy of the patient care report to the health care facility that receives the patient.

(a) If a completed patient care report cannot be left at the health care facility at the end of the patient transfer, an abbreviated patient encounter form containing information essential to continued patient care as set forth under Table 8 of the Emergency Medical Services Rule Appendix shall be provided until a patient care record can be provided to the health care facility.

(b) If an immediate response to another patient is required of an ambulance delivering a patient to a health care facility, a complete oral report on the patient being delivered must be given to the receiving health care facility until an abbreviated patient encounter form or patient care record can be provided.

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

#### NEW RULE V EMS AGENCY GENERAL SERVICE REQUIREMENTS

(1) Except as otherwise specifically provided in this subchapter, no person may:

(a) advertise the provision of an emergency medical service without first having obtained a license from the department; or

(b) advertise, allow advertisement of, or otherwise imply provision of emergency medical services at a level of care higher than that for which the service is licensed.

(2) An emergency medical service must store, handle, and dispose of infectious waste in accordance with the Infectious Waste Management Act, 75-10-1001, et seq., MCA.

(3) Each emergency medical service must develop and adhere to a written sanitation policy that includes at least a method to dispose of contaminated materials meeting the requirements set forth in (2) and the following standards:

(a) Products used for cleaning must be EPA registered disinfectants.

(b) Disposable equipment must be disposed of after use.

(c) Any equipment that comes into contact with body fluids or secretions must be cleaned using an EPA registered disinfectant.

(d) Linens must be changed after each use.

(e) Oxygen humidifiers must be single service and disposable.

(f) Needles must not be recapped, bent, or broken, and must be disposed of in a container that provides protection to personnel from a needle puncture.

(4) The use of smoking and vaping products is prohibited in all ambulances.

(5) With the exception of a physician or the circumstances described in [NEW RULE X], individual personnel must not provide a level of care higher than the level and type for which the emergency medical service is licensed. The emergency medical service must be licensed or authorized to operate at the highest level it plans to allow individuals to provide care.

(6) Each emergency medical service approved for a BLS license with authorization for advanced life support or advanced life support level shall have a service medical director. The requirements and responsibilities of the service medical director are described in [NEW RULE III].

(7) An emergency medical service must have a two-way communication system that enables online medical direction.

(8) If a licensed ambulance service is not reasonably available, occasional and infrequent transportation by other means is permitted.

(9) In a disaster or major emergency when licensed ambulances are insufficient to render services required, non-licensed emergency medical services may be used.

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

#### NEW RULE VI EMS AGENCY MINIMUM STAFFING REQUIREMENTS

(1) Except as provided in (a) through (d), ambulance services shall adhere to the minimum staffing requirements set forth in Table 1 of the Emergency Medical Services Rule Appendix when responding to a request for service that has not been medically triaged:

(a) An ambulance service medical director may authorize a process for medical evaluation of a patient and the use of a basic life support crew configuration if that configuration meets the clinical needs of the patient.

(b) During periods of extraordinary call volume, a service licensed at the advanced life support level of service may temporarily utilize a crew configuration equal to the minimum staffing standard for a service licensed at the basic life support level of service.

(c) During inter-facility transfers by air ambulance, the service medical director may alter the crew configuration to match the medical needs of the patient, so long as one of the personnel is an ECP, a physician, or a physician assistant.

(d) An air ambulance may transport a patient with only one ECP crew member in addition to the pilot when advisable for weather, weight, or other extenuating circumstances on a case-by-case basis.

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

NEW RULE VII EMS AGENCY LICENSE TYPES AND LEVELS (1) A license will be issued for, and authorize performance of, emergency medical services for the following types of service:

- (a) air ambulance fixed wing;
- (b) air ambulance rotor wing;
- (c) ground ambulance; or
- (d) nontransporting medical unit.

(2) A license will be issued for, and authorize performance of, emergency medical services for the following levels of service:

- (a) basic life support;
- (b) basic life support with authorization for limited advanced life support; or
- (c) advanced life support.

(3) An emergency medical service that seeks to provide advanced life support but cannot reasonably provide it 24 hours per day, seven days per week, may request a basic life support license with authorization for limited advanced life support.

AUTH: 50-6-323, MCA

IMP: 50-6-306, 50-6-323, MCA

NEW RULE VIII EMS AGENCY LICENSE APPLICATION REQUIREMENTS

(1) Applications for licensing and renewal of licensing must be made using department-approved electronic forms. Except as provided under (10), the term of an EMS license is two years. Applications must be accompanied by the license fee and proof of current single occurrence malpractice insurance and liability insurance coverage. Copies of the accrediting body certifications must be included if the application is for renewal of a license and the service is accredited by an accrediting body without variance or limitations. The application, license fee, and all required supporting documents must be received by the department not less than 30 days prior to the commencement of a new emergency medical service or 15 days prior to the expiration of the license, in the case of an application for renewal.

(2) An application for a ground ambulance service license, including for renewal of a license, must include documentation of current single occurrence

automobile vehicle liability insurance coverage, unless exempt under 61-6-303, MCA.

(3) An application for an air ambulance service, including the renewal of a license, must include documentation of current and unrestricted FAA air medical ambulance certification and an attestation that the operations comply with FAA Regulations at 14 CFR Part 135 and related circulars in effect as of the date of application. If the applicant intends to provide rotor wing service, the applicant must also submit an attestation that the operations comply with FAA regulations at 14 CFR Part 135, Subpart L, and related circulars in effect as of the date of the application. The same documentation and attestation requirements also apply to contractor operations if the applicant contracts for service with another provider.

(4) Within 30 working days after an emergency medical service application has been initiated, the emergency medical service's manager must complete the required fields in the department's licensing management system.

(5) Within 30 days from receipt of an emergency medical service license application or, if the department requests additional information about the application, within 30 days from receipt of that information, the department shall:

- (a) issue the license;
- (b) issue the license with stipulations;
- (c) issue a provisional license; or
- (d) deny the license.

(6) The department may deny an emergency medical service license if:

- (a) the application does not provide all of the requested information; or
- (b) there is evidence that the applicant is not complying with these rules.

(7) If the department does not take action on the application within 30 days after its receipt, the emergency medical services license must be issued unless the applicant is known to be in violation of these rules.

(8) Except as provided under (9), the department shall inspect each emergency medical service prior to issuing a license. If an inspection cannot be conducted, the department may issue a provisional license until an inspection can be completed.

(9) An ambulance service renewing its service license at the same level of service that holds valid and current accreditation without variance or limitations from an accrediting body is exempt from vehicle, equipment, and operation inspections. The ambulance service must still request, pay for, and display state-issued permits for each ambulance.

(10) To establish staggered terms of licensing:

(a) when the department receives a completed license application for a new emergency medical service, it will assign that service a number; and

(b) if the department grants the license:

(i) an odd-numbered service will be issued a license expiring December 31 of the year in which it was issued; and

(ii) an even-numbered service will be issued a license expiring December 31 of the year following the year in which it was issued.

(11) The service license must be updated within ten days when any information contained in the service license application changes.

(12) If an emergency medical service from another state identifies Montana as part of its service area, and if it regularly provides an initial emergency medical services response into Montana, the emergency medical service must obtain a Montana emergency medical services license as provided by these rules, unless the other state's licensing standards are substantially comparable to those of Montana, in which case the department may license these services through a reciprocal agreement with the other state.

(13) An emergency medical service responding into Montana to transfer patients from a Montana medical facility to a non-Montana medical facility is not required to obtain a Montana license if it is licensed in its state of origin.

AUTH: 50-6-323, MCA

IMP: 50-6-306, 50-6-323, MCA

#### NEW RULE IX NONTRANSPORTING MEDICAL UNIT SERVICE

REQUIREMENTS (1) A nontransporting medical unit must have an agreement with a licensed ambulance service to ensure continuity of care and adequate transportation for its patients. An ambulance service is not required to approve of, or enter into an agreement with, a nontransporting medical unit.

(2) A law enforcement agency, fire department, search and rescue unit, ski patrol, or mine rescue unit which does not hold itself out as a provider of emergency medical care to the public and does not routinely offer to provide services to the general public beyond the boundaries of a single recreational site, work site, school, or other facility shall not be considered a nontransporting medical unit solely because members of the unit provide medical care at the scene of a medical emergency to which they were dispatched for other purposes.

(3) A nontransporting medical unit must:

(a) ensure that patients are transported by a licensed ambulance service, unless a licensed service is not reasonably available;

(b) ensure either that the patient is transported by an ambulance service licensed to provide at least the same level of patient care commenced by the nontransporting medical unit or that the ambulance service carries the personnel and equipment of the nontransporting medical unit with the patient to the hospital if a level of care has commenced which the ambulance service cannot legally continue; and

(c) have a written dispatch policy and procedure coordinated with a licensed ambulance service.

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

#### NEW RULE X GROUND AMBULANCE SERVICE REQUIREMENTS

(1) The interior of an ambulance, including all storage areas, must be kept clean and free from dirt, grease, and other contaminants.

(2) Persons utilized as drivers of ambulances must have a valid driver's license and have completed the service's vehicle operations training.

(3) If an ambulance service publicly advertises a telephone number to receive calls for emergency assistance, that telephone number must be answered 24 hours a day, seven days per week.

(4) An ambulance service may transport patients who are receiving care at a higher level than the level for which the service is licensed if:

(a) the higher level of care is initiated by a licensed emergency medical service authorized to perform that level of care; and

(b) the personnel and the equipment of the emergency medical services licensed at the higher level accompany the patient in the ambulance.

(5) An ambulance service may perform inter-facility (including between a physician's office and hospital) transfers at a higher level of care than the level to which the service is licensed if personnel trained and legally authorized to provide the higher level of care, as well as appropriate equipment, accompany the patient in the ambulance to ensure continuity of patient care.

