MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 9

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NOTICE SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the amendment of Rules ARM 2-2.11(1)-S1100, Subsection (1), 2-2.11(2)-S11140, Subsection (5), and 2-2.11(6)-S11410, Subsection (1) concerning requested inspection fees.	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF RULES Requested Inspection Fees

TO: All Interested Persons:

1. On Wednesday, September 20, 1978, at 9:30 a.m., a public hearing will be held in the Auditorium of the Montana State Highway Building, Helena, Montana, to consider the amendment of Rules ARM 2-2.11(1)-S1100, Subsection (1), ARM 2-2.11 (2)-S11140, Subsection (5) and ARM 2-2.11(6)-S11410, Subsection (1)(b)(iii) concerning requested inspection fees.

2. The proposed amendments will accomplish the following:

(a) ARM 2-2.11(1)-S1100 will be amended by adding fees for requested inspections concerning building code items.

(b) ARM 2-2.11(2)-S11140, Subsection (5) will be amended by raising the present fee for requested electrical inspections.

(c) ARM 2-2.11(6)-S11410, Subsection (1)(b)(iii) will be amended by adding a fee for requested plumbing inspections.

3. The rules as proposed to be amended will read as follows:

(a) ARM 2-2.11(1)-S1100(1)(c) Add a new paragraph to Section 303 of the Uniform Building Code to read, "(e) Requested Inspection Fee - Thirty dollars ($30) provided that such service is not in excess of one hour in duration, and then fifteen dollars ($15) for each 30 minutes or fractional part thereof in excess of one hour. Travel and per diem will be charged as per the State of Montana's existing rates for these items."

(b) ARM 2-2.11(2)-S11140(5) Requested Inspections Fee: ~~Minimum one (1) hour . . . $15.00 per hour.~~ Thirty dollars ($30) provided that such service is not in excess of one hour in duration, and then fifteen dollars ($15) for each 30 minutes or fractional part thereof in excess of one hour. Travel and per diem will be charged as per the State of Montana's existing rate for these items.

(c) ARM 2-2.11(6)-S11410(1)(b)(iii) Requested Plumbing Inspection Fee - Thirty dollars ($30) provided that such service is not in excess of one hour in duration, and then fifteen dollars ($15) for each 30 minutes or fractional part thereof in excess of one hour. Travel and per diem will be charged as per the State of Montana's existing rate for these items.

4. The Division is proposing these amendments to its rules because presently only electrical, recreational vehicle, and modular fees have provisions for charging for requested

inspections. Since the Division is self-supporting, all services performed must be charged for or they cannot be provided. In addition it is felt that the charge for requested inspections should be equal throughout all functions of the Division. The equal fee for all requested inspections also reduces confusion for the Division and the public.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing.

6. J. Michael Young, Administrator, Insurance and Legal Division, State of Montana, Capitol Station, Helena, Montana, 59601, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendments is based on Section 69-2124, R.C.M. 1947. Section 69-2124, R.C.M. 1947, also provides the authority of implementation for the above amendments.

Lawrence E. D'Arcy
for Jack C. Crosser
Director
Department of Administration

Certified to the Secretary of State July 28, 1978.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the adoption of a rule concerning asbestos in building construction.	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE Asbestos in building construction.

TO: All Interested Persons:

1. On Wednesday, September 20, 1978, at 9:30 a.m., a public hearing will be held in the Auditorium of the Montana State Highway Building, Helena, Montana, to consider the adoption of a rule concerning the use of asbestos in building construction.

2. The proposed rule does not replace or modify any section currently found in the Administrative Rules of Montana.

3. The proposed rule reads as follows:

ASBESTOS IN BUILDING CONSTRUCTION (1) The following rules result from the mandate of Legislature contained in Section 69-7401 through Section 69-7407, R.C.M. 1947.

(2) Building Demolitions. (a) All buildings, scheduled for demolition, which contain asbestos insulation or fireproofing must follow the safeguards listed in Section 69-7403, R.C.M. 1947, as follows:

(i) Whenever possible, the local fire department shall be notified of the demolition.

(ii) Signs must be posted in conspicuous locations around the building or structure being demolished warning persons to take proper precautions against exposure to asbestos fibers before entering the area.

(iii) Boilers, pipes, and steel members insulated or fireproofed with asbestos must be wetted before toppling of the wall begins. This mandatory procedure applies, where practicable, to all asbestos-lined surfaces.

(iv) When demoliton by toppling is performed, a reasonable enclosure for dust emission control must be constructed.

(v) Adequate wetting to suppress dust must be performed before and during the demoliton or toppling.

(vi) Asbestos-containing debris may not be dropped or thrown from any floor and must be transported by dust-tight chutes or buckets with the chutes or buckets sufficiently wetted to prevent dust.

(vii) During transportation of the debris, it must be thoroughly wetted before loading and must be enclosed or covered during its transport to prevent dust dispersion.

(viii) The asbestos-containing debris must be deposited at a sanitary landfill at which it is unlikely to be disturbed, and signs must be posted around the landfill warning that asbestos-containing debris is buried there.

(b) Before demolition of a building is started, a build-

ing permit must be obtained from the building official of the appropriate jurisdiction, that being a municipality, county, or the State of Montana.

(c) At the time of application for the permit, the building official having jurisdiction shall be informed, by the person or corporation performing the work, as to whether the building to be demolished contains asbestos materials. Such information shall be furnished in writing before the permit is issued and before the demolition is started.

(d) Periodic inspections may be made by the building official to determine compliance with Section 69-7403, R.C.M. 1947, and these rules.

(3) Asbestos-Containing Spray Products. (a) "Asbestos-containing spray product" shall mean any fibrated product or compound which is applied to a surface utilizing a spray or pneumatic means of application, for whatever purpose. "Fibrated product" means a substance used in construction, for whatever purpose, which contains asbestos fibers, which tend to disperse into ambient air during application or upon destruction or removal.

(b) The use of asbestos-containing spray products for whatever purpose, in the construction, remodeling, renovation, alteration of a building or structure is prohibited.

(4) Violations - Penalties. Any person, firm, or corporation found guilty of violating any of the provisions of these rules and/or the State statutes shall be fined no more than $1,000 or be imprisoned in the county jail for a term not to exceed 60 days or both.

4. The Division is proposing this rule as the result of a Legislative mandate contained in Section 69-7401 through 69-7407, R.C.M. 1947.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing.

6. J. Michael young, Administrator, Insurance and Legal Division, State of Montana, Capitol Station, Helena, Montana, 59601, has been designated to preside over and conduct the hearing.

7. The authority of the agency to adopt the proposed rule is found in Section 69-7406, R.C.M. 1947. Section 69-7406 and 69-7407 provide the authority of implementation to enforce the proposed rule.

Laurence E. D'Arcy
for Jack C. Crosser
Director
Department of Administration

Certified to the Secretary of State July 28, 1978.

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE STATE OF MONTANA

In the matter of the adoption of a rule concerning the minimum number of plumbing fixtures to be provided in new buildings.	)))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE Minimum Required Plumbing Fixtures

TO: All Interested Persons:

1. On Wednesday, September 20, 1978, at 9:30 a.m., a public hearing will be held in the Auditorium of the Montana State Highway Building, Helena, Montana, to consider the adoption of a rule concerning the minimum number of plumbing fixtures to be provided in new buildings.

2. The proposed rule does not replace or modify any section currently found in the Administrative Rules of Montana.

3. The proposed rule reads as follows:

MINIMUM REQUIRED PLUMBING FIXTURES (1) The following table will be used to determine the minimum number of plumbing fixtures to be installed in new buildings.

4. The Division is proposing this rule as a result of public complaints filed with the Department of Health and Environmental Sciences and the Building Codes Division regarding lack of toilet facilities in public places. The Uniform Building Code, as adopted by the Division, has some requirements but they do not include all occupancies.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing.

6. J. Michael Young, Administrator, Insurance and Legal Division, State of Montana, Capitol Station, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on Section 69-2111 and 69-2115, R.C.M. 1947. Section 69-2109, R.C.M. 1947, provides the authority of implementation to enforce the proposed rule.

Laurence E. D'Arcy
for Jack C. Crosser
Director
Department of Administration

Certified to the Secretary of State July 28, 1978.

*MINIMUM REQUIRED PLUMBING FIXTURES

Occupancy	Water Closets		Urinals	***Lavatories	Drinking Fountains
	Male	Female	Male Fixtures/Persons	Fixtures/Persons	Fixtures/Floor
Groups A-1, A-2, A-2.1, A-3 & A-4 and ** Shopping Centers Assembly Buildings	1. 1-150 2. 151-200 3. 201-400 Over 400, add 1 fixture for each additional 250 males and 1 for each 200 females	1. 1-100 2. 101-150 3. 151-400	1. 51-200 2. 201-400 3. 401-600 Over 600: add 1 for each additional 250 males	Use Section 605 of 1976 Uniform Building Code	Use Section 605 of 1976 Uniform Building Code
Groups E-1, E-2, & E-3	For elementary and secondary school plumbing fixtures use Section 805 of the 1976 Uniform Building Code				
Schools Colleges & Universities Day Care	1:100 1:40	1:60 1:20	1:100 1:30	1:200 1:60	1/Floor 1/Floor Plus 1:100
Groups I-1, I-2 & I-3 Jails, Prisons, Detention Units	One water closet and one lavatory for each cell. One additional water closet and lavatory for every eight in multiple occupancy cells. One shower for every fifteen.				
Hospitals and Nursing Homes Nurseries	See Chapter 22, Administrative Rules of Montana See Section 1305 of 1976 Uniform Building Code				1/Floor
Groups H-1, H-2, H-3, H-4 H-5, B-1, B-2, B-3, & B-4 ** Offices, stores, service stations, public buildings, **** food service facilities	Use Section 1005, 1105, and 1205 of the 1976 Uniform Building Code for employees Toilet facilities for the public are to be provided as noted for Groups A and B and shopping centers and, in addition, where alcoholic beverages are sold for on site consumption add to the fixture requirements 1 extra urinal for males from 1-100, 2 from 101-300, 3 from 301-400, 1 per 150 over 400 and 1 extra water closet for females from 51-100, 3 from 101-400 and 1 per 100 over 400. Handwashing sinks are required in all food preparation areas.				
Groups R-1 Hotels, Apartments, Motels, Convents and Monasteries	Use Section 1305 of 1976 Uniform Building Code and Section 505 of 1976 Uniform Housing Code				
Group R-3 Dwelling and Lodging Houses	Use Section 1405 of 1976 Uniform Building Code and Section 505 of 1976 Uniform Housing Code				

*Required plumbing fixtures may be provided as separated employee and public toilets or as public toilets with employee accessibility. In food service facilities employee use of public facilities must be approved by the health authority and then the number of employees shall be added to the occupancy load for fixture requirements.

**Keyed toilets under employee control of the type available at service stations are permitted.

***Hot and Cold Water required.

****Contact the Department of Health and Environmental Sciences for additional requirements for food service establishments.

BEFORE THE DEPARTMENT OF BUSINESS REGULATION
OF THE STATE OF MONTANA

In the matter of the adoption of Track II American National Standards Institute, 1975, and Track III American National Standards Institute, 1975, standards for Electronic Funds Transfer Machines.	))))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE AND STANDARDS FOR ELECTRONIC FUNDS TRANSFER MACHINES.

TO: All Interested Persons

1. On September 19, 1978, at 8:30 A.M., a public hearing will be held in the conference room of the Commissioner of Higher Education at 33 North Last Chance Gulch, Helena, Montana, to consider the adoption of a rule which would provide for the use of the American National Standards Institute (ANSI) standards, relating to Track II ANSI, 1975, and Track III ANSI, 1975, in order to partially fulfill the requirements of mandatory sharing of automated teller machines as provided in Chapter 17 of Title 5 of the Revised Codes of Montana, 1947.

2. The proposed rule does not replace or modify any section currently found in the Montana Administrative Code.

3. The proposed rule provides in summary that there shall be specific encoding formats and other standards for plastic cards used in the operation of Electronic Funds Transfer Machines, in order to provide that both on-line and off-line utilization of such machines may be provided. The standards requiring Track II ANSI, 1975, capabilities relate to the ability of the ATM to operate in an "on-line" system by communicating by direct terminal connections with a central computer to effectuate the requested financial transactions. The standards requiring Track III ANSI, 1975, capabilities relate to the ability of the ATM to operate in an "off-line" system where transactional data is stored within the ATM and is periodically manually removed for processing at a separate facility to complete the requested financial transaction. The standards proposed to be adopted would provide the physical dimensions and encoding formats to insure effective sharing potential. A copy of the entire proposed rule and specifications may be obtained by contacting the Department of Business Regulation, 805 North Main, Helena, Montana 59601.

4. The Department is proposing its rule because Section 5-1707, R.C.M. 1947, provides that there shall be mandatory sharing, on a non-discriminatory basis, available to financial institutions. Such standards as proposed will assist in the accomplishment of such sharing.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing.

6. Robert J. Wood, Esq., 805 North Main, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based on Section 5-1720, R.C.M. 1947. IMP, 5-1707

Kent Kleinkopf

Kent Kleinkopf, Director
Department of Business Regulation

Certified to the Secretary of State on August 1, 1978.

BEFORE THE STATE LIBRARY COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 10.10.031, ARM	)))))	NOTICE OF PUBLIC HEARING on the amendment of Rule 10.10.031, Use of State and Federal Funds to Support Library Federations

To All Interested Persons:

1. On September 8, 1978, at 10:30 a.m., a public hearing will be held at the Montana State Library, 930 East Lyndale, Helena, Montana, to consider the amendment of Rule 10.10.031, ARM, Use of State and Federal Funds to Support Library Federations.

2. The existing rule to be amended is found at pages 10-40 to 10-41, of the Administrative Rules of Montana.

3. The amendment would read or provide in substance as follows (deleted matter interlined, new matter in the existing rule underlined):

10.10.031 Use of Federal ~~and State~~ Funds to Support Library Federations (1) (a) No change.

(b) Policy: To further the development of library federations, the State Library Commission may make grants of federal funds of the following types:

(i) Basic grants ~~--as defined in Sec. 44-306, R.C.M. 1947,~~ are annual grants given to all federation headquarters libraries for the purpose of improving public library services within the federation and enabling public libraries within the federation to achieve and maintain the Montana public library standards as adopted and amended from time to time by the Montana state library commission.

(ii) Special project grants ~~--as defined in Sec. 44-306, R.C.M. 1947,~~ are grants to federation headquarters libraries to implement services not provided for in basic grants or to provide construction funds or remodeling funds or funds for capital acquisitions. Grants for construction or remodeling must be equally matched by local funds; grants for services or capital acquisitions may fund the full cost thereof.

(iii) Formula for distribution of basic grants. ~~as set forth in Sec. 44-308, R.C.M. 1947.~~ The amount of LSCA funds available statewide for basic grants shall be defined and distributed as determined periodically by the state library commission. Of this total amount 50 percent shall be distributed in equal portions to all federations and 50 percent shall be distributed to federations in proportion to that part of the total state population served by federations which each federation serves.

(c) Maintenance of effort required: in order for a library federation to be eligible to receive a grant of federal funds, the following item must be satisfied:

(i) The amount of local funds from any source, including federal revenue sharing funds spent for all library services in a federation by participating entities including the federation

headquarters library, and all the amount of local funds from any source, including federal revenue sharing funds, spent for all library services by the federation headquarters library for the last completed fiscal year may not be less than the amount spent for such purposes during the next previous fiscal year. Any entity which discontinues participation in a federation for any fiscal year shall be deleted from the comparison of funding levels for both that fiscal year and the previous fiscal year.

(ii) Should there be a decrease in the taxable valuation of the property of a city operating a federation headquarters library which causes a decrease in the amount spent for library services, maintenance of effort for such headquarters library will be met if such city expends for library services a sum equal to that which would be raised by the maximum number of mills leviable for library services under state law by said city. In case of a joint city/county library serving as a federation headquarters library suffering such a decrease in taxable valuation, maintenance of effort will be met if the amount spent for all library services shall equal that sum which would be raised if both said city and county were to levy the maximum number of mills leviable for library services under state law by said city and county.

(iii) Should a library participating in a federation receive a one-time grant from any source for a special project not normally funded in annual operations or capital expenditure budgets, upon notification in writing to and with the concurrence of the State Librarian that the receipt of said funds is for such a special one-time project, such grant funds shall not be included in computing maintenance of effort for the following fiscal year.

4. The commission is proposing to adopt at this time the state law definition of basic grants and modifying the state law definition of special project grants for grants of federal funds in these categories. Also, the commission is proposing an allocation formula for federal basic grants which is different than the state formula in Sec. 44-308(1), R.C.M. 1947, because the latter formula has not provided a fair distribution of available funds to all federations. Finally, the commission is proposing the addition of a maintenance of effort requirement in order for a library federation to be able to receive a grant of federal funds.

5. Interested parties may submit data, views or arguments concerning the proposed rule orally or in writing at the hearing.

6. William P. Conklin chairman of the commission, will preside over and conduct the hearing.

7. The authority of the commission to amend the proposed rule is based on section 44-131(5), R.C.M. 1947.

STATE LIBRARY COMMISSION
WILLIAM P. CONKLIN, CHAIRMAN

By: Alma S. Jacobs
Alma S. Jacobs
State Librarian

Certified to the Secretary of State August 1, 1978.

9-8/10/78

BEFORE THE STATE LIBRARY COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 10.10.050, ARM	)))	NOTICE OF PUBLIC HEARING on the amendment of Rule 10.10.050, ARM, Application for Grants

To All Interested Persons:

1. On September 8, 1978, at 10:30 a.m., a public hearing will be held at the Montana State Library, 930 East Lyndale, Helena, Montana, to consider the amendment of Rule 10.10.050, ARM, Application for Grants.

2. The existing rule to be amended is found at pages 10-43 to 10-44 of the Administrative Rules of Montana.

3. The amendments would read or provide in substance as follows (deleted matter interlined, new matter in existing rule underlined):

10.10.050 Application for Grants (1) Applications for grants from state, federal or private funds available to the State Library Commission shall be made in writing to the State Librarian, giving such detail as may be necessary to satisfy the requirements of the funding source. Applications from libraries or library federations must indicate the extent to which the grant may be expected to help the library or library federation achieve levels of service or strength as prescribed in the Montana Public Library Standards. Prior approval of federation grant applications must be obtained from the federation advisory board and the federation headquarters library board.

(2) No change.

(3) No change.

(4) No change.

4. The commission is proposing this change to add an additional sign off on grant applications to assure that projects proposed for funding enjoy the support of the governing body of the responsible headquarters library.

5. Interested parties may submit data, views or arguments concerning the proposed rule orally or in writing at the hearing.

6. William P. Conklin, chairman of the commission, will preside over and conduct the hearing.

7. The authority of the commission to amend the proposed rule is based on section 44-131(5), R.C.M. 1947.

STATE LIBRARY COMMISSION
WILLIAM P. CONKLIN, CHAIRMAN

By: Alma S. Jacobs
Alma S. Jacobs
State Librarian

Certified to the Secretary of State August 1, 1978.

MAR Notice No. 10-3-10-5 9-8/10/78

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

IN THE MATTER of the adoption of New Rules regarding telephone Extended area service guidelines.	NOTICE OF PROPOSED ADOPTION OF NEW RULES PERTAINING TO TELEPHONE EXTENDED AREA SERVICE GUIDELINES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 11, 1978, the Department of Public Service Regulation proposes to adopt rules pertaining to guidelines for telephone extended area service.

2. The proposed rules do not replace or modify any section currently in the Montana Administrative Code.

3. The proposed rules provide as follows:

Rule I. DEFINITION (1) Extended Area Service (EAS) is nonoptional, unlimited, flat rate calling service between two exchanges, provided at exchange rates or at an increment to exchange rates, rather than at toll prices.

Rule II. CONDITIONS FOR APPROVAL (1) The Commission will order a new Extended Area Service arrangement to be provided when the following general conditions have been met.

(2) A strong community of interest exists between contiguous exchanges.

(3) The incremental rates charged for the EAS arrangement will generate revenues within the affected exchanges sufficient to meet the increased intrastate revenue requirement resulting from provision of EAS.

(4) The proposed EAS arrangement, offered at a price sufficient to meet the increased revenue requirement, is approved by a majority of subscribers in the affected exchanges via written ballot.

Rule III. PROCEDURE (1) When the Public Service Commission receives a request for EAS from customers of a regulated telephone company, a telephone cooperative, a political subdivision, an organized community group; receives a proposal by a telephone company; or, initiates an investigation, the following standards will be used to determine whether it should implement EAS:

(2) The Commission will determine whether a community of interest exists between the exchanges sufficient to warrant further study in the following manner:

(a) The Commission will order the company or companies involved to initiate a calling usage study. A sufficient indication of community of interest between the exchanges will be deemed to exist if there is an average of eight (8) calls per main and equivalent main station per month and at least 50 percent of the customers make at least one (1) toll call per month to the exchange to which the service is requested. These community of interest qualifications shall exist for both exchanges

on the proposed route, unless the large exchange has over twice the number of main and equivalent main stations on the smaller exchange, in which case the community of interest qualification shall apply only to the smaller exchange.

(b) The Commission may order the company (companies) or petitioners involved to provide information on factors influencing community of interest, such as (but not limited to) location relative to exchange boundaries of:

(i) schools
(ii) medical and emergency services
(iii) local government entities
(iv) police and fire protection
(v) shopping and service centers
(vi) churches
(vii) agricultural and civic organizations
(viii) employment centers

(3) When the Commission determines that a sufficient community of interest exists to warrant consideration of EAS it will order its staff and the company or companies involved to determine the increase in intrastate costs resulting from this proposed EAS arrangement. This study will consider the following relevant costs over a five year future planning period:

(a) Losses in revenues from toll and other discontinued services such as foreign exchange service.

(b) Increases in capital costs resulting from required additions to network capacity.

(c) Changes in operating expenses

(d) Changes in interstate Division of Revenue Settlements

(e) Changes in Bell-Independent settlements.

(4) Studies to determine the increased intrastate cost will be completed utilizing the following methodology:

(a) Lost revenue will be based upon estimates of toll messages for each year of the study multiplied by the expected average revenue per message and upon estimates of the quantities of other affected services, such as FX, for each year of the study multiplied by the appropriate annual rate.

(b) The added investment will be based on the additional switching and trunking facilities required to carry the incremental usage each year. Estimates of incremental usage involve call stimulation factors and holding time effects due to EAS. Appropriate annual charges will be applied to the added investment to obtain additional annual revenue requirements.

(c) Changes in Division of Revenue settlements will be based on the increase in intrastate usage and investment quantities experienced under Extended Area Service. The usage and investment increases will be determined from the call stimulation and changed holding time patterns forecast as a result of EAS.

(5) The Commission will then use the equivalent annual average additional revenue requirement to determine the rate increment to be charged to subscribers in the affected exchanges in such a way that no increase in rates or charges will be in-

curred by nonbenefited exchanges. This will be accomplished in the following manner:

(a) The total additional revenue requirement will be equally divided between the two exchanges.

(b) The additional revenue requirement in each exchange will then be divided by the number of main and equivalent main stations to determine the EAS Rate Increment applicable to all main stations in that exchange.

(c) New extended area service will be priced using these rate increments designed to recover the additional revenue requirement. Each exchange will retain its own appropriate rate group classification.

(6) The Commission will then order a survey by mail to be made under its supervision. The ballot to be mailed to each customer would include all pertinent information (including rates and effective date) that would enable the customer to make a rational choice of acceptance or rejection of the proposal. If at least a simple majority of all affected customers in each exchange vote in favor of establishing EAS at the determined rate, then the Commission will order it implemented.

(7) When the Commission determines that the EAS increment to either exchange is of such magnitude that it believes a substantial majority of the customers would not desire EAS, then it may dispense with the survey.

(8) The Extended Area Service increments are subject to future increase as the Commission may order.

4. These guidelines are being proposed so that the public can know when extended area service (EAS) applications will be granted. They describe those situations where the grant of such applications will not result in discrimination against other telephones. The guidelines also inform the public of the procedures which the Commission intends to follow in considering these applications.