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

NEW RULE XI GROUND AMBULANCE SPECIFICATIONS (1) All ground ambulances must have or meet the following specifications:

(a) the word "ambulance" must be affixed in mirror image in reflectorized lettering at least four inches tall, centered above the grill on the front of the vehicle; and

(b) the word "ambulance" must be affixed to the rear of the vehicle in reflectorized lettering at least four inches tall.

(2) The required markings may not appear on nonlicensed ambulances, with the exception of those ambulances temporarily in transit within the state.

(3) All oxygen cylinders must be secured so that they will not roll, tip over, or become projectiles in the event of a sudden vehicular maneuver.

(4) All ground ambulances must meet the requirements set forth under Table 9 of the Emergency Medical Services Rule Appendix.

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

NEW RULE XII AMBULANCE PERMITS (1) Except as provided in (7), no ambulance may be utilized by an ambulance service until the department has found it is, at the time of inspection, in compliance with these rules and issued a permit to the ambulance service for the ambulance. The department may issue a temporary permit, by mail or otherwise, until an inspection can be completed.

(2) Effective [18 months from the date of publication of the adoption notice], all ground ambulances, including remounts, that have not previously been permitted by the department must meet ambulance design criteria from:

(a) The Commission on Accreditation of Ambulance Services Ground Vehicle Standard for Ambulances (GVS), Version 3.0, effective July 1, 2022; or

(b) The National Fire Protection Association (NFPA) 1917 Standard for Automotive Ambulances - 2019 Edition.

(3) Vehicles that do not meet these standards may be permitted by the department if the ambulance service can demonstrate that the vehicle meets substantially similar standards in effect on the year of the vehicle's manufacture.

(4) A decal or letter of verification from the manufacturer certifying that the vehicle meets the standard shall be made available upon inspection.

(5) The department adopts and incorporates by reference the GVS Version 3.0 and the NFPA 1917 Standard for Automotive Ambulances 2019 Edition. The GVS Version 3.0 is available at <https://www.groundvehiclestandard.org/>. The NFPA 2019 Edition is available at <https://www.nfpa.org/>. Copies of each standard are available for review by contacting the Department of Public Health and Human Services, Public Health and Safety, Division, Emergency Medical Services and Trauma Systems Section, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(6) Any ambulance that has a salvage title must undergo an inspection pursuant to 49 CFR 396.17 before the vehicle may be permitted or returned to service.

(7) If an ambulance service has current accreditation without variance or limitations from an accrediting body, inspection of ambulances may be waived; however, the ambulance service must submit current accreditation documentation and attest that each ambulance is compliant with the ambulance specifications. Accredited ambulance services must request, pay for, and display state-issued permits for each ambulance.

(8) The ambulance permit must be displayed either on or in the ambulance as the department directs.

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

### NEW RULE XIII GROUND AND AIR AMBULANCE INSPECTIONS

(1) Each ambulance must be inspected every 24 months unless:

(a) the ambulance service has current and valid ambulance accreditation without variance or limitations from an accrediting body and provides the department with documentation of current accreditation; or

(b) the ambulance service has current and valid documentation that the vehicle has passed an inspection within the past 12 months pursuant to 49 CFR 396.17.

(2) Ground ambulance service providers must comply with applicable motor vehicle laws under Title 61, MCA.

(3) The inspector will provide a written or electronic inspection record for each vehicle upon completion of a ground ambulance inspection.

(4) If the inspector identifies and lists a minor defect in the ground ambulance inspection report, the inspector will issue a permit. The ambulance service manager has 180 days to repair the defect and notify the department that the repair has been accomplished.

(5) If the inspector identifies and lists a major defect in the ground ambulance inspection report, a vehicle permit will be issued only after the ambulance service manager notifies the inspector that the major defect has been repaired.

(6) Major and minor defects for ground ambulances are described under Table 10 of the Emergency Medical Services Rule Appendix.

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

NEW RULE XIV ADVISORY COMMITTEE (1) The purpose of the advisory committee is to advise the department consistent with 50-6-323, MCA, on matters including:

(a) the equipment and materials required for an emergency medical service;  
(b) the data to be collected and submitted to the department;  
(c) the information contained in an abbreviated patient encounter form submitted to a hospital; and

(d) in consultation with the Department of Labor and Industry or the board, patient care standards and guidelines.

(2) The membership of the advisory committee consists of 17 individuals appointed by the department director, taking into consideration the geography and demography of Montana, as follows:

(a) an emergency medical services fellowship trained or national board-certified emergency medical services physician who will serve as chair;

(b) two service medical directors, one of whom is employed by an emergency medical service serving a population greater than 20,000 persons;

(c) a representative from the Department of Labor and Industry;

(d) a representative from the department's Emergency Medical Services for Children Committee;

(e) a representative from the department's State Trauma Advisory Council;

(f) a service manager from a government-owned ground ambulance service;

(g) a service manager from a privately owned ground ambulance service;

(h) a service manager from a hospital-owned ground ambulance service;

(i) a service manager from a not-for-profit ground ambulance service;

(j) an ECP service manager of a nontransporting medical unit;

(k) an ECP service manager of an air ambulance;

(l) an ECP from a tribal emergency medical service provider;

(m) an RN with supplemental training that is on an emergency medical service roster;

(n) a sworn officer representative from a law enforcement agency;

(o) a representative of a 9-1-1 dispatch organization who is trained in emergency medical dispatch; and

(p) a member of the public not affiliated with the emergency medical service system.

(3) Individuals who are interested in serving on the advisory committee must submit to the department an application that is available on the department's web site along with a resume and letter of interest.

(4) The membership term is three years with the initial terms of membership randomly assigned for the purpose of ensuring staggered terms. Members of the advisory committee may seek reappointment to serve additional terms.

(5) The advisory committee will meet publicly at least twice each year and will conduct its business in person or, when appropriate, by electronic means.

AUTH: 50-6-323, MCA

IMP: 50-6-324, MCA

4. The department proposes to repeal the following rules:

37.104.101 DEFINITIONS

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

37.104.102 PERSONNEL: AEMT GROUND AMBULANCE SERVICE

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

37.104.105 LICENSE TYPES AND LEVELS

AUTH: 50-6-323, MCA

IMP: 50-6-306, 50-6-323, MCA

37.104.106 LICENSE APPLICATION REQUIREMENTS

AUTH: 50-6-323, MCA

IMP: 50-6-306, 50-6-313, 50-6-323, MCA

37.104.107 WAIVERS

AUTH: 50-6-323, MCA

IMP: 50-6-325, MCA

37.104.108 ADVERTISING RESTRICTIONS

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

37.104.109 BASIC LIFE SUPPORT SERVICE LICENSING

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

37.104.110 SERVICE OPERATION

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

37.104.111 NONTRANSPORTING MEDICAL UNIT

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

37.104.112 STANDARD OF CARE

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

37.104.114 LICENSE RENEWALS

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

37.104.115 APPEAL FROM ORDER

AUTH: 50-6-323, MCA

IMP: 50-6-323, 50-6-327, MCA

37.104.120 ADVISORY COMMITTEE

AUTH: 50-6-323, MCA

IMP: 50-6-324, MCA

37.104.201 COMMUNICATIONS

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

37.104.202 SAFETY: GENERAL REQUIREMENTS

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

37.104.203 EQUIPMENT

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

37.104.204 BASIC EQUIPMENT KIT

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

37.104.205 SAFETY AND EXTRICATION KIT

AUTH: 50-6-323, MCA  
IMP: 50-6-323, MCA

37.104.206 TRANSPORTATION EQUIPMENT KIT

AUTH: 50-6-323, MCA  
IMP: 50-6-323, MCA

37.104.208 SANITATION

AUTH: 50-6-323, MCA  
IMP: 50-6-323, MCA

37.104.212 RECORDS AND REPORTS

AUTH: 50-6-323, MCA  
IMP: 50-6-323, MCA

37.104.213 PERSONNEL REQUIREMENTS

AUTH: 50-6-323, MCA  
IMP: 50-6-323, MCA

37.104.218 OFFLINE AND ONLINE MEDICAL DIRECTION

AUTH: 50-6-323, MCA  
IMP: 50-6-323, MCA

37.104.301 AMBULANCE PERMITS

AUTH: 50-6-323, MCA  
IMP: 50-6-323, MCA

37.104.305 AMBULANCE SPECIFICATIONS: GENERAL

AUTH: 50-6-323, MCA  
IMP: 50-6-323, MCA

37.104.306 AMBULANCE SPECIFICATIONS: GROUND AMBULANCES

AUTH: 50-6-323, MCA  
IMP: 50-6-323, MCA

37.104.307 AMBULANCE SPECIFICATIONS: AIR AMBULANCE

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

37.104.311 SAFETY: GROUND AMBULANCE SERVICES

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

37.104.312 SAFETY: AIR AMBULANCE

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

37.104.316 PERSONNEL REQUIREMENTS: BASIC LIFE SUPPORT  
GROUND AMBULANCE SERVICE

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

37.104.319 PERSONNEL: ADVANCED LIFE SUPPORT GROUND  
AMBULANCE

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

37.104.320 AUTHORIZATION

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

37.104.321 PERSONNEL: AEMT LIFE SUPPORT AIR AMBULANCE  
SERVICE

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

37.104.325 PERSONNEL: AIR AMBULANCE, GENERAL

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

37.104.326 PERSONNEL: BASIC LIFE SUPPORT AIR AMBULANCE  
SERVICE

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

37.104.329 PERSONNEL: ADVANCED LIFE SUPPORT AIR AMBULANCE SERVICE

AUTH: 50-6-323, MCA  
IMP: 50-6-323, MCA

37.104.330 ECP LEVEL OF CARE LIMITATIONS

AUTH: 50-6-323, MCA  
IMP: 50-6-323, MCA

37.104.335 OTHER REQUIREMENTS: AMBULANCE SERVICES

AUTH: 50-6-323, MCA  
IMP: 50-6-323, MCA

37.104.336 OTHER REQUIREMENTS: AIR AMBULANCE SERVICE

AUTH: 50-6-323, MCA  
IMP: 50-6-323, MCA

37.104.401 PERSONNEL: BASIC LIFE SUPPORT NONTRANSPORTING UNIT

AUTH: 50-6-323, MCA  
IMP: 50-6-323, MCA

37.104.404 PERSONNEL: ADVANCED LIFE SUPPORT NONTRANSPORTING UNIT

AUTH: 50-6-323, MCA  
IMP: 50-6-323, MCA

37.104.405 PERSONNEL: AEMT LIFE SUPPORT NONTRANSPORTING UNIT

AUTH: 50-6-323, MCA  
IMP: 50-6-323, MCA

37.104.410 OTHER REQUIREMENTS: NONTRANSPORTING SERVICES

AUTH: 50-6-323, MCA  
IMP: 50-6-323, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes this rulemaking to update, consolidate, simplify, and make more user friendly the administrative rules governing licensure of emergency medical service providers.