5. Interested parties may submit their data, view or arguments, orally or in writing, concerning the proposed rules to Eileen E. Shore, 1227 11th Avenue, Helena, Montana 59601, phone 449-3007. Written comments must be received not later than September 8, 1978, in order to be considered.

6. Any interested person wishing to express or submit data, views or arguments at a public hearing must request the opportunity to do so, and submit this request to Eileen E. Shore, 1227 11th Avenue, Helena, Montana 59601, no later than September 8, 1978.

7. If the Commission receives requests for a public hearing on the proposed rules from more than 10% or 25 or more persons who are directly affected by the proposed rules, by a government subdivision or agency, or by an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. The Commission may also, in its discretion, hold a hearing if written comments indicate that one would be appropriate. Notice of the hearing will be published in the Montana Administrative Register and by direct

notice to persons presenting timely requests for a hearing.

8. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59601 (Telephone 449-2771), is available and may be contacted to represent consumer interests in this matter.

9. The rules proposed in this notice are identical to those proposed in Notice No. 38-2-19. The comments received at a public hearing held pursuant to the former notice will be fully considered by the Commission.

10. Authority of the Department to make the proposed rules is based on Sections 70-104 and 70-113, R.C.M. 1947.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE August 1, 1978.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

IN THE MATTER of the Amendment of Rule 38-2.6(1)-S6000.	NOTICE OF PROPOSED AMENDMENT OF RULE 38-2.6(1)-S6000 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 9, 1978, the Department of Public Service Regulation proposes to amend rule 38-2.6(1)-S6000.

2. The rule, as proposed to be amended, provides as follows (stricken material is interlined, new material is underlined):

38-2.6(1)-S6000 INSURANCE (1) Pursuant to the requirements of statute concerning insurance coverage (8-113), every motor carrier regulated by this act must file with this board evidence of insurance prior to any motor carrier operations upon the public highways of this state. Failure to so file the appropriate insurance will prohibit any carrier from conducting a transportation movement on the highways of this state. Every Class A, Class B, Class C or Class D intrastate carrier, or any interstate or foreign commerce carrier must file with this board evidence of complying with the minimum insurance requirements of this Commission as applicable to public liability, and property damage. ~~and cargo insurance.~~ In addition each Class A or Class B intrastate carrier must file with this board evidence of complying with the minimum insurance requirements of this Commission as applicable to cargo insurance. Policies of insurance in regard to public liability, property damage, and cargo insurance, proof of which are submitted to this Commission by way of certificates of insurance ~~(see Form 1 and 2)~~ must be written by insurance companies who are authorized to conduct business within the state of Montana, as required by the state commissioner of insurance. Insurance policies themselves need not be filed. All certificates of insurance submitted by those insurance companies to this Commission on behalf of the respective carriers must be executed by the appropriate company and all certificates of insurance submitted for carriers holding Montana intrastate authority must be countersigned by a resident Montana agent for the respective insurance companies.

(2) Certificate of Insurance filings must be submitted only on the following forms:

(a) Intrastate - Public Liability, Property Damage -Form 2.

(b) Intrastate - Cargo Insurance - Form 1.

(c) Interstate - Public Liability, Property Damage -Form 2 or 5.

~~(2)~~ (3) No change.

~~(3)~~ (4) No change.

~~(4)~~ (5) No change.

3. This rule is being amended to bring it into conformity with Montana statutes dealing with countersigning by Montana

resident agents.

4. Interested parties may submit their data, views or arguments, orally or in writing, concerning the proposed rules to James C. Paine, 1227 11th Avenue, Helena, Montana 59601, phone 449-3415. Written comments must be received not later than September 7, 1978, in order to be considered.

5. Any interested person wishing to express or submit data, views or arguments at a public hearing must request the opportunity to do so, and submit this request to James C. Paine, 1227 11th Avenue, Helena, Montana 59601, no later than September 7, 1978.

6. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59601 (Telephone 449-2771), is available and may be contacted to represent consumer interests in this matter.

7. Authority of the Department to make the proposed amendment is based on Sections 8-103, 82-4204 and 82-4204.1, R.C.M. 1947.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE August 1, 1978.

FORM E
UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY DAMAGE LIABILITY CERTIFICATE OF INSURANCE
(Executed in Triplicate)

Filed with ..... (hereinafter called Commission)
(Name of Commission)

This is to certify, that the .....
(Name of Company)

(hereinafter called Company) of .....
(Home Office Address of Company)

has issued to ..... of .....
(Name of Motor Carrier) (Address of Motor Carrier)

a policy or policies of insurance effective from ..... 12:01 A.M. standard time at the address of the insured, stated in said policy or policies and continuing until canceled as provided herein, which, by attachment of the Uniform Motor Carrier Bodily Injury and Property Damage Liability Insurance Endorsement, has or have been amended to provide automobile bodily injury and property damage liability insurance covering the obligations imposed upon such motor carrier by the provisions of the motor carrier law of the State in which the Commission has jurisdiction or regulations promulgated in accordance therewith.

Whenever requested, the Company agrees to furnish the Commission a duplicate original of said policy or policies and all endorsements thereon.

This certificate and the endorsement described herein may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the Company or the insured giving thirty (30) days' notice in writing to the State Commission, such thirty (30) days' notice to commence to run from the date notice is actually received in the office of the Commission.

Countersigned at .....
(Street Address) (City) (State) (Zip Code)

this ..... day of ..... 19.....

.....
Authorized Company Representative

Insurance Company File No. .....
(Policy Number)

C-12799 PRINTED IN U.S.A. IRB 35398 971

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

IN THE MATTER of the adoption of New Rules regarding Minimum Filing Standards for Motor Carrier Rate Increases.	)))))	NOTICE OF A PUBLIC HEARING ON NEW RULES PERTAINING TO MINIMUM FILING STANDARDS FOR MOTOR CARRIER RATE INCREASES

TO: All Interested Persons

1. On October 13, 1978, in the Conference Room of the Public Service Commission, 1227 11th Avenue, Helena, Montana at 10:00 a.m., a public hearing will be held to consider the proposed adoption of rules pertaining to minimum filing standards for motor carrier rate increases.

2. The proposed rules do not replace or modify any section currently in the Montana Administrative Code.

3. The proposed rules provide as follows:

Rule I. COMPARISON OF PRESENT AND PROPOSED RATES (1) All rate increase tariff filings must be accompanied by a cover sheet setting forth the present rate, the proposed rate, and the percentage change for each affected item.

(2) Independent Carrier Filings. Income statements and balance sheets must be submitted for the last two calendar or fiscal years. Where possible, that year should run from January 1 through December 31, or other established regulatory fiscal year (i.e., four 13-week periods).

(a) A pro forma or future year income statement must be submitted which includes all known expense increases, along with the revenue derived from the current requested increase.

(b) Written verified statement explaining the reason(s) or need(s) for the requested increase must be supplied.

(c) Back-up data on all significant expense increases must be included. In the verified statement an explanation will be offered for each increased expense item, along with supporting documents attached for easy reference (i.e., labor contracts, fuel bills, etc.).

(3) Rate Bureau Filings. When submitting a bureau filing, all carrier's data must be submitted for the same time frame with no overlapping periods.

(a) A consolidated income statement for each of the two previous calendar or fiscal years must be submitted. A consolidated pro forma income statement must be submitted, including all known expense increases and the revenue to be derived from the requested increase.

(b) A verified statement must be supplied on a consolidated basis only, however, the individual carrier's forms must be verified.

(c) Bureaus will submit a listing of all carriers party to the affected tariff, along with the corresponding issue revenue for each carrier. This listing must be in descending order of issue revenue.

(d) The carriers submitting detailed information will

account for at least 75% of the issue revenue.

(4) Carriers That File With The I.C.C. A copy of the annual report filed with the I.C.C. must be attached. If two or more applications are filed during the year, only one annual report must be filed with this Commission.

(5) NOTE: All justification material should be filed at the same time the tariffs are deposited at the Public Service Commission.

4. The reason for this action is that the Commission presently lacks rules establishing minimum filing standards for this type of case, and they are needed to expedite the hearing process.

5. Interested parties may submit their data, views, or arguments concerning the proposed adoption in writing in James C. Paine, 1227 11th Avenue, Helena, Montana 59601, no later than September 7, 1978.

6. The Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59601 (Telephone 449-2771), is available and may be contacted to represent consumer interests in this matter.

7. The authority for the Commission to make this rule is based on Sections 8-103, 82-4204 and 82-4204.1, R.C.M. 1947.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE August 1, 1978.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of rules pertaining to county medical assistance and the repeal of Rules 46-2.10(38)-S101950, 46-2.10(38)-S101960, 46-2.10(38)-S101970, 46-2.10(38)-S101980, and 46-2.10(38)-S101990	)))))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES PERTAINING TO COUNTY MEDICAL ASSISTANCE AND THE REPEAL OF RULES 46-2.10(38)-S101950, 46-2.10(38)-S101960, 46-2.10(38)-S101970, 46-2.10(38)-S101980, and 46-2.10(38)-S101990

TO: All Interested Persons

1. On September 7, 1978, at 10:00 a.m. a public hearing will be held in the Auditorium of the State Department of Social and Rehabilitation Services, 111 Sanders Street, Helena, Montana, to consider the adoption of rules pertaining to county medical assistance and the repeal of rules ARM 46-2.10(38)-S101950, 46-2.10(38)-S101960, 46-2.10(38)-S101970, 46-2.10(38)-S101980, and 46-2.10(38)-S101990.

2. The rules proposed to be repealed can be found on pages 46-94.39 through 46-94.41 of the Administrative Rules of Montana.

3. The proposed rule provides as follows:

RULE I GENERAL (1) Medically Needy persons may apply to county welfare departments in the county in which they are residing for medical aid and hospitalization care.

(2) "Medically Needy Persons" for the purposes of this Sub-Chapter 38 of the Economic Assistance Division are those persons who are eligible for General Relief as provided in R.C.M. 1947, Title 71, Chapter 3, and meet the requirements as set forth in this Sub-Chapter.

RULE II APPLICATION FOR COUNTY MEDICAL CERTIFICATION (1) Application for County Medical benefits must be filed prior to receiving such services except when bonafide emergencies preclude such prior application.

(a) Emergency application procedure: Application by an individual for payment of medical services rendered to him under emergency circumstances shall be effective retroactively for five days prior to notice of intent to apply for payment of said services.

(b) Retroactivity beyond the above five day limit may be allowed at the discretion of the county welfare board upon good cause shown for failure to meet said

five day limit; but in no case shall responsibility be assumed by a county for services rendered more than forty five days prior to application or of notice by the individual of intent to apply.

(2) Notice of intent to apply must be given by the individual, a responsible relative or the provider acting on behalf of the individual, or in cases where the individual is not conscious and has no known relatives, the intent will be presumed by the county department of public welfare. Notice may be given either in writing or verbally to any representative of the county welfare department.

(3) Applications are to be processed within the county within 30 days of the date of application, provided, however, payment for services may be delayed until any pending Medicaid application is determined.

(4) When applications are received by a county welfare department on behalf of a person who is the legal responsibility of another county in the state, the application form with all supporting documents shall be mailed within 10 working days to the county of legal residence herein after defined. Failure of the initiating county to conform to this time limit will result in financial responsibility attaching to the initiating county for all bills incurred up to the date of mailing. Inability to determine the responsible county or applicant's legal residence will be justification for delays exceeding ten days, but not greater than 20 days.

(5) Applicant must be notified by the county of its ruling upon applicant's application. If properly authorized by applicant, the provider of medical services shall be also notified of county's ruling.

(6) Upon receipt of an application for County Medical certification, the county welfare department will make a determination of the ability of certain relatives to meet the need in full or in part, as required in Sections 71-233 71-233 through 71-240 of the Revised Codes of Montana, 1947.

RULE III COUNTY RESIDENCY (1) For determination of applicant's county residency requirements, reference is made to R.C.M. 1947, Section 71-302.2. That statute is interpreted to mean that an individual for the purpose of County Medical liability is the responsibility of the county with which said individual has the most significant contacts. In determining with which county an applicant has the most significant contacts, the length of stay in a county shall be considered as a factor. Other factors to be considered are:

(a) Ownership of real property in a county.
(b) Residence of the immediate family in a county.
(c) Payment of taxes, including licensure of automobile or other licensure, in a county.
(d) Patterns of returning to a county after short stays elsewhere.
(e) The expressed intent of an applicant to remain in a county or return to a county permanently.

RULE IV SCOPE AND DURATION OF SERVICES (1) Counties are not required to pay for services which are medically inappropriate. Each county should have a method of reviewing medical claims for appropriateness. Methods of review may include:
(a) Review by county doctor or other medical professional contracted with by the county.
(b) Consultation with providers to assure good communications and relationships.
(c) Requiring that utilization review procedures used for Medicaid and Medicare patients be applied to County Medical cases.
(d) Submission of questionable or suspect cases to the Medical Assistance Bureau for referral under the Department's contract with the Montana Foundation for Medical Care.
(2) As a minimum, County Medical plans must provide needed hospitalization, long term care, physicians's services, and prescribed medications, and aids. At the option of individual counties, services
in addition to basic services may be offered.
(a) Counties are not obligated to pay for any service in behalf of County Medical or Medicaid eligible persons which is supplemental to, a substitute for, or a restoration of any benefit excluded from the Montana Medicaid program.
(3) Counties may provide medical services by employing or contracting with specific providers, or restricting availability of services not yet rendered to county owned and/or county operated facilities or at the option of the county may authorize freedom of choice by eligible persons.
(4) The duration of certification for County Medical services shall be not less than 30 days from the date coverage begins. The duration of certification beyond 30 days will be determined by the county in writing based upon medical necessity for the services provided, and financial need of the applicant.
(5) Persons found eligible for County Medical benefits shall be informed in writing as provided in S101960(5) of these rules with notification defining the

method by which services are to be obtained and specifying the duration of certification.

RULE V ELIGIBILITY, GENERAL (1) Not withstanding other requirement as defined in this section, all persons certified for County Medical benefits must conform with those requirements applicable to General Assistance eligibility listed in 46-2.10(34)-S11910 of these rules.

RULE VI ELIGIBILITY, INCOME (1) Applicants and recipients whose income is at or below 300% of the department's standard for medical assistance for the size of the household will be eligible for county medical benefits.

(a) Those individuals or families whose income is within 133% of the medical assistance standard will be certified without respect to an obligation by the recipient to pay any portion of authorized services.

(b) Those individuals or families whose income is between 133% and 300% of the medical assistance standard will be certified subject to a deductible, equal in amount to 6 times the amount of projected monthly income which is in excess of 133% of the medical assistance standard.

(i) Said deductible will apply to those benefits which would otherwise be the obligation of the county.

(ii) The recipient must designate those medical providers to whom the deductible will be applied.

(2) The income of all members of intact, nuclear families (spouses and minor dependent children) will be counted in determining eligibility. Unborn children when pregnancy is verified will be considered in determining household size.

(3) Applicants or recipients, except for nursing home patients, whose income exceeds current medical assistance standards for the size of the household by 300% or more are not considered eligible for the income requirement. However, persons in nursing homes may be eligible without income limits subject to such persons spending all their income over $25.00 per month for their medical needs.

(4) Income is defined as actual and potential gross income from any and all sources. The gross income shall be adjusted by deducting mandatory withholdings from earned income. The gross income of self-employed applicants shall be adjusted by deducting costs of doing business.

(a) Monthly income is to be determined by some documented means. Documentation may include, but is not limited to:

(i) current wage statements

(ii) benefit notices from Employment Service, Social Security, Veterans' Administration, Workmens Compensation Division or similar agencies,

(iii) most recent tax return of self-employed persons.

(b) Income received on other than a monthly basis is to be converted to monthly income by pro-rating.

(c) Potential monthly income shall be projected to be no greater than the highest monthly income earned in the 6 months immediately prior to application. Potential income shall be determined considering the disability of the applicant, the availability of work in the applicant's field, and the realistic probable earning capacity of the applicant.

(d) Any deductible which is the liability of a reci-pient who fails to acquire other income may be satisfied by the recipient fulfilling a work requirement in those counties which conduct General Relief programs. Credit for the deductible will be earned at the rate of minimum wage.

(5) If need continues beyond the month in which the initial determination is made, eligibility from the income standpoint may be recomputed using the foregoing criteria and procedure. Recomputation shall be made on the request of a denied applicant or at the discretion of the county department on the following basis:

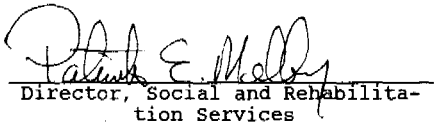
(a) Increase or decrease in the amount of income received by a recipient during the period of certification or within 6 months of denial of eligibility is grounds for reconsidering current eligibility.

4. The department proposes to adopt new rules governing county medical assistance in order to clarify the procedures and criteria for establishing eligibility, and to specify the types and amounts of services provided in the program. The intent of the proposed rules is to clearly establish the condi-tions under which county medical assistance is available to the needy persons within a county in conformity with existing state statutes and case law.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing.

6. The Office of Legal Affairs, P. O. Box 4210, Helena, MT 59601, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based on section 71-308(4), R.C.M. 1947.



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 1, 1978.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of Rule ARM 46-2.2(1)-S2261 pertaining to conflicts of interest of providers for the developmentally disabled	))))))	NOTICE OF PUBLIC HEARING FOR THE ADOPTION OF RULE 46-2.2 (1)-S2261 pertaining to conflicts of interest of providers for the developmentally disabled

TO: All Interested Persons:

1. On September 8, 1978, at 10:00 a.m., a public hearing will be held in the Auditorium of the State Department of Social and Rehabilitation Services, 111 Sanders Street, Helena, Montana, to consider the adoption of Rule 46-2.2(1)-S2261 pertaining to conflicts of interest of providers for the developmentally disabled.

2. The proposed rule does not replace or modify any section currently found in the Administrative Rules of Montana.

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

46-2.2(1)-S2261 DEVELOPMENTALLY DISABLED, PROVIDERS, CONFLICTS OF INTEREST (1) Definitions. For purposes of this rule, the following definitions apply:

(a) "Provider" means a public or non-profit agency, institution, or organization which provides services for developmentally disabled persons.

(b) "Immediate family member" means an individual's parent, child, spouse, brother, sister, or mother-, father-, brother-, or sister-in-law.

(c) "Financial interest" means an interest held by the board member or a member of his immediate family, including but not limited to: any ownership interest in any real or personal property owned in part or leased by the provider or in any business doing business with the provider; an employment relationship with the provider; or any interest as creditor of the provider.

(2) Board Membership. The department will purchase services only from a provider whose bylaws prohibit any of the following from serving as a member of the board of directors:

(a) An employee of the provider, except in an ex officio capacity;

(b) an employee of another provider which is under contract to the department;

(c) a person who is an immediate family member of a person enumerated in (a) or (b) above; or

(d) an employee of the department whose service as board member would violate the code of ethics for state employees, section 59-1701 et seq., R.C.M. 1947.

(3) Board Member Limitation. The department will purchase services only from a provider whose bylaws provide as follows:

(a) A board member may not have a financial interest in or relating to any provider on whose board he serves.

(b) An individual may serve as board member for more than one provider if he is otherwise in compliance with these rules.

(c) A board member who serves on more than one provider board may serve as an officer for only one provider board.

(4) Conflict of Interest Clause. The department will purchase services only from a provider whose bylaws contain a conflict of interest clause which includes but is not necessarily limited to the following conditions:

(a) The provider shall not lease, rent, or purchase real or personal property or services from any member of the provider's board of directors, any employee of the provider, or from any immediate family member of such director or employee, or from any business or enterprise in which such person has a financial interest.

(b) This section does not apply to an employment relationship between the provider and its employees.

(5) Waiver. This rule may be waived by the director of the department in cases where the provider can show that no conflict of interest in fact exists and that no other reasonable alternative exists for obtaining essential property or services.

(6) Effective Date. This rule becomes effective on January 1, 1979.

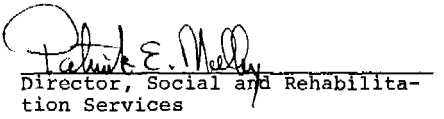
4. This rule is intended to curtail and prevent situations in which providers are entering into property or service contracts with board members or others, causing questions about conflicts of interest to arise. The rule will become effective on January 1, 1979, to provide individuals now in such a situation time to make other arrangements.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing.

6. The Office of Legal Affairs has been designated to preside over and conduct the hearing.

7. The effective date of this rule is to be January 1, 1979.

8. The authority of the agency to make the proposed rule is based on section 71-2404, R.C.M. 1947. The implementing authority is also section 71-2404, R.C.M. 1947.



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 1, 1978.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of ten rules pertaining to reimbursement for skilled nursing and intermediate care services.	))))))	NOTICE OF PUBLIC HEARING ON THE ADOPTION OF TEN RULES PERTAINING TO REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES

TO: All Interested Persons

1. On September 1, 1978, at 9:00 a.m., a formal rulemaking hearing pertaining to Section 82-4216 RCM 1947, will be held in the Auditorium of the State Department of Social and Rehabilitation Services, 111 Sanders Street, Helena, Montana, to consider the adoption of ten rules pertaining to reimbursement for skilled nursing and intermediate care services.

2. The proposed rules replace all rules governing reimbursement for skilled nursing and intermediate care, currently found in the Administrative Rules of Montana.

3. The proposed rule provides as follows:

46-2.10(18)-S11450A REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, PURPOSE AND DEFINITIONS

(1) Reasonable cost related reimbursement for skilled nursing and intermediate care facility services is mandated by Section 249 of Public Law 92-603, the 1972 amendment to the Social Security Act.

The purpose of the following rules is to meet the requirements of Title XIX including Section 249 of Public Law 92-603 and 42 C.F.R. 450, while treating the eligible recipient, the provider of services, and the Department fairly and equitably.

(2) The following method of reimbursement shall be effective October 1, 1978, for all skilled nursing and intermediate care facilities participating in the Montana Medicaid Program.

(3) As used in these rules governing nursing home care reimbursement the following definitions apply:

(a) "CPI" means the All Items figure from the Consumer Price Index for All Urban Consumers published monthly by the Bureau of Labor Statistics, U.S. Department of Labor, 911 Walnut Street, Kansas City, Missouri 64106.

(b) "MPI" means the Medical Care component of the Consumer Price Index for all urban consumers.

(c) "Date of entry into program" means the initial effective date of an agreement between the Department and any individual or organization for the provision of nursing care.

(d) "Department" means the Montana Department of Social and Rehabilitation Services.

(e) "Facility" means a long-term care facility which provides skilled nursing or intermediate care, or both to two or more persons and which is licensed as such by the Montana Department of Health and Environmental Sciences.

(f) "Grouping of Providers" means the classification of providers by reference to their operation of a as free standing nursing home, a combined hospital and nursing home, or a facility serving the mentally ill or retarded, for purposes of determining cost limits.

(g) "HIM 15" means Provider Reimbursement Manual, Health Insurance Manual 15, Part I, 1967, as updated through August 31, 1978, published by the U.S. Department of HEW, SSA.

(h) "HIM 18" means the Audit Program for Extended Care Facilities under the Health Insurance for the Aged Act, Title XVIII, as updated and published by the U.S. Department of HEW, SSA.

(i) "New provider" means a provider who acquires ownership or control of a skilled nursing and intermediate care facility whether by purchase, lease, rental agreement, or in any other way subsequent to the effective date of this rule.

(j) "New facility" means a facility which has not participated in the program at any time prior to the date of entry into the program.

(k) "Nursing care services" means skilled or intermediate nursing care as defined in ARM 46-2.10(18)-S11443 and S11444.

(l) "Owner" means any person, agency, corporation, partnership or other organization which has an ownership interest, including a leasehold or rental interest, in assets used to provide nursing care services pursuant to an agreement with the Department.

(m) "Provider" means any person, agency, corporation, partnership or other organization which has entered into a contract with the Department for the provision of nursing care services.