There are currently 43 administrative rules governing emergency medical service providers. These rules are contained in ARM Title 37, chapter 104, subchapters 1 through 4. Many of these rules have not been updated in over 20 years and no longer reflect industry best practices and/or federal standards. The department has reviewed and applied the Regulatory Reform Initiative criteria to the rules by assessing if each rule serves a legitimate purpose, is not redundant, creates the lowest burden possible to meet the identified need, and is clear in language and intent.

The department is proposing to repeal each of the current rules and to adopt New Rules I through XIV in their place. Many of the new rules consolidate and incorporate existing requirements from the current rules. The department is also proposing to update the rules to:

- clarify the role and composition of the Advisory Committee established under 50-6-324, MCA;
- clarify which ECP personnel are considered advanced life support personnel and remove inconsistent Advanced Life Support and Advanced Life Support Emergency Medical Service definitional language;
- clarify industry and department requirements for ambulance vehicle standards, including professional and liability insurance;
- eliminate redundant air ambulance regulatory requirements that are covered under the Federal Aviation Administration's oversight responsibilities;
- revise ambulance permitting requirements and establish ambulance criteria consistent with nationally recognized ambulance design criteria while allowing exceptions for vehicles currently permitted; and
- incorporate by reference a newly created Emergency Medical Services Rule Appendix.

Technical, stylistic, and nonsubstantive updates are also proposed to make the rules clearer and more user friendly.

The proposed rulemaking decreases unnecessary regulatory barriers, maintains requirements necessary for the safe operation of emergency medical services, and incorporates stakeholder feedback expressing the need for increased regulatory clarity and consistency.

Between January and June of 2022, the department's EMS and Trauma System Section staff met monthly with a stakeholder working group to review existing rule language and identify needed changes. Between each monthly meeting, the EMS and Trauma System Section staff prepared an updated version of the rule language

based upon stakeholder recommendations. Each meeting began with a review of the changes suggested during the previous meeting in an effort to achieve consensus on the proposed rule changes. This iterative process was used throughout the six months of meetings.

Stakeholders represented in these meetings included members of the Advisory Committee, air medical ambulance services, public, private and hospital-based ambulance services, the Montana Fire Chief's Association, the Montana Hospital Association, and the Montana Department of Labor and Industry.

#### NEW RULE I DEFINITIONS

The department proposes to adopt a new definitions rule to clarify the meaning of terms used throughout the rules and to provide for a better understanding of the rules. The new rule incorporates much of the existing language from the current definitions rule under ARM 37.104.101. New definitions have been added to align with updates being made to the other rules.

The department also proposes creation of an Emergency Medical Services Rule Appendix to be adopted and incorporated by reference under the rule. The appendix sets forth, in a clear and concise manner, basic requirements for EMS providers including minimum staffing levels, required equipment, and minimum ambulance specifications. A copy of the proposed appendix is electronically accessible at: <https://dphhs.mt.gov/publichealth/EMSTS/ems/resources>.

#### NEW RULE II EMS AGENCY SERVICE MANAGER DUTIES

The department proposes this rule to clarify the duties and responsibilities of the EMS service manager. This rule consolidates requirements from several of the current rules for which there was no assigned responsible party and assigns them to, and establishes in a single rule the duties and responsibilities of, the service manager. The rule also addresses stakeholder concerns regarding the existing rules and their lack of adequate guidance for service managers. Additionally, the new rule more clearly sets forth required communication tools and equipment kits for ambulance services. The required communication tools are listed in Table 2 of the Emergency Medical Services Rule Appendix. The required EMS equipment kits are listed in Table 3 of the Emergency Medical Services Rule Appendix. The department has also made updates to the required equipment kit lists to reflect industry best practices and nationally recognized standards.

#### NEW RULE III EMS AGENCY SERVICE MEDICAL DIRECTOR DUTIES

The department proposes this rule to clarify the duties and responsibilities of the EMS medical director. This rule consolidates clinical and medical oversight components from several of the current rules for which there was no assigned responsible party and assigns them to, and establishes into a single rule the duties and responsibilities of, the service medical director.

#### NEW RULE IV EMS AGENCY RECORDS AND REPORTS

The department is proposing this rule to specify records and reports ambulance service providers must maintain and/or submit to the department. This rule replaces ARM 37.104.212. The new rule reduces the length of time an ambulance service has before a medical report must be submitted from 3 months to 48 hours. An exemption is provided for services that are unable to meet the requirement due to extenuating circumstances. These changes reflect contemporary industry standards for most emergency medical services in Montana in that over 70% of the reports are currently submitted within 24 hours of a service request. The rule also clarifies the party responsible for identifying essential patient care information that must be shared with hospital staff when a patient is delivered to a hospital.

#### NEW RULE V EMS AGENCY GENERAL SERVICE REQUIREMENTS

The department proposes this rule to consolidate into a single rule the general requirements applicable to all EMS service types. These requirements are currently scattered throughout the EMS rules. Consolidating these requirements into a single rule will increase the clarity and user-friendliness of the rules.

#### NEW RULE VI EMS AGENCY MINIMUM STAFFING REQUIREMENTS

The department proposes this rule to consolidate current rules pertaining to staffing of EMS services into a single rule. The new rule changes the minimum staffing requirement for air ambulances by requiring a second ECP crew member in most circumstances. This proposed change aligns with contemporary industry standards in Montana. The minimum staffing requirements are set forth in Table 1 of the Emergency Medical Services Rule Appendix.

#### NEW RULE VII EMS AGENCY LICENSE TYPES AND LEVELS

The department proposes this rule to set forth the type and level of available EMS agency licenses. The rule replaces ARM 37.104.105. The rule also includes removal of the AEMT license level previously identified in rule. The AEMT license level is no longer needed because the updated definition of the Advanced Life Support license level encompasses the AEMT license level.

#### NEW RULE VIII EMS AGENCY LICENSE APPLICATION REQUIREMENTS

The department is proposing this rule to set forth license application requirements for EMS providers. The rule replaces ARM 37.104.106. As compared to the current rule, this rule reduces licensing requirements for EMS services holding national accreditation. The rule adds the requirement for EMS providers to possess vehicle and professional liability insurance. This change reflects contemporary industry standards in Montana. The rule also requires air ambulance services to submit appropriate FAA documentation, which in turn eliminates the need for several existing air ambulance rules proposed for repeal in this rulemaking.

#### NEW RULE IX NONTRANSPORTING MEDICAL UNIT SERVICE REQUIREMENTS

The department is proposing this rule to clearly and concisely set forth requirements applicable to nontransporting medical units. The new rule consolidates requirements contained in several of the current rules, including ARM 37.104.111 and 37.104.410.

#### NEW RULE X GROUND AMBULANCE SERVICE REQUIREMENTS

The department is proposing this rule to clearly and concisely set forth requirements applicable to ground ambulance services. The new rule consolidates requirements contained in several of the current rules, including ARM 37.104.316 and 37.104.335.

#### NEW RULE XI GROUND AMBULANCE SPECIFICATIONS

The department is proposing this rule to set forth required specifications for ground ambulances. The rule incorporates requirements from ARM 37.104.305 and 37.104.306.

#### NEW RULE XII AMBULANCE PERMITS

The department is proposing this rule to more clearly set forth permitting requirements for ambulances. This rule replaces ARM 37.104.301, which requires permitting of ambulances but lacks specific permitting criteria. The proposed new rule sets forth permitting criteria ambulances must meet based upon nationally recognized ambulance design criteria. The rule grandfathers existing, permitted ambulances and reduces permitting inspection requirements for services holding national accreditation.

#### NEW RULE XIII GROUND AND AIR AMBULANCE INSPECTIONS

The department is proposing this rule to clarify inspection procedures for ambulances and to establish a comprehensive list of inspection criteria. The rule establishes and identifies minor and major defect categories for ambulances. These defect categories are set forth in Table 10 of the Emergency Medical Services Rule Appendix and are designed to ensure that ground ambulances are operated in a safe working manner. The rule removes inspection requirements for ambulance services holding national accreditation and for ambulance services that document inspections pursuant to Federal Motor Carrier Safety Regulations under 49 CFR 396.17.

#### NEW RULE XIV ADVISORY COMMITTEE

The department is proposing this rule to clarify the role and composition of the Advisory Committee established under 50-6-324, MCA. The rule replaces ARM 37.104.120.

#### RULES REPEALED

The department is proposing to repeal ARM 37.104.101 through 37.104.410 based upon the proposed adoption of New Rules I through XIV and to allow for re-organization of the emergency medical service provider rules into a single subchapter.

#### Fiscal Impact

There is no anticipated fiscal impact associated with this rulemaking.