(n) "Administrator" means the person, including an owner, salaried employee, or other provider, with day-to-day responsibility for the operation of the facility. In the case of a facility with a central management group, the administrator, for the purpose of these rules, may be some person other than the principal administrator of the facility, with day-to-day responsibility for the

nursing home portion of the facility. In such cases, this other person must also be a licensed nursing home administrator.

(o) "Related parties" means husband and wife, parent and child, brother and sister, adopted child and adoptive parent, stepparent, stepchild, stepbrother, and stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, and sister-in-law; grandparent and grandchild; a grantor, a fiduciary, and a beneficiary of a trust; partners in a partnership; corporations, and organizations and persons related by common control or ownership.

Control exists when an individual, group, or organization has the power, directly or indirectly, whether legally enforceable or not, to significantly influence or direct the actions or policies of another individual or organization, whether such power is exercised or not.

Common ownership exists when an individual, group, or organization possesses significant ownership or equity in the assets of a provider and of the assets of an individual or organization serving the provider. In the case of corporations, ownership of 10% or more of the outstanding stock shall be deemed a significant ownership interest. The holdings of related individuals and organizations shall be attributed, one to the other, for purposes of determining the relation to a third party.

(p) "Property cost" means cost related to plant and equipment as defined and allowed in Rule 46-2.10(18)-S11450D(3)(c) and Rule 46-2.10(18)-S11450E(3).

(q) "Operating Cost" means all other costs as allowed in Rule 46-2.10(18)-S11450E(2).

(r) "Cost reporting period ending March 31, 1978" means the period from the close of the provider's last fiscal year to March 31, 1978.

(s) "ICF/MR" means Intermediate Care Facility for the Mentally Retarded as defined in 42 C.F.R. 449.13. In these rules the term intermediate care facility shall include ICF/MRs unless a separate treatment is specified.

All references, except those relating to HIM 15, to laws and regulations refer to citations current as of August 31, 1978, and shall be deemed to include all successor provisions.

46-2.10(18)-S11450B REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, PROSPECTIVE RATES

(1) Reimbursement of the costs of skilled nursing and intermediate care services shall be by means of a prospective rate. A payment rate set prospectively is a rate set for an accounting period entirely on the basis

of cost reports of provider facilities and other cost data for earlier accounting periods, and on economic forecasts available before the beginning of the accounting period for which the rate is paid.

(2) The following prospective rate shall be effective from October 1, 1978 to September 30, 1979, but shall be adjusted for inflation, minimum wage, and occupancy changes during that period.

(3) The prospective rate for a provider shall be based upon the allowable operating costs and allowable capital costs reported in the provider's cost reports filed for the period ending March 31, 1978.

(4) Interested members of the public may obtain a preliminary schedule of initial prospective rates or the rates as they have been adjusted quarterly for inflation upon request to the Department.

46-2.10(18)-S11450C REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, PARTICIPATION REQUIREMENTS (1) The skilled nursing and intermediate care facilities participating in the Montana Medicaid program shall meet the following basic requirements to receive payments for services:

(a) Maintain a current license under the rules of the State Department of Health and Environmental Sciences for category of care being provided.

(b) Maintain a current certification for Montana Medicaid under the rules of the Department for the category of care being provided.

(c) Maintain a current agreement with the Department to provide the care for which payment is being made.

(d) Have a licensed Nursing Home Administrator or such other qualified supervisor for the facility as statutes or regulations may require.

(e) Accept, as payment in full for all operating and property costs, the amounts calculated and paid in accordance with the reimbursement method set forth in these rules.

46-2.10(18)-S11450D REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, RATE DETERMINATION

(1) General Provisions: Prospective rates for each provider are established on the basis of operating costs and capital costs for the period ending March 31, 1978, and projected property expenses reported by each provider, adjusted for non-allowable costs as determined by Rule 46-2.10(18)-S11450E. A cost limit for operating costs and capital costs shall be set at the 90th percentile of per patient day cost for each group of providers, and applied to each provider classified in the group. Reimbursement shall not exceed the average of

customary charges to the general public for such services calculated for the quarter in which a rate is set or adjusted, except that a state or county provider charging nominally may be reimbursed at its prospective rate.

The following rate determination method provides payment rates that consider the full allowable cost of a facility that is economically and efficiently operated as provided in 42 C.F.R. 450.30(a)(3)(iv)(A) and expected economic conditions and trends as provided in 42 C.F.R. 450.30 (a)(3)(iv)(B).

(2) Grouping of Providers: For purposes of calculating an operating cost limit, providers shall be grouped as follows:

(a) Combined hospital and nursing homes;

(b) Free-standing nursing homes; and

(c) Providers primarily serving the mentally ill or retarded under the provisions of 42 C.F.R. 449.13.

(3) Reimbursement Rate: Per diem operating costs adjusted for inflation plus per diem property cost equals reimbursement rate.

(a) Per Diem Operating Cost: Per diem operating cost for each provider is the total allowable operating cost for that provider for the period ending March 31, 1978, divided by patient days and adjusted for an operating cost limit, a profit or quality of care factor, and minimum wage increases.

(i) Operating Costs: Operating costs for use in setting a provider's Base Per Diem Operating Cost will be determined from cost reports for the period ending March 31, 1978. These costs will be adjusted based on the definitions of allowable cost contained in Rule 46-2.10 (18)-S11450E. The total allowable operating cost will be divided by the applicable patient days of care provided during the period covered by the cost report to determine a per diem rate.

(ii) Operating Cost Limit:

(aa) The Operating Cost Limit is the 90th percentile of provider's base per diem operating cost for each group of providers. However, because there are so few providers in the group serving the mentally ill and retarded, a 90th percentile limit cannot be calculated, and these providers shall not be subject to the operating cost limit.

(ab) If the providers Base Per Diem Operating Cost is less than the Operating Cost Limit, then a quality of care incentive factor equal to fifty percent (50%) of the difference up to $.75 per patient day shall be added to the providers Base Per Diem Operating Cost.

(ac) A maximum of $.50 per patient day of the difference between the operating cost prospective rate and the actual operating cost as determined by audit may

be retained by the provider. Any excess will be subject to recovery as an overpayment as provided in Rule 46-2.10(18)-S11450G.

(iii) Minimum Wage Adjustment: An adjustment for the minimum wage increase which became effective January 1, 1978, is included in the provider's Operating Cost as determined for the April 1, 1978 rate period. This same adjustment will be included in the October 1, 1978 rate determination. A further adjustment will be made for future increases in the minimum wage to the extent such increases exceed the CPI inflation adjustment.

(b) Inflation Adjustments:

(i) Quarterly Adjustment: A quarterly inflation adjustment shall be determined by reference to the CPI and MPI and calculated as follows:

(aa) The CPI component of change is calculated by taking the percentage change in the monthly CPI between the seventh month prior to the quarter for which the adjustment is to be made and the fourth month prior. The adjustment for the July through September, 1978 quarter would be based on the percentage change in the CPI between December, 1977 and March, 1978. The adjustment for the October through December, 1978 quarter would be based on the percentage change in the CPI between March, 1978 and June, 1978. The adjustment for the January through March, 1979 quarter would be based on the percentage change in the CPI between June, 1978 and September, 1978, etc.

(ab) A similar calculation is made to determine the MPI component of change.

(ac) The inflation adjustment percentage is calculated by multiplying the CPI component of change determined in Rule 46-2.10(18)-S11450D(3)(b)(i) (aa) by 2/3 and adding this result to 1/3 of the MPI component of change determined in Rule 46-2.10(18)-S11450D(3)(b)(i) (ab).

(ad) The inflation adjustment percentage is multiplied by the mean of the Per Diem Operating Cost, as determined in Rule 46-2.10(18)-S11450D(3)(a)(i) for each group to determine the dollar amount of the quarterly inflation adjustment for providers in that group.

For subsequent quarters the inflation adjustment percentage will be multiplied by the sum of the mean of Per Diem Operating Cost and all previous quarterly inflation adjustment amounts.

(ae) The applicable quarterly inflation adjustment amount is added to each provider's previous per diem prospective operating cost rate to determine the prospective per diem operating cost rate for the next quarter.

Example:

1.	CPI component of change	
	CPI December, 1977	186.1
	CPI March, 1978	189.8
	Percent change	1.99%
2.	MPI component of change	
	MPI December, 1977	209.3
	MPI March, 1978	214.5
	Percent change	2.48%
3.	Inflation adjustment percentage	
	2/3(1.99) 1/3(2.48) =	2.15%
4.	Quarterly inflation adjustment for July through September, 1978	
	Mean of Per Diem Operating Cost	$20.00
	Inflation adjustement percentage	x 2.15%
	Dollar amount of quarterly inflation adjustment	$ 43
5.	Quarterly inflation adjustment for October through December, 1978	
	Mean of Per Diem Operating Cost	$20.00
	Previous quarterly adjustment	.43
	Adjustment Mean	$20.43
	Inflation adjustment percentage	x 2.46%
	Dollar amount of 2nd quarterly inflation adjustment	$ .50
6.	Providers new rate (operating costs)	
	Provider X, Prospective Per Diem Operating Cost Rate	$17.00
	Sum of 1st and 2nd quarterly inflation adjustments	.93
	Rate for Provider X, October through December, 1978	$17.93

(af) The intitial adjustment shall be made for rates payable in the quarter beginning October 1, 1978, using the July through September, 1978, quarter and the adjustment for the October through December, 1978 quarter.

(ag) The provider shall be notified of subsequent prospective rate quarterly inflation adjustments 45 days prior to the quarter in which it becomes effective. A schedule of rates for all providers shall be available upon request to the Department.

(ii) Annual Re-Basing: The prospective operating cost rate for the quarter beginning October 1, 1979, and annually thereafter, will include an adjustment for any difference between actual allowable operating cost increases for each group of providers as determined from

the average of cost increases reported in individual provider cost reports and the CPI and MPI inflation adjustments and minimum wage adjustments that have been provided.

(c) Per Diem Property Costs: Property Costs reimbursement will be calculated using historical capital cost as reported in cost reports for the period ending March 31, 1978, and projected property expenses for the October 1, 1978 through September 30, 1979 period as reported by each provider and as adjusted by Rule 46-2.10(18)-S11450D(3)(c)(iii) and allowable in Rule 46-2.10(18)-S11450E.

(i) Property Costs Classes: Property costs will be divided into two classes -- capital costs items and property expense items -- defined as follows:

(aa) Capital costs items are depreciation, interest, mortgage guarantee insurance (except mortgage life insurance that pays off the loan principal) amortization of points or other mortgage discount and lease costs.

(ab) Property expense items are property taxes, comprehensive property damage and property liability insurance (except malpractice, workmen's compensation, and automobile insurance), utility costs, and equipment interest and depreciation.

The sum of items in (aa) and (ab) will be divided by the applicable patient days of care provided during the period covered by the cost report to determine a per diem rate.

(ii) Capital Cost Limit:

(aa) Owned Facilities: The per diem capital cost limit is the 90th percentile of owned facility providers capital cost.

(ab) Leased Facilities: The per diem amount of the lease or rental agreement, excluding any property expense items paid as part of the lease or rental agreement, is limited to the Capital Cost Limit for Owned Facilities.

(ac) New Leases: Providers who enter into a lease or rental agreement after September 30, 1978, will be reimbursed the underlying lease costs of depreciation and interest expense up to the Capital Cost Limit. Further, the depreciation portion of the lease cost will only be recognized if the lessor agrees to be bound by the depreciation recapture provisions of Rule 46-2.10(18)-S11450E(3)(d).

(iii) Property Expense Adjustment: Because the property expense portion of the prospective rate is based on estimates of property expenses supplied by the provider, an adjustment will be made as provided in Rule 46-2.10(18)-S11450G for differences of greater than 5% between projected property expenses and actual cost as determined by audit.

(iv) Return on Investment: Proprietary providers are permitted to retain fifty percent (50%) of the difference up to $.50 between the providers capital cost and the Capital Cost Limit. No distinction shall be made between owned and leased facilities in the determination of return on investment.

(v) The prospective rate shall be adjusted quarterly for property costs associated with new equipment acquisition not included in the original projection and capital improvements after October 1, 1978.

(vi) Occupancy Adjustment: Actual occupancy for the reporting period ending March 31, 1978, will be used to set the property cost prospective rate. Adjustments to the property cost portion of the prospective rate will be made quarterly if actual occupancy during any quarter changes by more than 3 percentage points (i.e. from 90% to 93%).

(vii) No adjustment will be made for increased costs as a result of a sale and leaseback. No adjustment will be made for a transfer between related parties.

(d) Private Pay Limitation: The prospective rate shall be limited to the average per diem charges to private patients receiving similar services. Within 30 days after rate notification, the provider shall notify the Department of its anticipated schedule of charges to private patients. The prospective rate shall then be adjusted to reflect the private pay limitation where applicable. Rate data will only be considered for private patients receiving services comparable to the Medicaid levels of skilled nursing and intermediate care as defined in ARM 46-2.10(18)-S11441, S11442 and S11443. If it is determined that the provider's projected charges to such private patients were erroneous, recovery or payment proceedings will be undertaken immediately in accordance with the provisions of Rule 46-2.10(18)-S11450G.

46-2.10(18)-S11450E REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, ALLOWABLE COSTS (1) For purposes of determining allowable costs for individual providers to be utilized in setting the individual providers prospective rate, the principles governing allowable cost contained herein shall be applied.

(a) As a prerequisite to allowability, all items of cost must be supported by source documentation which clearly identifies the item or service purchased and the cost incurred.

(b) The general principles of reasonableness, necessity and prudent buyer as set forth in paragraphs 2100, 2102 and 2103 of HIM 15, which are hereby incor-

porated and made a part of this rule by reference, are applicable in making the determination of allowable costs.

(c) Costs of meeting all certification standards for skilled nursing and intermediate care facilities required by the State Department of Health and Environmental Sciences, by state law, or by Federal legislation or regulation including those outlined in 42 C.F.R. 450.30(a)(3)(iii)(A) are allowable. Cost of meeting new certification standards implemented subsequent to September 30, 1978 shall be added to each provider's prospective rate.

(d) Costs to related parties, as defined in Rule 46-2.10(18)-S11450A(3)(o), shall be governed by and allowable to the extent provided by the provisions of Chapter 10 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(2) For purposes of determining allowable operating costs, the following shall be applied:

(a) Costs of routine services: Allowable costs shall include standard items of expense included in the per diem rate which providers incur in the provision of routine services to the extent such expenses are reasonable and necessary. Routine services include room, dietary and nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Excluded from routine services are ancillary medical supplies and services for which reimbursement may be received over and above the prospective per diem rate. Ancillary medical supplies and services are defined in Rule 46-2.10(18)-S11450(2)(b). Also excluded from routine services is social service consultation since such consultation may be provided to facilities by the Department through its staff consultants. Examples of expenses that are allowable costs for routine services are:

(i) All general services including but not limited to administration of oxygen and related medications, hand-feeding, incontinency care, tray service, and enemas;

(ii) Items furnished routinely and relatively uniformly to all patients without charge, such as patient gowns, water pitchers, basins and bed pans;

(iii) Items stocked at nursing stations or on the floor in gross supply and distributed or used individually in small quantities without charge: such as alcohol, applicators, cotton balls, bandaids, antacids, aspirin (and other non-legend drugs ordinarily kept on hand), suppositories, and tongue depressors;

(iv) Items which are used by individual patients which are reusable and expected to be available, such as

ice bags, bed rails, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment;

(v) Laundry services will be allowed except for patients personal clothing which is dry cleaned outside of the facility.

(b) Ancillary medical supplies and services: Ancillary medical supplies and services are limited to the medical supplies and services needed to provide nursing care to patients who are required by doctor's orders to receive extraordinary care. The provider shall be paid for ancillary medical supplies and services in addition to the prospective per diem rate provided that the supplies and services have been prior authorized by the Montana Foundation for Medical Care to signify that the item is medically necessary and the bills for these items have the have the authorization on the face of the claim form. Payment for ancillary medical supplies and services shall be the actual cost the provider incurred in providing the item or service and such costs shall conform with the general principles defined in Rule 46-2.10(18)-S11450E. Any item not specified as an ancillary medical supply or service shall be considered a routine service. Revenues receives from the Montana Medicaid Program for ancillary medical supplies or services over and above the prospective per diem rate are recoveries of cost and shall be deducted from the related cost. Ancillary medical supplies and services include:

(i) Oxygen (code 932-3308-00)

(ii) Wheelchair (custom, special design for unique condition) (code 932-3242-00)

(iii) Wheelchair (standard motorized) (code 932-3237-00)

(iv) Wheelchair (child, motorized) (code 932-3241-00)

(v) Helmet (code 932-3315-00)

(vi) Disposable Colostomy Appliance (code 932-4210-00)

(vii) Colostomy Shield Appliance (code 932-4213-00)

(viii) Disposable Lelostomy Appliance (code 932-4219-00)

(ix) Catheter (Urethral, rubber or silicone) (code 932-4233-00)

(x) Catheter (Indwelling Foley Balloon Retention) (code 932-4234-00)

(xi) Catheter (misc.) (code 932-4235-00)

(xii) Scrotal Truss (code 932-6101-00)

(xiii) Umbilical Truss (code 932-6102-00)

(xiv) Shoulder Brace (code 932-6103-00)

(xv) Sacroiliac Support (code 932-6104-00)

(xvi) Lumbosacral Support (code 932-6105-00)

(xvii) Post Hernia Truss (code 932-6106-00)

(xviii) Hinged Joint Steel Knee Cap (code 932-6707-00)
(xix) Wrist Support Leather (code 932-6108-00)
(xx) Corsets (code 932-6109-00)
(xxi) Abdominal Support (code 932-6110-00)
(xxii) Dorso Lumbar Support (code 932-6111-00)
(xxiii) Orthopedic Brace (code 932-6113-00)
(xxiv) Elastic Stockings (sheer type, Jobst or comparable) (code 932-6201-00)
(xxv) Elastic Stockings (surgical type, Jobst or comparable) (code 932-6201-00)
(xxvi) Special dietary supplements used for tube feeding or oral feeding (such as elemental high nitrogen diet) (code 992-047-00)
(xxvii) Prescription drugs
(xxviii) Occupational, speech, physical and other therapy
(xxix) X-ray

(c) Administrators Compensation:

(i) Administrators compensation is limited to the following schedule of compensation based on bed size of facility:.

No. Beds	Compensation
0- 50	$24,000
51-100	27,000
101 and over	30,000

This schedule shall be adjusted annually by percentage change in CPI for the previous year.

(ii) Administrators compensation shall include:

(aa) Salary amounts paid to the administrator for managerial, administrative, professional and other services.

(ab) Employee benefits excluding employer contributions required by state law--FICA, WCI, FUI, SUI. For a self-employed administrator, an amount up to the employers contribution may be excluded for expenses claimed by the administrator for comparable retirement, disability, and unemployment coverage. The excess self-employment contribution to FICA may also be excluded..

(ac) Deferred compensation either accrued or paid.

(ad) Supplies, services, special merchandise, and the cost of assets paid or provided for the personal use of the administrator.

(ae) Wages of a domestic or other employee who works in the home of the administrator.

(af) Personal use of a car owned by business.

(ag) Personal life, health, or disability insurance premium paid.

(ah) A portion of the physical plant occupied as a personal residence.

(ai) Other types of remuneration, compensation fringe benefits or other benefits whether paid, accrued,

or contingent.

(d) Employee benefits:

(i) Employee benefits are defined as amounts paid to or on behalf of an employee, in addition to direct salary or wages, and from which the employee or his beneficiary derives a personal benefit before or after the employee's retirement or death.

(ii) All employer contributions which are required by State or federal law, including FICA, WCI, FUI, SUI, are allowable employee benefits. In addition, employee benefits which are uniformly applicable to all employees are allowable. A bona fide employee benefit must directly benefit the individual employee, and shall not directly benefit the owner, provider or related parties.

(iii) Costs of activities or facilities which are available to employees as a group, such as condominiums, swimming pools or other recreational activities, are not allowable. Cash bonuses and staff parties are considered employee benefits.

(iv) For purposes of this subsection, an employee is one from whose salary or wages the employer is required to withhold FICA. Notwithstanding the above, stockholders or officers of a corporate provider, and partners owning a facility are not employees.

(e) Paid vacation and sick leave shall not be considered employee benefits, but shall be allowable to the extent that the facility has in effect a written policy which is uniformly applicable to all employees within a given class of employees, and paid vacation and sick leave are reasonable in amount.

(f) Costs of employment related taxes, license taxes and other taxes concerned with the operation of a nursing facility are governed by and allowable to the extent provided by paragraphs 2122 through 2122.5 of HIM 15, which are hereby incorporated and made part of this rule by reference.

(g) Costs of telephone, television and radio services are governed by and allowable to the extent provided by paragraphs 2106 through 2106.2 of HIM 15, which are hereby incorporated and made a part of this rule by reference..

(h) Life insurance premiums are governed by and allowable to the extent provided by paragraph 2130 of HIM 15, which is hereby incorporated and made a part of this rule by reference.

(i) Franchise fees are governed by and allowable to the extent provided by paragraphs 2133 through 2133.10 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(j) Organization costs are governed by and allowable to the extent provided by paragraphs 2134

through 2134.11 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(k) Advertising costs are governed by and allowable to the extent provided by paragraphs 2136 through 2136.2 of HIM 15, which are hereby incor-porated and made a part of this rule by reference.

(l) Home office costs are governed by and allowable to the extent provided by paragraphs 2150 through 2153 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(m) Losses are governed by and allowable to the extent provided by paragraphs 2160 through 2160.5 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(n) Malpractice and Workers' Compensation insurance costs are governed by and allowable to the extent provided by paragraphs 2161 through 2162.13 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(o) Post-termination costs are governed by and allowable to the extent provided by paragraphs 2176 through 2176.2 of HIM 15, which are hereby incorporated and made a part of this rule by reference except as otherwise provided in these rules.

(o) Purchase discount allowances and refunds are governed by paragraphs 800 through 8.0.2 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(q) Grants, gifts and endowments are governed by and allowable to the extent provided by paragraphs 600 through 614 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(r) Bad debts, charity and courtesy allowances are deductions from revenue and shall not be allowable as costs.

(s) Revenues received for services or items provided to employees and guests are recoveries of cost and shall be deducted from the related cost.

(t) Dues, membership fees or subscriptions to organizations unrelated to the provider's professional or business activities are not related to patient care and are not allowable costs.

(u) Charges for services of a chaplain are not an allowable cost.

(v) Fees for management or professional services (e.g., management, legal, accounting or consulting services) are allowable to the extent they are identified to specific services, and the hourly rate charged is reasonable in amount. In lieu of compensation on the basis of an hourly rate, the provider may compensate for professional services on the basis of a reasonable

retainer agreement which specifies in detail the services to be performed. Documentation that such services were in fact performed shall be provided by the provider. No cost in excess of the agreed upon retainer fee shall be allowed.

(w) Entertainment expenses directly related to the provider's nursing home operation shall be allowed.

(x) Transportation costs for travel related to patient care are allowable in accordance with Internal Revenue guidelines for items of expense. Vehicle operating costs will be pro-rated between business and personal use based on mileage logs or a prior approved percentage derived from a sample mileage log or other method acceptable to the Department. For vehicles used primarily by the administrator, any portion of vehicle costs disallowed on pro-ration can be included as compensation subject to the limits specified in Rule 46-2.10(18)-S11450E(2)(b). Depreciation will be allowed on a straight-line basis with a minimum of 3 years. Depreciation and interest or comparable lease costs may not exceed $2,400 per year. Other reasonable vehicle operating expenses will be allowed. Public transportation costs will be allowable at tourist or other available commercial rate (not first class).

(y) The reasonable cost of providing services to mentally retarded persons, as both are defined in 42 C.F.R. 449.13, shall be allowed in facilities not specifically designated as ICF/MR.

(3) For purposes of determining allowable property costs, the following shall be applied:

(a) Costs of taxes are governed by and allowable to the extent provided by paragraphs 2122 through 2122.5 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(b) Property insurance costs are governed by paragraphs 2161 through 2162.13 of HIM 15, which are hereby incorporated and made a part of this rule by reference.