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: Bailey Yuhas, 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 [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov), and must be received no later than 5:00 p.m., August 4, 2023.

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.

9. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at <http://sosmt.gov/ARM/register>.

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

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

/s/ Robert Lishman  
Robert Lishman  
Rule Reviewer

/s/ Charles T. Brereton  
Charles T. Brereton, Director  
Department of Public Health and Human  
Services

Certified to the Secretary of State June 27, 2023.

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 37.34.907 pertaining to ) PROPOSED AMENDMENT  
Medicaid Home and Community- )  
Based Services Program )

TO: All Concerned Persons

1. On July 27, 2023, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/84236457336?pwd=THYzNWtScDdWdGpEaXFGZUYrQVlzQT09>, meeting ID: 842 3645 7336, and password: 667928; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 842 3645 7336, and password: 667928. Find your local number: <https://mt-gov.zoom.us/u/kdUGzqSxnK>.

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 July 13, 2023, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, 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 [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov).

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

37.34.907 0208 MEDICAID HOME AND COMMUNITY-BASED SERVICES PROGRAM: SELECTION AND ENTRY (1) through (4) remain the same.

(5) Within five working days from the date of the notification letter, the department designee must present all waiver service options available to the person selected, ~~and~~ document which providers the person requests to meet, and submit to the providers:

(a) through (9) remain the same.

(10) The department may prioritize and select a person who has a life-threatening physical condition, is eligible for DDP services, and ~~that without services would jeopardize their continued existence~~ whose continued existence would be jeopardized without services.

(11) and (11)(a) remain the same.

~~(b) death or inability of the person's primary caregiver to provide care and no alternative caregiver is available~~ the death of the person's primary caregiver, or the inability of that caregiver to provide care, and no alternative caregiver is available; or

(c) lack of appropriate placement for the person due to loss of housing or imminent discharge from the temporary placement or hospitalization; or

(d) non-waiver services are insufficient to meet the severe and persistent clinical and treatment needs of the person due to a crisis or emergency situation that is currently threatening the person's life or safety. In the absence of a waiver slot, the person is at risk of an out of home placement, such as an institution or higher level of care.

(12) through (14) remain the same.

AUTH: 53-6-113, 53-6-402, MCA

IMP: 53-6-101, 53-6-402, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.34.907 pertaining to the selection and entry into the Home and Community Based Services (HCBS) Waiver.

The HCBS Waiver appendix B, approved 4/21/2022 by the Center for Medicare & Medicaid Services (CMS), grants the department the right to select an individual on the Waiver waiting list due to a crisis or emergency that threatens institutionalization. The Developmental Disabilities Program (DDP) is proposing to amend ARM 37.34.907 to allow persons on the waiting list, who are at risk of institutionalization due to the insufficiency of non-waiver services, an emergency reserved capacity slot. This amendment is necessary because the threat of institutionalization meets the emergency criteria approved by CMS.

#### Fiscal Impact

The proposed rule amendment has no anticipated fiscal impact implications.

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: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-4094; or e-mail [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov), and must be received no later than 5:00 p.m., August 4, 2023.

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. Written request may be mailed or delivered to the contact person in paragraph 5.

8. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at <http://sosmt.gov/ARM/register>.

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not 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 appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ Rachel Raymond  
Rachel Raymond  
Rule Reviewer

/s/ Charles T. Brereton  
Charles T. Brereton, Director  
Department of Public Health and Human  
Services

Certified to the Secretary of State June 27, 2023.

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

In the matter of amendment of ARM ) NOTICE OF PUBLIC HEARING ON  
37.79.326, 37.85.104, 37.85.105, ) PROPOSED AMENDMENT  
37.85.106, 37.86.3607, and )  
37.87.1226 pertaining to updating )  
Medicaid and non-Medicaid provider )  
rates, fee schedules, and effective )  
dates )

TO: All Concerned Persons

1. On July 27, 2023, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/81242426949?pwd=OVVCWWRiMWYrMk1CemV5T0dXYk9zQT09>, meeting ID: 851 8640 3053, and password: 977532; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 851 8640 3053, and password: 977532. Find your local number: <https://mt-gov.zoom.us/j/81242426949?pwd=OVVCWWRiMWYrMk1CemV5T0dXYk9zQT09>.

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 July 13, 2023, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, 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 [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov).

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

37.79.326 DENTAL BENEFITS (1) remains the same.

(2) Providers must bill for services using the procedure codes and modifiers set forth, and according to the definitions contained in the American Dental Association Manual of Current Dental Terminology (~~CDT 2022~~) (CDT 2023).

(3) Effective ~~July 1, 2022~~ July 1, 2023, only the dental procedures listed at <http://dphhs.mt.gov/hmk> are benefits of the HMK coverage group Dental Program.

(4) through (6) remain the same.

AUTH: 53-4-1004, 53-4-1005, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1005, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.85.104 EFFECTIVE DATES OF PROVIDER FEE SCHEDULES FOR MONTANA NON-MEDICAID SERVICES (1) remains the same.

(a) Mental health crisis services, as provided in ARM 37.88.101, is effective ~~October 1, 2022~~ July 1, 2023.

(b) remains the same.

(c) Youth respite care services, as provided in ARM 37.87.2203, is effective ~~July 1, 2022~~ July 1, 2023.

(d) Substance use disorder services provider reimbursement, as provided in ARM 37.27.905, is effective ~~October 1, 2022~~ July 1, 2023.

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

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

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

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) The Montana Medicaid Program establishes

provider reimbursement rates for medically necessary, covered services based on the estimated demand for services and the legislative appropriation and federal matching funds. Provider reimbursement rates are stated in fee schedules for covered services applicable to the identified Medicaid program. New rates are established by revising the identified program's fee schedule and adopting the new fees as of the stated effective date of the schedule. Copies of the department's current fee schedules are posted at <http://medicaidprovider.mt.gov> and ~~may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59620-2951.~~ A description of the method for setting the reimbursement rate and the administrative rules applicable to the covered service are published in the chapter or subchapter of this title regarding that service. The department will make periodic updates, as necessary, to the fee schedules noted in this rule to include new procedure codes and applicable rates and to remove terminated procedure codes.

(2) remains the same.

(a) Resource-based relative value scale (RBRVS) means the version of the Medicare resource-based relative value scale contained in the Medicare Physician Fee Schedule adopted by the Centers for Medicare & Medicaid Services (CMS) of the U.S. Department of Health and Human Services and published at ~~86 Federal Register 64996 (Nov. 19, 2021)~~ 87 Federal Register 69404 (Nov. 18, 2022), effective ~~January 1, 2022~~ January 1, 2023, which is adopted and incorporated by reference. Procedure codes created after January 1, 2023, will be reimbursed using the relative value units from the Medicare Physician Fee Schedule in place at the time the procedure code is created.

(b) Fee schedules are effective ~~January 1, 2023~~ July 1, 2023. The conversion factor for physician services is ~~\$42.29~~ \$44.32. The conversion factor for allied services is ~~\$25.34~~ \$26.13. The conversion factor for mental health services is ~~\$21.69~~ \$22.67. The conversion factor for anesthesia services is \$30.57.

(c) and (d) remain the same.

(e) The payment-to-charge ratio is effective ~~July 1, 2022~~ July 1, 2023, and is ~~43.8%~~ 46.8% of the provider's usual and customary charges.

(f) through (h) remain the same.

(i) Optometric services receive a ~~115.33%~~ 115.50% provider rate of reimbursement adjustment to the reimbursement for allied services, as provided in ARM 37.85.105(2), effective ~~July 1, 2022~~ July 1, 2023.

(j) through (3)(b) remain the same.

(i) the Outpatient Prospective Payment System (OPPS) fee schedule as published by the CMS in ~~86 Federal Register 63458 (Nov. 16, 2021)~~ 87 Federal Register 71748 (Nov. 23, 2022), effective ~~January 1, 2022~~ January 1, 2023, and reviewed annually by CMS, as required in 42 CFR 419.50 ~~(2016)~~ and as updated by the department;

(ii) the conversion factor for outpatient services on or after ~~October 1, 2022~~ July 1, 2023 is ~~\$56.14~~ \$58.39;

(iii) the Medicaid statewide average outpatient cost-to-charge ratio is ~~41.06%~~ 48.95%; and

(iv) the bundled composite rate of ~~\$260.60~~ \$271.02 for services provided in an outpatient maintenance dialysis clinic effective on or after ~~July 1, 2022~~ July 1, 2023.

(c) The hearing aid services fee schedule, as provided in ARM 37.86.805, is effective ~~January 1, 2023~~ July 1, 2023.

(d) The Relative Values for Dentists, as provided in ARM 37.86.1004, reference published in ~~2022~~ 2023 resulting in a dental conversion factor of ~~\$35.48~~ \$36.90 and fee schedule is effective ~~January 1, 2023~~ July 1, 2023.

(e) The Dental and Denturist Program Provider Manual, as provided in ARM 37.86.1006, is effective ~~July 1, 2022~~ July 1, 2023.

(f) The outpatient drugs reimbursement dispensing fees range, as provided in ARM 37.86.1105(3)(b), is effective ~~July 1, 2022~~ July 1, 2023:

(i) for pharmacies with prescription volume between 0 and 39,999, the minimum is ~~\$4.32~~ \$5.11 and the maximum is ~~\$15.73~~ \$16.36;

(ii) for pharmacies with prescription volume between 40,000 and 69,999, the minimum is ~~\$4.32~~ \$5.11 and the maximum is ~~\$13.62~~ \$14.16; or

(iii) for pharmacies with prescription volume greater than or equal to 70,000, the minimum is ~~\$4.32~~ \$5.11 and the maximum is ~~\$11.52~~ \$11.98.

(g) remains the same.