(c) Interest expense shall be governed by and allowable to the extent provided by paragraphs 200 through 232 of HIM 15, which are hereby incorporated and made part of this rule by reference.

(d) Depreciation shall be governed by and allowable to the extent provided by paragraphs 100 through 108.2 and 118 of HIM 15, which are hereby incorporated and made a part of this rule by reference. Depreciation shall be calculated using the straight line method, as defined in paragraph 116.1 of HIM 15, which is hereby incorporated and made a part of this rule by reference.

(i) The disposal of assets on which there is a gain or loss on sale which must be allocated to the period from July 1, 1974, to March 31, 1978, shall be governed

by and allowable to the extent provided by the provisions of Chapter 1, HIM 15, which are hereby incorporated and made a part of this rule by reference. July 1, 1974, is the starting date of the program for purposes of applying the above provisions.

(ii) Depreciation allowed by the Department in the calculation of prospective rates from April 1, 1978, shall be recoverable by the Department upon sale of the facility and/or equipment at a price in excess of the provider's cost less accumulated depreciation at the time of sale. The amount of depreciation recoverable under this subparagraph is the amount, allocated to periods beginning April 1, 1978, by which the sale price exceeds the seller's original cost plus capital improvements less depreciation allowed by the Department, or the amount of depreciation actually paid, whichever is the lesser.

(iii) The amount of depreciation recovery constitutes a debt due the Department as of the date of sale and may, at the option of the Department be recovered from the seller or any transferee or fiduciary who has benefited from a transfer of assets on which depreciation was paid, or by means of a reduction in asset basis for purposes of future rate determinations.

Notwithstanding the above there shall be no recovery by a provider of any loss incurred after termination from the program, or as a result of termination.

46-2.10(18)-S11450F REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, COST REPORTING The procedures and forms for maintaining cost information and reporting are as follows:

(1) Generally accepted accounting principles shall be used by each provider to record and report costs. As part of the cost report these costs will be adjusted in accordance with these rules to determine allowable costs.

(2) The accrual method of accounting shall be employed, except that, for governmental institutions operated on a cash method or a modified accrual method, these methods of accounting will be acceptable.

(3) Cost finding means the process of allocating and prorating the data derived from the accounts ordinarily kept by a provider to ascertain its costs of the various services provided. In preparing cost reports, all providers shall utilize the step down method of cost finding described at 42 C.F.R. 405.453(d)(1) which is hereby incorporated and made a part of this rule by reference. Notwithstanding the above, distinctions between skilled nursing and intermediate care need not be made in cost finding.

(4) Uniform Chart of Accounts. The Department has developed a Uniform Chart of Accounts based upon the

American Health Care Association Uniform Chart of Accounts for Long-Term Care Facilities published in 1976. The use of the uniform chart of accounts is not mandatory if the information for the Uniform Financial and Statistical Report can be compiled from other source documents.

(5) Uniform Financial and Statistical Report. Provider costs are to be reported based upon the provider's fiscal year using the Financial and Statistical Report Form provided by the Department. The use of the new Financial and Statistical Report Form becomes mandatory for participating facilities for facility fiscal years beginning on or after April 1, 1978. These reports shall be complete and accurate; incomplete reports or reports containing inconsistent data will be returned to the provider for correction.

(a) Filing Period -- Cost reports must be filed within 90 days after the end of the provider fiscal year.

(b) Rate Period -- Rates are promulgated quarterly beginning October 1, 1978.

(c) Late Filing -- In the event a provider does not file within 90 days of the closing date of its fiscal year, or files an incomplete cost report, an amount equal to 20% of the provider's total reimbursement for the following month shall be withheld by the Department. For each succeeding month the report is overdue or incomplete an amount equal to 40% of the provider's total reimbursement shall be withheld. All amounts so withheld will be payable to the provider upon submission of a complete and accurate cost report. Unavoidable delays may be reported with a full explanation and a request made for an extension of time limits prior to the filing deadline.

(d) Cost reports shall be signed by the individual provider, a partner of a partnership provider, the trustee of a trust provider, or an authorized officer of a corporate provider. The person executing such reports shall sign under penalties of false swearing, that he has examined the report including accompanying schedules and statements, and that to the best of his knowledge and belief, the report is true, correct, and complete, and prepared consistent with governing laws and regulations.

(e) The preparer of such cost reports shall also sign the reports stating that the report has been prepared based on all information of which he has knowledge.

(6) Maintenance of Records. Records of financial and statistical information supporting cost reports must be maintained by the provider at the facility or another pre-determined location within Montana for five years after the date a cost report is filed, or the date the cost report is due, whichever is later.

The Department shall maintain on file the cost reports submitted by the providers for a period of five years. These reports shall be available to authorized representatives of the Department of Health, Education, and Welfare.

(a) Each provider facility will maintain, as a minimum, a general ledger and the following supporting ledgers and journals: revenue, accounts receivable, cash receipts, accounts payable, cash disbursements, payroll, general journal, patient census records identifying the level of care of all patients individually, all records pertaining to private pay patients and patient trust funds.

(b) All business records of any related party, including any parent or subsidiary firm, which relate to a provider under audit, shall be available at the facility or another pre-determined location within Montana for audit by the Department or its designated representative upon reasonable notice to the provider. Personal financial records of the owner of a facility or related party shall be made available for audit by the Department or its designated representative upon reasonable notice given by the Department.

(c) Cost information as developed by the provider shall be current, accurate and in sufficient detail to support payments made for services rendered to beneficiaries and recorded in such a manner to provide a record which is auditable through the application of reasonable audit procedure. This includes all ledgers, books, records and original evidences of cost (purchase requisitions, purchase orders, vouchers, invoices, requisitions for materials, inventories, labor time cards, payrolls, bases for apportioning costs, etc.) which pertain to the determination of reasonable cost.

(d) All of the above records and documents shall be available at the facility or another pre-determined location within Montana subject at all reasonable times to inspection, review or audit by the Department and the U.S. Department of Health, Education and Welfare personnel, or any designated representative of the Department. The provider will make all records available as may be necessary for purposes of Legislative post-audit or analysis in accordance with the provisions of Section 9 of HB145 the General Appropriations Act of 1977. Upon refusal of the provider to allow access to the above records and documents, the costs which are based upon the withheld data will be deemed unsupported and not allowable for reimbursement purposes. If payments have been made based upon interim information the applicable amounts shall be recovered by the Department. In addition, the Department may at its option terminate any

contracts between the Department and provider if the above records and documents are withheld (after proper notice).

46-2.10(18)-S11450G REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, OVERPAYMENT AND UNDERPAYMENT (1) Overpayment and Underpayment on Prospective Rate.

(a) For most providers the prospective rate will be based on a cost report that has received only a desk review. In situations where the Department finds during field audit that the prospective rate was based on an erroneous cost report resulting in an overpayment, the Department will notify the provider of the overpayment.

(b) In the event of an overpayment the Department will, within 30 days after the day the Department notifies the provider that an overpayment exists, adjust the provider's prospective rate and arrange to recover the overpayment by set-off against amounts paid under the adjusted prospective rate or by repayments by the provider.

(c) If an arrangement for repayment cannot be worked out within 30 days after notification of the provider the Department will make deductions from prospective rate payments with full recovery to be completed with 120 days from date of the initial request for payment. Recovery will be undertaken even though the provider disputes in whole or in part the Department's determination of the overpayment, unless a formal request for a hearing is filed by the provider within 30 days of notification.

(d) Errors in cost report data identified by the provider may be corrected and given consideration for rate adjustment if submitted within 30 days after rate notification. Adjustments will also be made for computational errors in rate determination review by the Department.

(e) In the event an underpayment has occurred, the Department will reimburse the provider within 30 days of the Department's determintion of error and adjust the prospective rate accordingly.

(f) No court or administrative proceeding for collection of an overpayment or underpayment shall be commenced after five years following the due date of the original cost report. In the case of a fraudulent cost report, recovery of overpayment may be undertaken at any time.

(g) The amount of any overpayment constitututes a debt due the Department as of the date of initial request for payment and may be recovered from any person, party, transferee, or fiduciary who has benefited from the

payment or a transfer of assets.

(h) All overpayments or underpayments will be accounted for by the Department on the Federal report OA-41.

46-2.10(18)-S11450H REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, NEW FACILITIES (1) New facilities participating for the first time in the program will be given an interim prospective rate based upon the average per diem operating cost of providers in the group in which the provider is to be classified plus estimated capital cost and property expenses using an 80% occupancy factor.

(2) A prospective rate based on the individual providers audited cost will be determined following the first complete fiscal year after an occupancy of 80% has been achieved.

(3) Reimbursement rates for providers having facilities that are newly constructed, have major additions or renovations, are refinanced or are sold are calculated differently from those for established participating facilities because there are no historical capital costs from which to determine rates. Such providers are requested to certify and submit to the Department their expected capital costs and property expenses. The Department will use the certified expected dollar value of capital costs and property expenses in calculating the prospective rate, pending audit. If, upon audit, the Department finds a discrepancy between certified information and actual costs, then all excess funds paid by the Department to the facility as a result of that request will be recovered with a penalty factor (equal to the then current Medicare rate on net equity) applied to the discrepancy.

(4) An individual who is a new provider by reason of his purchase or lease of a facility which is currently participating in the program will receive the prospective rate set for the previous provider for operating costs.

46-2.10(18)-S11450I REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, AUDITS, RATE REVIEW (1) Department audit staff will perform a desk audit of cost statements prior to rate setting and will conduct on-site audits of provider records. Where appropriate, audit procedures defined in the HIM 18 shall be adopted by the Department but the Department shall not be confined to these guidelines and may utilize other methods.

(a) Desk Review. Desk review of cost reports will determine the adjustments to be applied to reported costs for rate determination. Incomplete reports, or inconsis-

tency in reported costs will cause the return of the cost report to the facility for correction and will result in withholding payment as specified in Rule 46-2.10(18)-S11450F(5)(c).

(b) Field Audits. On-site audits of provider detail records will be made to assure validity of reports, costs and statistical information. A schedule of on-site audits will be developed so that each participating provider is audited over a three-year period beginning April 1, 1978 (the scheduled receipt date of cost reports for providers whose fiscal reporting periods began on January 1, 1977), and no less than one-third of partici-pating providers are audited each year. After the end of the above three-year period, on-site audits shall be conducted for a minimum of 15% of the participating providers yearly. Five percent of the providers shall be selected on a random sample with the remainder being selected on a basis of exceptional profiles.

(c) Exit Conferences. On conclusion of on-site audit, the auditor shall write a summary of his findings and recommendations. This summary shall be mailed to the provider no later than 10 days after the completion of the on-site audit. Within 10 days of receipt of the written findings or recommendations the provider may request an exit conference. Such conference shall be held no later than 30 days after receipt of request.

(d) Prospective Rate Review Conferences. Prospective rate review conferences with agency staff may be requested by the provider within 30 days after rate notification. The request for prospective rate review shall identify all items for consideration at the administrative conference by specific reference to the appropriate section of the cost statement. The request for review shall identify the provider representatives who will be present.

The rate review conference, if timely requested, shall be held no later than 30 days from the receipt of request.

46-2.10(18)-S11450J REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES, FAIR HEARING PROCEDURES (1) In the event the provider does not agree with the rates recommended by the Department, the following fair hearing procedures will apply:

(a) The written request for a fair hearing shall be addressed to the Department of Social and Rehabilitation Services, Hearings Officer, Helena, Montana.

(b) The request shall be signed by the provider or his designee.

(c) The fair hearing request must be received not

later than the 60th calendar day following the date of the rate notification, or within 30 days of the rate review conference. If it is filed later, justification for the delay must be given to the hearings officer who, for good cause, may waive the time limit.

(d) The fair hearing request shall identify the individual settlement items and amount in disagreement, give the reasons for the disagreement, and furnish substantiating materials and information.

(e) Within ten days of receipt of the request, the hearing officer shall notify the provider and other parties of the time and place for the prehearing conference, which shall be within 30 days. The notice will state the purpose of the prehearing conference and the issues to be resolved, stipulated to, or excluded. The hearings officer may waive the prehearing conference.