(h) The outpatient drugs reimbursement vaccine administration fee, as provided in ARM 37.86.1105(6), will be \$21.32 for the first vaccine and ~~\$15.65~~ \$18.65 for each additional administered vaccine, effective ~~July 1, 2022~~ July 1, 2023.

(i) remains the same.

(j) The home infusion therapy services fee schedule, as provided in ARM 37.86.1506, is effective ~~July 1, 2022~~ July 1, 2023.

(k) Montana Medicaid adopts and incorporates by reference the Region D Supplier Manual, effective ~~April 1, 2023~~ July 1, 2023, which outlines the Medicare coverage criteria for Medicare covered durable medical equipment, local coverage determinations (LCDs), and national coverage determinations (NCDs), as provided in ARM 37.86.1802, effective ~~April 1, 2023~~ July 1, 2023. The prosthetic devices, durable medical equipment, and medical supplies fee schedule, as provided in ARM 37.86.1807, is effective ~~April 1, 2023~~ July 1, 2023.

(l) The nutrition services fee schedule, as provided in ARM 37.86.2207(2), is effective ~~July 1, 2022~~ July 1, 2023.

(m) remains the same.

(n) The orientation and mobility specialist services fee schedule, as provided in ARM 37.86.2207(2), is effective ~~July 1, 2022~~ July 1, 2023.

(o) The transportation and per diem fee schedule, as provided in ARM 37.86.2405, is effective ~~July 1, 2022~~ July 1, 2023.

(p) The specialized nonemergency medical transportation fee schedule, as provided in ARM 37.86.2505, is effective ~~July 1, 2022~~ July 1, 2023.

(q) The ambulance services fee schedule, as provided in ARM 37.86.2605, is effective ~~January 1, 2023~~ July 1, 2023.

(r) The audiology fee schedule, as provided in ARM 37.86.705, is effective ~~January 1, 2023~~ July 1, 2023.

(s) The therapy fee schedules for occupational therapists, physical therapists, and speech therapists, as provided in ARM 37.86.610, are effective ~~January 1, 2023~~ July 1, 2023.

(t) The optometric services fee schedule, as provided in ARM 37.86.2005, is effective ~~January 1, 2023~~ July 1, 2023.

(u) The chiropractic fee schedule, as provided in ARM 37.85.212(2), is effective ~~July 1, 2022~~ July 1, 2023.

(v) The lab and imaging services fee schedule, as provided in ARM 37.85.212(2) and 37.86.3007, is effective ~~January 1, 2023~~ July 1, 2023.

(w) The Targeted Case Management for Children and Youth with Special Health Care Needs fee schedule, as provided in ARM 37.86.3910, is effective ~~July 1, 2022~~ July 1, 2023.

(x) The Targeted Case Management for High-Risk Pregnant Women fee schedule, as provided in ARM 37.86.3415, is effective ~~July 1, 2022~~ July 1, 2023.

(y) The mobile imaging services fee schedule, as provided in ARM 37.85.212, is effective ~~January 1, 2023~~ July 1, 2023.

(z) The licensed direct-entry midwife fee schedule, as provided in ARM 37.85.212, is effective ~~January 1, 2023~~ July 1, 2023.

(aa) The private duty nursing services fee schedule, as provided in ARM 37.86.2207(2), is effective ~~July 1, 2022~~ July 1, 2023.

(4) remains the same.

(a) The Big Sky Waiver home and community-based services for elderly and physically disabled persons fee schedule, as provided in ARM 37.40.1421, is effective ~~July 1, 2022~~ July 1, 2023.

(b) The home health services fee schedule, as provided in ARM 37.40.705, is effective ~~July 1, 2022~~ July 1, 2023.

(c) The personal assistance services fee schedule, as provided in ARM 37.40.1135, is effective ~~July 1, 2022~~ July 1, 2023.

(d) The self-directed personal assistance services fee schedule, as provided in ARM 37.40.1135, is effective ~~July 1, 2022~~ July 1, 2023.

(e) The community first choice services fee schedule, as provided in ARM 37.40.1026, is effective ~~July 1, 2022~~ July 1, 2023.

(5) remains the same.

(a) The mental health center services for adults fee schedule, as provided in ARM 37.88.907, is effective ~~October 1, 2022~~ July 1, 2023.

(b) The home and community-based services for adults with severe disabling mental illness fee schedule, as provided in ARM 37.90.408, is effective ~~July 1, 2022~~ July 1, 2023.

(c) The substance use disorder services fee schedule, as provided in ARM 37.27.905, is effective ~~October 1, 2022~~ July 1, 2023.

(6) For the Behavioral Health and Developmental Disabilities Division, the department adopts and incorporates by reference the Medicaid youth mental health services fee schedule, as provided in ARM 37.87.901, effective ~~May 12, 2023~~ July 1, 2023.

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

IMP: 53-2-201, 53-6-101, 53-6-125, 53-6-402, MCA

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

(2) The Department of Public Health and Human Services (department) adopts and incorporates by reference the Medicaid Behavioral Health Targeted Case Management Fee Schedule effective ~~July 1, 2022~~ July 1, 2023, for the following programs within the Behavioral Health and Developmental Disabilities Division:

(a) through (c) remain the same.

(3) Copies of the department's current fee schedules are posted at <http://medicaidprovider.mt.gov> and may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59620-2951.

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

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

37.86.3607 CASE MANAGEMENT SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES, REIMBURSEMENT (1) Reimbursement for the delivery by provider entities of Medicaid funded targeted case management services to persons with developmental disabilities is provided as specified in the Montana Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures for Targeted Case Management Services for Individuals with Developmental Disabilities Enrolled in the 1915(c) 0208 Home and Community Based (HCBS) Comprehensive Waiver or Eligible Individuals Age 16 and Over, dated ~~July 1, 2022~~ July 1, 2023.

(2) The department adopts and incorporates by this reference the Montana Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures for Targeted Case Management Services for Individuals with Developmental Disabilities Enrolled in the 1915(c) 0208 Home and Community Based (HCBS) Comprehensive Waiver or Eligible Individuals Age 16 and Over, dated July 1, 2022 July 1, 2023. ~~A copy of the manual may be obtained through the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 and at <https://dphhs.mt.gov/dsd/developmentaldisabilities/ddpratesinf>~~ The manual is posted at <https://dphhs.mt.gov/bhdd/disabilityservices/developmentaldisabilities/ddpratesinf>.

AUTH: 53-6-113, MCA

IMP: 53-6-101, MCA

37.87.1226 OUT-OF-STATE PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY SERVICES, REIMBURSEMENT (1) ~~Reimbursement for the out-of-state Psychiatric Residential Treatment Facility (PRTF) is established in the department's Medicaid fee schedule, as adopted in ARM 37.85.105. The maximum daily rate paid to an out-of-state PRTF facility is equal to 133% of the in-state PRTF rate. The in-state PRTF rate published in the Medicaid Mental Health Youth Under 18 Fee Schedule referenced at ARM 37.85.105. The Montana Medicaid Program will reimburse a provider of inpatient psychiatric services provided to a youth in a psychiatric residential treatment facility (PRTF) for each patient day, in accordance with the requirements of this subchapter and the Children's Mental Health Bureau Medicaid Services Provider Manual, adopted and incorporated by reference in ARM 37.87.903.~~

(2) The Montana Medicaid Program will reimburse a provider for each Medicaid patient day the following bundled per diem rate less any third party or other payments. The bundled per diem rate for out-of-state PRTF services is the lesser of:

(a) the amount specified in the department's Medicaid Youth Mental Health fee schedule, as adopted in ARM 37.85.105; or

(b) the provider's usual and customary charges.

(2)(3) The bundled per diem rate for out-of-state PRTFs services coverage includes the following services:

(a) all services, therapies, and items related to treating the psychiatric condition of the youth;

(b) through (e) remain the same.

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

AUTH: 53-6-101, MCA

IMP: 53-6-113, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.79.326, 37.85.104, 37.85.105, 37.85.106, and 37.86.3607 pertaining to updating Medicaid and non-Medicaid provider rates, fee schedules, and effective dates. The department administers the Montana Medicaid and non-Medicaid program 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.

Pursuant to 53-6-113, MCA, the Montana Legislature has directed the department to use the administrative rulemaking process to establish rates of reimbursement for covered medical services provided to Medicaid members by Medicaid providers. The department proposes these rule amendments to establish Medicaid rates of reimbursement. In establishing the proposed rates, the department considered as primary factors the availability of funds appropriated by the Montana legislature during the 2023 regular legislative session, the actual cost of services, and the availability of services.

Proposed changes to provider rates that are the subject of this rule notice, including rates in fee schedules and rates in provider manuals, can be found at <https://medicaidprovider.mt.gov/proposedfs>.

#### Proposed Increases for Four Categories of Rates Studied by Guidehouse

In 2021, the Montana Legislature directed the department to contract with an independent health care consulting firm to conduct a comprehensive rate review of services provided through the Adult Behavioral Health, Children's Mental Health, Developmental Disabilities, and Senior and Long Term Care programs. The department contracted with Guidehouse, a consulting firm, to conduct the multifaceted study of Medicaid rates within the four programs and make recommendations for rate increases. Through this rule notice, the department proposes to apply funding appropriated by the 2023 legislature across all studied rates using the methodology recommended by Guidehouse. To reduce existing disparities in rates, this methodology increases rates by a percentage of the difference between current and benchmark rates. The department is proposing to increase rates by funding about 70% of the "gap" between the current rate and the benchmark rate and bring these rates up to an average of 94% of the Guidehouse benchmark, effective July 1, 2023. Overall, this methodology results in an increase in funding for studied rates of approximately 18%, effective July 1, 2023. The specific rate increase for each service is dependent upon the difference between the current rate and the Guidehouse benchmark rate. The following fee schedules have proposed rates that were recommended by the Guidehouse study: Medicaid Youth Mental Health Fee Schedule; Medicaid Behavioral Health Targeted Case Management Fee Schedule; Targeted Case Management Services for Individuals with Developmental Disabilities Enrolled in the 1915 (c) 0208 Home and Community Based (HCBS) Comprehensive Waiver; Medicaid Mental Health Center Services for Adults; Medicaid Substance Use Disorder Services; Home and Community-Based

Services for Adults with Severe Disabling Mental Illness; Non-Medicaid Mental Health Crisis Services; and Non-Medicaid Substance Use Disorder Services.

#### Proposed Increase For Provider Rates Not Studied by Guidehouse

The 2023 legislature appropriated funds for a provider rate increase of 4% for the state fiscal year 2024 for provider rates that were not part of the Guidehouse study. The department considered all factors in proposing these rates, and the proposed rates represent a weighted average rate increase of 4%.

#### Mobile Crisis Services

Additionally, the proposed amendments represent the state's commitment to further expand coverage and promote access to crisis services for eligible Montanans by adding mobile crisis services for both the Medicaid and non-Medicaid programs.

#### Miscellaneous

As provided in 2-4-307(3)(a)(ii), MCA, fee schedules and manuals adopted by reference in rules must be available to the public on the agency's website. Accordingly, the department proposes to remove outdated references to the department's physical addresses but maintain links to the agency's website as the method for obtaining or viewing the information.

The following sections explain proposed amendments to the following specific subsections: ARM 37.79.326, 37.85.104, 37.85.105, 37.85.106, 37.86.3607, and 37.87.1226.

#### ARM 37.79.326(2), (3) Dental Benefits

The department proposes to update the HMK Dental fee schedule to align services with the state employee benchmark plan changes and reflect new procedure code updates, additions or deletions, and changes to existing code descriptions. The amendments also include updates to the Current Dental Terminology (CDT) codebook from 2022 to 2023. The department also proposes to update the effective date of the covered dental procedures list to July 1, 2023.

#### ARM 37.85.104 Effective Dates of Provider Fee Schedules for Montana Non-Medicaid Services

(1)(a), (c), and (d) Behavioral Health and Developmental Disabilities Division  
The department is proposing the adoption of fee schedules effective July 1, 2023. The above-listed subsections are for the following fee schedules -- Medicaid youth mental health services, mental health crisis services, and substance use disorder services.

Updates to the mental health crisis services and substance use disorder fee schedules include the addition of procedure codes for mobile crisis response services and crisis care coordination. This amendment is part of the department's Healing and Ending Addiction through Recovery and Treatment (HEART) Initiative. The HEART Initiative represents the state's commitment to expanding coverage and promoting access to prevention, crisis intervention, treatment, and recovery services

for eligible Montanans with mental health issues. Updates to all three fee schedules are necessary to reflect legislatively approved provider rate increases.

ARM 37.85.105 Effective Dates, Conversion Factors, Policy Adjusters, And Cost-To-Charge Ratios of Montana Medicaid Provider Fee Schedules

(2)(a) and (b) Resource-Based Relative Value Scale (RBRVS) Federal Register  
Effective July 1, 2023, the department is proposing to adopt the version of the RBRVS contained in the Medicare Physician Fee Schedule adopted by the Centers for Medicare & Medicaid Services (CMS) in the November 18, 2022, Federal Register (effective January 1, 2023) for the RBRVS reimbursement methodology. This adoption is necessary to incorporate the most up-to-date changes made by CMS.

(2)(b) RBRVS Conversion Factors (CF)

RBRVS rates are calculated by multiplying code-specific relative value units (RVU) by the applicable conversion factor. During the annual RBRVS reimbursement modeling process, the department considers all these factors in the aggregate using a weighted average based on utilization. The 2023 legislature appropriated funds for a provider rate increase of 4% for the state fiscal year 2024 for provider rates other than the rates studied by Guidehouse. Considering the pricing factors and the appropriated provider rate increase, the department proposes increases to the allied services and mental health services conversion factors. The proposed allied services conversion factor is \$26.13, and the proposed mental health services conversion factor is \$22.67. When the proposed conversion factor increases are applied against utilization and RVUs, the result is a weighted average rate increase of 4%.

For the physician services conversion factor, the department is directed by 53-6-125, MCA, to increase the conversion factor by the consumer price index for medical care for the previous year, which for this adjustment period is 4.8%. Physician services are not included in the 2023 legislature appropriated provider rate increase.

(2)(e) Payment- to- Charge Ratio

The payment-to-charge ratio, which is used to price some allowable procedures which do not have set reimbursement is proposed to be 46.8%, effective July 1, 2023. This ratio is updated annually as part of the department's annual RBRVS updates and will change when there are changes in the average provider charges and/or changes to reimbursement.

(2)(i) Optometric Services Provider Rate of Reimbursement (PRR)

The department is proposing to change the optometric services PRR, which is a pricing factor, to 115.50% of the reimbursement for allied services with an effective date of July 1, 2023. When this pricing factor is applied against utilization, relative value units, and proposed allied services conversion factor, optometrists and opticians will receive a weighted average provider rate increase of 4%, which is

consistent with the weighted average rate increase for providers not included in the Guidehouse study.

(3)(b)(i) Outpatient Prospective Payment System (OPPS) Federal Register

Effective July 1, 2023, the department is proposing to adopt the Outpatient Prospective Payment System fee schedule published by CMS in the November 23, 2022, Federal Register (effective January 1, 2023) for the OPPS reimbursement methodology. This adoption is necessary to ensure outpatient hospital updates are aligned with CMS.

(3)(b)(ii) Outpatient Prospective Payment System (OPPS) Conversion Factor

The department is proposing to increase the OPPS conversion factor to \$58.39, effective July 1, 2023, to effectuate the legislatively approved provider rate increase.

(3)(b)(iii) Medicaid Statewide Average Cost-to-Charge Ratio

The Medicaid statewide average cost-to-charge ratio is calculated utilizing submitted cost reports and is updated annually. The proposed updated cost-to-charge ratio is 48.95%. Individual hospital cost-to-charge ratios can fluctuate annually which can result in shifts to the Montana statewide average cost-to-charge ratio. This ratio is required to be updated annually to keep the ratio current.

(3)(b)(iv) Outpatient Maintenance Dialysis Clinic

The bundled composite rate for outpatient maintenance dialysis clinics is proposed to increase by 4% to \$271.02, effective July 1, 2023, to incorporate the provider rate increase approved by the Montana Legislature.

(3)(c), (j), (l), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), and (aa) Fee Schedules

The department is proposing the adoption of fee schedules effective July 1, 2023. The fee schedules incorporate changes due to the proposed amendments within this rule notice, including federal register changes, conversion factor updates, and legislatively required provider rate increases. The above-listed subsections are for the following fee schedules: hearing aid services; home infusion therapy services; nutrition services; orientation and mobility specialist services; transportation and per diem fee schedule; specialized non-emergency medical transportation; ambulance services, audiology services; occupational, physical, and speech therapy services; optometric services; Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) chiropractic services; lab and imaging services; Targeted Case Management (TCM) for Children and Youth with Special Health Care Needs; TCM for High-Risk Pregnant Women; mobile imaging services; licensed direct-entry midwife; and private duty nursing.

(3)(d) Dental Reimbursement

The department proposes three changes to this subsection: (1) adoption of the Relative Values for Dentist reference published in 2023; (2) modification of the dental conversion factor to \$36.90; and (3) adoption of the July 1, 2023, Dental Services fee schedules. These proposed changes are necessary to incorporate the

legislatively approved provider rate increase and to keep current with updated dental procedure codes.

(3)(e) Dental Provider Manual Update

The Dental Provider manual is proposed to be amended, effective July 1, 2023, to incorporate information and guidance from provider notices. Provider notices are archived after a few years. As a result, the department is incorporating pertinent information from such notices into the manual.

(3)(f) Outpatient Drugs Dispensing Fee

Annually, the department surveys enrolled pharmacies to establish the state fiscal year minimum dispensing fee. The results from the annual survey provide the data necessary to calculate the minimum dispensing fee, which is proposed to be \$5.11. The maximum dispensing fee, for each volume range, is proposed to increase to incorporate the legislatively approved provider rate increase.

(3)(h) Outpatient Drugs Reimbursement Vaccine Administration Fee

The department proposes to increase the fee paid for each additional vaccine administered to \$18.65. This change is necessary to maintain a vaccine administration fee aligned with the physician services rate.

(3)(k) Prosthetic Devices, Durable Medical Equipment, and Medical Supplies

The department proposes to adopt and incorporate by reference the Medicare Region D Supplier Manual effective July 1, 2023. This proposal is necessary to ensure the department adopts newly added, revised, or deleted Medicare coverage criteria for Medicare covered durable medical equipment, local coverage determinations (LCDs), and national coverage determinations (NCDs).

The department also proposes to revise the effective dates for the durable medical equipment fee schedule to July 1, 2023, to reflect the Calendar Year 2023 Medicare Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) fee schedule. This allows the department to update department-set fees, Medicare fees, additions, deletions, or changes to procedure codes when Medicare releases and updates its fee schedule.

(4) Senior Long Term Care

The department proposes the adoption of updated fee schedules effective July 1, 2023. The updated fee schedules implement a legislatively appropriated Medicaid provider rate increases for Community First Choice, Personal Assistance Services (CFC/PAS), Big Sky Waiver, and Home Health programs.

(5)(a), (b), (c) Behavioral Health and Developmental Disabilities Division

The department is proposing the adoption of fee schedules effective July 1, 2023. The above-listed subsections are for the following fee schedules: Mental Health Center Services for Adults, Home and Community-based Services for Adults with Severe Disabling Mental Illness, and Substance Use Disorder Services. Updates to the Mental Health Center Services for Adults and Substance Use Disorders Services

include the addition of procedure codes for mobile crisis response services and crisis care coordination. This amendment is part of the department's Healing and Ending Addiction through Recovery and Treatment (HEART) Initiative. The HEART Initiative represents the state's commitment to expanding coverage and promoting access to prevention, crisis intervention, treatment, and recovery services for eligible Montanans with mental health issues. Updates to all three fee schedules are necessary to reflect legislatively approved provider rate increases.

(6) Behavioral Health and Developmental Disabilities Division Medicaid youth mental health services fee schedule

The department proposes to update the Medicaid youth mental health services fee schedule, to incorporate the legislatively approved provider rate increase and change the effective date to July 1, 2023.

ARM 37.85.106 Medicaid Behavioral Health Targeted Case Management Fee Schedule

(2) Fee schedule

The department is proposing to amend ARM 37.85.106 to update the effective date of the Medicaid Behavioral Health Targeted Case Management Fee Schedule to July 1, 2023. This is necessary to update provider rates in accordance with funding appropriated by the Montana Legislature during the 2023 regular session.

ARM 37.86.3607 Case Management Services for Persons with Developmental Disabilities, Reimbursement

(1) and (2) Reimbursement

The department is proposing to amend ARM 37.86.3607 pertaining to reimbursement rates in the Targeted Case Management Services for Individuals with Developmental Disabilities Enrolled in the 1915 (c) 0208 Home and Community Based (HCBS) Comprehensive Waiver for Eligible Individuals Age 16 and over.

The rule amendment would adopt and incorporate an updated version of the manual dated July 1, 2023, to incorporate the legislatively approved provider rate increase. In addition, because the link to the manuals in regulation is now invalid, the department proposes to update it with a valid link.

ARM 37.87.1226(1) and (2) Out-of-State Psychiatric Residential Treatment Facility Services, Reimbursement

The department is proposing to amend ARM 37.87.1226(1) to align in-state and out-of-state reimbursement rates in accordance with changes to reimbursement methodology made in the 2023 legislative session. The department proposes to clarify that the bundled rate only includes services related to treat the psychiatric condition to align with current practice.

Fiscal Impact

The following table displays the number of providers affected by the amended fee schedules, effective dates, conversion factors, and rates for services for SFY 2024 based on the proposed amendments. The estimated fiscal impact below is based on the most recent utilization estimates for SFY24.

Provider Type	SFY 2024 Budget Impact (Federal Funds)	SFY 2024 Budget Impact (State Funds)	SFY 2024 Budget Impact (Total Funds)	Active Provider Count
Ambulance	\$384,905	\$106,944	\$491,849	233
Audiologist	\$6,650	\$2,873	\$9,523	94
BCBA/BCBA-D	\$44,216	\$24,820	\$69,036	56
Case Management Services for Persons with Developmental Disabilities	\$11,883	\$7,391	\$19,274	1
Chemical Dependency Clinic	\$152,034	\$28,025	\$180,059	62
Commercial Transportation	\$6,394	\$2,693	\$9,087	12
Community First Choice	\$12,970,713	\$5,116,558	\$18,087,271	43
Crisis Services	\$6,764,831	\$1,963,983	\$8,728,814	11
C SCT Children's Mental Health	\$48,369	\$26,545	\$74,914	451
Dental	\$2,075,677	\$860,620	\$2,936,297	740
Denturist	\$109,157	\$31,414	\$140,571	22
Dialysis Clinic	\$116,007	\$43,842	\$159,849	25
Durable Medical Equipment	\$130,858	\$48,862	\$179,720	525
EPSDT - Chiropractic	\$23,547	\$12,294	\$35,841	171
Free Standing Birthing Center	\$1,431	\$451	\$1,882	2
Hearing Aid Dispenser	\$4,780	\$2,181	\$6,961	40
Home & Community Based Services - Big Sky Waiver	\$5,718,747	\$3,208,468	\$8,927,215	284

Home & Community Based Services - SDMI Waiver	\$2,290,510	\$1,280,662	\$3,571,172	256
Home Health Agency	\$27,047	\$8,014	\$35,061	26
Home Infusion Therapy	\$66,170	\$26,021	\$92,191	16
Hospital - Outpatient	\$3,947,911	\$1,099,789	\$5,047,700	471
Independent Diagnostic Testing Facility	\$40,908	\$10,003	\$50,911	25
Laboratory	\$47,260	\$9,764	\$57,024	233
Licensed Clinical Social Worker	\$550,964	\$190,831	\$741,795	1,056
Licensed Professional Counselor	\$794,098	\$276,305	\$1,070,403	1,280
Licensed Marriage and Family Therapist	\$3,745	\$1,708	\$5,453	9
Mental Health Center	\$2,805,817	\$1,331,213	\$4,137,030	37
Mid-Level Practitioner	\$3,278,800	\$983,950	\$4,262,750	6,826
Mobile Imaging Service	\$2,820	\$881	\$3,701	2
Nutritionist/Dietician	\$5,011	\$2,468	\$7,479	176
Occupational Therapist	\$138,953	\$72,246	\$211,199	419
Optician	\$3,418	\$1,219	\$4,637	32
Optometrist	\$224,184	\$74,819	\$299,003	268
Orientation and Mobility	\$123	\$69	\$192	2
Personal Care Agency	\$176,854	\$80,935	\$257,789	74
Personal Care Agency - Adult MH	\$16,123	\$7,514	\$23,637	38
Personal Care Agency - Child MH	\$3,179	\$1,552	\$4,731	12

Pharmacy Dispensing Fee	\$1,113,877	\$286,669	\$1,400,546	481
Physical Therapist	\$297,796	\$80,193	\$377,989	1,254
Physician	\$7,755,137	\$2,345,954	\$10,101,091	15,282
Podiatrist	\$156,093	\$41,632	\$197,725	84
Private Duty Nursing Agency	\$1,067,936	\$601,758	\$1,669,694	5
Psychiatric Res Treatment Facility	\$2,037,071	\$1,111,025	\$3,148,096	31
Psychiatrist	\$402,096	\$136,247	\$538,343	390
Psychologist	\$39,155	\$12,956	\$52,111	308
Public Health Clinic	\$17,243	\$5,187	\$22,430	45
School Based Services	\$153,502	\$85,025	\$238,527	85
Speech Pathologist	\$95,717	\$52,719	\$148,436	376
Targeted Case Management - Children and Youth with Special Health Care Needs	\$1,296	\$612	\$1,908	19
Targeted Case Management - High Risk Pregnant Women	\$296	\$139	\$435	19
Targeted Case Management - Mental Health	\$327,249	\$124,638	\$451,887	23
Therapeutic Family Care	\$957,801	\$525,381	\$1,483,182	14
Therapeutic Group Home	\$1,069,047	\$592,200	\$1,661,247	27
Specialized Transportation	\$364	\$180	\$544	7
Provider Type	SFY 2024 Budget Impact	SFY 2024 Budget	SFY 2024 Budget	Active Provider Count

	(Federal Funds)	Impact (State Funds)	Impact (Total Funds)	
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5. The department intends these amendments to apply to services provided on or after July 1, 2023. Because of the rulemaking process, this means that the rates will be applied retroactively.

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: Bailey Yuhas, 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 [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov), and must be received no later than 5:00 p.m., August 4, 2023.

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.

9. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at <http://sosmt.gov/ARM/register>.

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

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will significantly and directly impact small businesses. The table above identifies the group of small businesses probably affected by the proposed rule. The probable significant and direct effects of the proposed amendments on small businesses will be to increase reimbursement rates.

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  
Rule Reviewer

/s/ Charles T. Brereton  
Charles T. Brereton, Director  
Department of Public Health and Human  
Services

Certified to the Secretary of State June 27, 2023.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.40.307 pertaining to nursing ) PROPOSED AMENDMENT  
facility reimbursement )

TO: All Concerned Persons

1. On July 31, 2023, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: <https://mt-gov.zoom.us/j/82105330198?pwd=ejBQeFFKNDdQc0RaU29VWDhRc055UT09>, meeting ID: 821 0533 0198, and password: 425935; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 821 0533 0198, and password: 425935. Find your local number: <https://mt-gov.zoom.us/u/keqNlgGGeL>.

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 July 17, 2023, to advise us of the nature of the accommodation that you need. Please contact Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-3026; fax (406) 444-9744; or e-mail [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov).

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

37.40.307 NURSING FACILITY REIMBURSEMENT (1) remains the same.

(2) Effective July 1, 2020, and in subsequent rate years, the reimbursement rate for each nursing facility will be determined using the flat rate component specified in (2)(a) and the quality component specified in (2)(b).

(a) The flat rate component is the same per diem rate for each nursing facility and will be determined each year through a public process. Factors that could be considered in the establishment of this flat rate component include cost of providing nursing facility services and Medicaid recipient access to nursing facility services. The flat rate component for state fiscal year (SFY) ~~2023~~ 2024 is ~~\$209.34~~ \$257.54.

(b) The quality component of each nursing facility's rate is based on the 5-star rating system for nursing facility services calculated by the Centers for Medicare & Medicaid Services (CMS). It is set for each facility based on their average 5-star rating for staffing and quality. Facilities with an average rating of 3 to 5 stars will receive a quality component payment. The funding for the quality component

payment will be divided by the total estimated Medicaid bed days to determine the quality component per Medicaid bed day. The quality component per bed day is then adjusted based on each facility's 5-star average of staffing and quality component scores. A facility with a 5-star average of staffing and quality component scores will receive 100%, a 4-star average will receive 75%, a 3-star average will receive 50%, and 1- and 2-star average facilities will receive 0% of the quality component payment. Funds unused by the first allocation round will be reallocated based on the facility's percentage of unused allocation against the available funds.

(c) The total payment rate available for the period ~~July 1, 2022~~ July 1, 2023, through ~~June 30, 2023~~ June 30, 2024, will be the rate as computed in (2), plus any additional amount computed in ARM 37.40.311 and 37.40.361. Copies of the department's current nursing facility Medicaid reimbursement rates per facility are posted at <https://medicaidprovider.mt.gov/26#1875810541>, or may be obtained from the Department of Public Health and Human Services, Senior & Long-Term Care Division, P.O. Box 4210, Helena, MT 59604-4210.

(3) Providers who, as of July 1 of the rate year, have not filed with the department a cost report covering a period of at least six months participation in the Medicaid program in a newly constructed facility will have a rate set at the flat rate component as computed on ~~July 1, 2022~~ July 1, 2023. Following a change in provider as defined in ARM 37.40.325, the per diem rate for the new provider will be set at the previous provider's rate, as if no change in provider had occurred.

(4) through (12) remain the same.

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

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

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.40.307 by revising nursing facility reimbursement rates for the upcoming State Fiscal Year (SFY) 2024.

The proposed amendments set the flat rate component for Medicaid nursing facility reimbursement at \$257.54 for SFY 2024, which equates to a 23.02% rate increase from SFY 2023. The rate calculation includes House Bill (HB) 2 funding appropriated by the Montana Legislature during the 68th Legislative Session and annualized SFY 2023 Medicaid paid days to determine nursing facility providers' reimbursement according to the methodology outlined under (2) of the rule. In balancing the factors that may be considered under 53-6-113, MCA, and ARM 37.40.307(2) to establish the rate, the department's primary consideration was the availability of appropriated funds and availability of services.

Copies of the department's proposed nursing facility Medicaid reimbursement rates per facility are located under "Proposed Rules Changes" tab at: <https://medicaidprovider.mt.gov/26>.

The proposed amendments are necessary for the department to provide notice of the change to Medicaid nursing facility provider rates.

### Fiscal Impact

The estimated total cost of the proposed rate increase is approximately \$30,297,189. These amounts do not include at risk provider funds or direct care wage funding.

Anticipated days for SFY 2024 are 745,575 using estimates from SFY 2023 Medicaid paid days.

The SFY 2024 appropriated funding for lump-sum payments to providers for direct care and ancillary workers is \$6,964,596 for the nursing facility direct-care worker wage program and \$3,962,026 for CNAs only direct-care worker wages program.

66 nursing facility providers participated in the Medicaid nursing facility payment program in SFY 2023 and approximately 2,656 recipients received services in nursing facilities under Medicaid.

The department intends to retroactively apply these proposed amendments to July 1, 2023.

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: Bailey Yuhas, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-3026; or e-mail [hhsadminrules@mt.gov](mailto:hhsadminrules@mt.gov), and must be received no later than 5:00 p.m., August 4, 2023.

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 paragraph 5.

8. An electronic copy of this notice is available on the department's web site at <https://dphhs.mt.gov/LegalResources/administrativerules>, or through the Secretary of State's web site at <http://sosmt.gov/ARM/register>.

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not 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/ Robert Lishman  
Robert Lishman  
Rule Reviewer

/s/ Charles T. Brereton  
Charles T. Brereton, Director  
Department of Public Health and Human  
Services

Certified to the Secretary of State June 27, 2023.

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

In the matter of the adoption of an ) NOTICE OF ADOPTION OF  
emergency rule closing the Rosebud ) EMERGENCY RULE  
Isle Fishing Access Site in Stillwater )  
County )

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule:

(a) Human attractants were left at the Rosebud Isle Fishing Access Site, which has attracted a bear. The department intends to set a bear trap at this location on June 21, 2023, in hopes of trapping the bear, to avoid any conflicts between the bear and humans.

(b) Persons recreating on the fishing access site are at risk of:

- (i) accidentally stepping in, or otherwise being injured by the bear trap; and
- (ii) being injured due to a confrontation with the bear.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue No. 13 of the 2023 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on July 21, 2023, to advise us of the nature of the accommodation that you need. Please contact Christina Bell, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail cbell@mt.gov.

3. The emergency rule is effective June 21, 2023, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

NEW RULE I ROSEBUD ISLE FISHING ACCESS SITE EMERGENCY CLOSURE (1) The Rosebud Isle Fishing Access Site is located in Stillwater County.

(2) The Rosebud Isle Fishing Access Site is closed to all public occupation and recreation as signed.

(3) This rule will expire as soon as the department determines the fishing access site is again safe for occupation and recreation. This will depend on the

extent and duration of the presence of the bear and the trap. Signs closing the fishing access site will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA

IMP: 2-4-303, 87-1-202, MCA

5. The rationale for the emergency rule is set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Christina Bell, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail [cbell@mt.gov](mailto:cbell@mt.gov). Any comments must be received no later than August 4, 2023.

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

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

9. The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website ([leg.mt.gov](http://leg.mt.gov)), were contacted by e-mail on June 21, 2023.

/s/ Robin Graham

Robin Graham

Acting Deputy Director

Department of Fish, Wildlife and Parks

/s/ Alex Neill

Alex Neill

Rule Reviewer

Certified to the Secretary of State June 21, 2023.

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

In the matter of the adoption of an ) NOTICE OF ADOPTION OF  
emergency rule closing the ) EMERGENCY RULE  
Yellowstone River near the Twin )  
Bridges Road railroad bridge in )  
Stillwater County )

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule closing the Yellowstone River one mile upstream and two and a half miles downstream of the Twin Bridges Road railroad bridge:

(a) The Twin Bridges Road railroad bridge has partially collapsed into the Yellowstone River.

(b) The combination of dangerous conditions includes railcars, iron, and debris in the Yellowstone River. There is no safe passage around the debris, ultimately rendering the river and shoreline unsafe for boating, floating, and shoreline use.

(c) There is a possibility that the remaining bridge may collapse into the river. Cleanup work and construction will be taking place, and crews need sufficient space to work and determine cleanup efforts.

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue 13 of the 2023 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on July 21, 2023, to advise us of the nature of the accommodation that you need. Please contact Regina Reynolds, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone 406-444-9785; or e-mail [regina.reynolds@mt.gov](mailto:regina.reynolds@mt.gov).

3. The emergency rule is effective June 27, 2023, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

NEW RULE I YELLOWSTONE RIVER AT THE TWIN BRIDGES ROAD RAILROAD BRIDGE EMERGENCY CLOSURE (1) The Yellowstone River is

closed beginning one mile upstream of the Twin Bridges Road railroad bridge and continuing two and a half miles downstream of the railroad bridge over the Yellowstone River in Stillwater County.

(2) This rule will remain in effect until the department determines that the Yellowstone River is safe for passage and human use. This will depend on the extent and the duration of the cleanup and construction work. Signs closing the Yellowstone River will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA  
IMP: 2-4-303, 87-1-202, MCA

5. The rationale for the emergency rule is set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Regina Reynolds, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail [regina.reynolds@mt.gov](mailto:regina.reynolds@mt.gov). Any comments must be received no later than 5:00 p.m., August 4, 2023.

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

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

9. The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website ([leg.mt.gov](http://leg.mt.gov)), were contacted by e-mail on June 27, 2023.

/s/ Quentin Kujala  
Quentin Kujala  
Chief of Staff  
Department of Fish, Wildlife and Parks

/s/ Alex Neill  
Alex Neill  
Rule Reviewer

Certified to the Secretary of State June 27, 2023.

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 18.15.419 pertaining to Refunds )  
of Gasoline and Special Fuel Tax )

TO: All Concerned Persons

1. On May 26, 2023, the Department of Transportation published MAR Notice No. 18-194 pertaining to the proposed amendment of the above-stated rule at page 466 of the 2023 Montana Administrative Register, Issue Number 10.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.

/s/ Valerie A. Balukas  
Valerie A. Balukas  
Rule Reviewer

/s/ Malcolm D. Long  
Malcolm D. Long  
Director  
Department of Transportation

Certified to the Secretary of State June 27, 2023.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 37.40.802 and 37.40.830 )  
pertaining to hospice reimbursement )

TO: All Concerned Persons

1. On May 26, 2023, the Department of Public Health and Human Services published MAR Notice No. 37-1030 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 472 of the 2023 Montana Administrative Register, Issue Number 10.

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

3. The department intends to apply the rate increase under ARM 37.40.830 retroactively to October 1, 2022. Any decreases in hospice rates will not be applied retroactively and are effective upon the day after the date of publication of this adoption notice. All other rule changes are effective upon the day after the date of publication of this adoption notice.

4. No comments or testimony were received.

/s/ Robert Lishman  
Robert Lishman  
Rule Reviewer

/s/ Charles T. Brereton  
Charles T. Brereton, Director  
Department of Public Health and Human  
Services

Certified to the Secretary of State June 27, 2023.

## **NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES**

### **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 (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

#### **Education Interim Committee**

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

#### **Children, Families, Health, and Human Services Interim Committee**

- Department of Public Health and Human Services

#### **Law and Justice Interim Committee**

- Department of Corrections
- Department of Justice

#### **Energy and Telecommunications Interim Committee**

- Department of Public Service Regulation

#### **Revenue Interim Committee**

- Department of Revenue
- Montana Tax Appeal Board

**State Administration and Veterans' Affairs Interim Committee**

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

**Transportation Interim Committee**

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

**Environmental Quality Council**

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- 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
- 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 recent rulemaking 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.

## RECENT RULEMAKING BY AGENCY

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 March 31, 2023. This table includes notices in which those rules adopted during the period January 13, 2023, through June 23, 2023, occurred 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 March 31, 2023, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2023 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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MONTANA ADMINISTRATIVE  
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PAGES 596-680

**CHRISTI JACOBSEN**  
SECRETARY OF STATE

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