(f) Within ten days after the prehearing conference, the hearings officer shall notify the provider and other parties of the time and place for the hearing, which shall be within 60 days.

(g) The hearings officer will reduce his decision to writing within ten days of completion of the hearing based upon evidence and other material presented at the hearing.

(h) In the event the provider or Department disagrees with the hearings officer's decision, a Notice of Appeals may be submitted to the hearings officer for forwarding to the Board of Social and Rehabilitation Appeals within ten days of the hearings officer's decision. The Notice of Appeals shall set forth the specific grounds for appeal.

(i) All evidence in the record and offers of proof shall be transmitted to the Board by the hearings officer. The decision of the Board shall be based solely on the record transmitted by the hearings officer. A legal brief or a legal argument may be presented personally or through a representative of the provider to the Board.

(j) The Board shall reduce its decision to writing and mail copies to the providers within ten days of completion of the hearing. The provider shall be notified of its right to judicial review under the provisions of Section 82-4216, R.C.M. 1947.

4. The purpose of the proposed rules is to meet the requirements of Section 249 of Public Law 92-603 and 42 C.F.R. 450 while treating the eligible recipient, the provider of services and the taxpayers of the State of Montana fairly and equitably. The rules are intended to prescribe rates of payment reasonably adequate to reimburse in full the actual allowable cost of skilled and intermediate care facilities that are economically and

efficiently operated.

5. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may be submitted to the Office of Legal Affairs, P.O. Box 4210, Helena, Montana 59601, any time before September 8, 1978.

6. An alternative to adopting the proposed ten rules pertaining to reimbursement for skilled nursing and intermediate care services is for the Department to continue to reimburse for such services using the eleven rules adopted April 1, 1978.

7. Stephen Brown, 1400 Eleventh Avenue, Helena, Montana, 59601, has been designated to preside over and conduct the hearing.

8. The authority of the Department to make the proposed rules is based on section 71-1511, R.C.M. 1947.

The implementing authority for the proposed rules is based on section 71-1517, R.C.M. 1947.

Director, Social and Rehabilitation Services

Certified to the Secretary of State August 1, 1978.

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment of rule ARM 16-2.14(1)-S1490 relating to open burning	)))	NOTICE OF THE AMENDMENT OF RULE ARM 16-2.14(1)-S1490 (Open Burning)

To: All Interested Persons:

1. On March 24, 1978, the Board of Health and Environmental Sciences published notice of proposed amendments to rule ARM 16-2.14(1)-S1490 concerning open burning at page 318 of the 1978 Montana Administrative Register, issue number 3.

2. The Board has amended the rule as proposed in the notice with minor editorial changes and the following substantive changes.

16-2.14(1)-S1490 OPEN BURNING RESTRICTIONS

(1) Similar to proposed rule

(2) Similar to proposed rule

(3) For purposes of essential agricultural or forestry burning:

(a) Same as proposed rule

(b) ~~All reasonable measures shall be taken to extinguish any burning under this rule which is creating a public nuisance.~~ Materials to be burned should be in a dirt-free condition.

(c) All reasonable measures shall be taken to extinguish any burning under this rule which is creating a public nuisance.

(4) Same as proposed rule

(5) [~~The director of the department may permit the burning of substances otherwise not permitted to be burned under this rule upon a written application to the department showing that the substance poses an immediate threat to public health and safety or to plant and animal life. The applicants shall demonstrate and certify in writing that there is no other alternative method for removing the substance.~~]

Emergency Open Burning Permits. The Department may issue an emergency open burning permit to allow burning of substances not otherwise approved for burning under this rule if certain conditions exist. Before the department shall issue such a permit it must be satisfied that the applicant has demonstrated that the substance sought to be burned poses an immediate threat to public health and safety, or plant and animal life for which no other alternative is reasonably available.

Application for such a permit may be made to the department by telephone. Upon completion of the burn, the recipient of the emergency open burning permit shall provide the department with a written report of the burn. It shall discuss why alternative methods of disposing of the substance

were not reasonably available; why the substance posed an immediate threat to human health and safety or plant and animal life; the legal description of where the burn occurred; the amount of material burned; and the date and time of the burn.

The department will issue emergency open burning permits for disposing of oil from oil field sludge pits under this section if the above procedures are met. After July 1, 1980, such burning will be prohibited. Owners and operators of oil fields with sludge pits shall submit to the department by January 1, 1979, a plan which provides for their disposing of oil wastes from sludge pits by alternative methods other than burning not later than July 1, 1980.

3. At the public hearing adverse comments were received from citizens and representatives of the petroleum industry concerned with oil sludge pits from oil wells, the environmental hazards they present and the need for burning them off due to the unavailability of reasonable alternatives at the present.

Oral testimony and written comments were also received from the Department's Solid Waste Management Bureau concerning open burning of petroleum products in view of draft proposals by the U.S. Environmental Protection Agency to classify petroleum wastes as hazardous wastes.

The concerns of the petroleum industry were closely examined by the Department and the Board and it was found that no reasonable alternatives to open burning of oil sludge pits exist in most areas of Montana at the present time. Proposed subsection (5), dealing with emergency open burning permits, was amended to allow until July 1, 1980, for burning of such substances if emergency conditions were found by the Department to exist. Operators of oil fields were to study the problem for other alternatives and submit compliance plans to the Department by January, 1979. The Department's Solid Waste Management Bureau indicated its willingness to work with the petroleum industry to consider other alternatives such as land farming oil wastes. The procedure for applying for such emergency permits was changed to allow for telephone application and authorization followed up with written reports.

The existing rule was also amended to distinguish burning of agricultural and forestry-related products from other substances due to the significant differences that exist among them.

John W. Bartlett

JOHN W. BARTLETT, Chairman

Certified to the Secretary of State August 1, 1978

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the amendment of ARM 32-2.6A(78)-S6330 to remove the Equine Infectious Anemia (EIA) test requirement on horses or other equidae imported into Montana.	NOTICE OF THE AMENDMENT OF RULE 32-2.6A(78)-S6330

TO: ALL INTERESTED PERSONS

1. On June 23, 1978, the Department of Livestock published notice of a proposed amendment to rule 32-2.6A(78)-S6330 eliminating the EIA test requirement on horses or other equidae imported into Montana at page 848 of the 1978 Montana Administrative Register, Issue Number 6.

2. The Agency has amended the rule as proposed.

3. The testimony received at the hearing and in materials submitted to the Department during the notice period strongly support the amendment. Two commenters expressed concern that EIA was a serious disease and that by failing to test horses imported into Montana, Montana could become a dumping ground for potential reactor horses unacceptable in other states. The Board agrees that this is a possibility. But, given the facts the EIA test requirement is difficult to enforce, that horsemen have emphatically opposed a control program for EIA, and that horses entering the state are subject to the permit system which allows for EIA testing on animals coming from areas of high EIA incidence the Board believes the risks are adequately controlled.

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the adoption of a rule pertaining to livestock market releases, their duration and circumstances under which diversions are allowed.	NOTICE OF THE ADOPTION OF RULE 32-2.10(3)-S1025

TO: ALL INTERESTED PERSONS

1. On June 23, 1978 the Department of Livestock published notice of proposed adoption of rule 32-2.10(3)-1025 concerning livestock market releases at page 850 of the 1978 Montana

Administrative Register, Issue No. 6.

2. The agency has adopted the rule with the following changes: (new matter underlined, deleted matter interlined) "LIVESTOCK MARKET RELEASES--DURATION AND CIRCUMSTANCES UNDER WHICH DIVERSION ALLOWED. Neither a licensed livestock market, nor a person having possession or control of livestock consigned to a Montana licensed livestock market shall remove livestock from the market until the release required by section 46-801.2 (3) has been issued. The release shall describe the livestock for which it is issued by sex, brand, breed and number and shall be valid for 36 hours after ~~issue~~ the livestock leave the market. Diversion from the destination shown on the release shall not occur until the person making the diversion has obtained either a brand inspection or an appropriate transportation permit authorizing movement of the livestock to the new destination."

3. A comment was received pointing out that on some occasions cattle would not be taken from a market until the weekend, frequently almost 36 hours after the release was issued by the market inspector. To accomodate that problem, the amendment shown in paragraph 2 was made. The rationale for this rule remains as stated in the notice.

Robert G. Barthelmess

ROBERT G. BARTHELMESS
Chairman, Board of Livestock

Certified to the Secretary of State July 24, 1978.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF ATHLETICS

In the matter of the Proposed Amendment of ARM 40-3.14(10)-S14040 Officials (1)(a), (2)(f))(i), and (3)(a).	))))	NOTICE OF AMENDMENT OF RULE ARM 40-3.14(10)-S14040 OFFICIALS

TO: All Interested Persons:

1. On June 23, 1978, the Board of Athletics published notice of a proposed amendment of 40-3.14(10)-S14040 (1)(a), (2)(f)(i), and (3)(a) and (d) concerning officials at page 854 of the 1978 Montana Administrative Register, issue number 6.

2. The Board has amended the rule as proposed.

3. No comments or testimony were received. The Board has amended the rule to achieve uniformity with current national and world boxing regulations.

In the matter of the Proposed Amendment of ARM 40-3.14(6)-S1430 Licensing REquirements (10).	))))	NOTICE OF AMENDMENTS OF RULE ARM 40-3.14(6)-S1430 LICENSING REQUIREMENTS

TO: All Interested Persons:

1. On June 23, 1978, the Board of Athletics published notice of a proposed amendment of 40-3.14(6)-S1430 (10) concerning licensing requirements at page 854 and 855 of the 1978 Montana Administrative Register, issue number 6.

2. The Board has amended the rule as proposed.

3. No comments or testimony were received. The Board has amended the rule to facilitate securing the license fees from the contestants.

ED CARNEY
DIRECTOR
DEPARTMENT OF PROFESSIONAL AND
OCCUPATIONAL LICENSING

Certified to the Secretary of State August 1, 1978.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF DENTISTS

In the matter of the Proposed) Amendment of ARM 40-3.34(10)-) S3470 Set and Approve Re-) quirements and Standards.)	NOTICE OF ADOPTION OF AMENDMENT TO ARM 40-3.34(10)-S3470 ALLOWABLE FUNCTIONS FOR DENTAL AUXILIARIES

TO: All Interested Persons:

1. On January 25, 1978 the Board of Dentists published a notice of amendment of ARM 40-3.34(10)-S3470 concerning setting and approving requirements and standards for dental auxiliaries, at page 50 through 53, 1978 Administrative Register, issue number 1. Upon receiving requests from the requisite number of persons for a hearing, the Board of Dentists published a notice of hearing on the amendment at page 325, 1978 Administrative Register, issue number 3, on March 25, 1978.

2. The Board has amended the rule with the following changes to the proposed form: (new matter underlined, deleted matter interlined)

40-3.34(10)-S3470 ALLOWABLE FUNCTIONS FOR DENTAL AUXILIARIES

3.B. (1) is the same as the proposed rule, except the word "recognized" in the second sentence of the third paragraph is deleted and replaced by the word "approved".

3.C. (2) remains the same.

3.C. (3) allowable functions permited for dental assistants without expanded duty training shall be ~~as follows:~~ the traditional duties allowed by custom and practice, including but not limited to; (no change in sub-sections (a) through (f).

3.C. (4) allowable expanded duty functions for assistants after 6 months clinical experience as a dental assistant and after becoming qualified by successfully ~~completing an educational course approved by~~ meeting the requirements specified by the Montana ~~Dental Association and the~~ Board of Dentist are as follows; (sub-sections (a) through (d) remain the same)

(e) polishing amalgam, restorations;

(f) placing and removing temporary restorations with hand instruments only.

3.C. (5), (a),(b), (c) are deleted and replaced by the following: (5) The requirements for expanded duty certification shall be as follows;

(a) the applicant shall have successfully completed a training program for dental assistants approved by the American Dental Association or shall have completed the Colorado Dental Assistants training program;

(b) the applicant shall sit for and successfully pass a written and practical examination administered by the Montana Dental Association under agreement with the Board.

3.D.(10) remains the same.

3. Numerous testimony, written and oral, was presented prior to and at the hearing. Most of the objection presented centered around the proposed deletion of polishing coronal surfaces as an allowable expanded duty function for dental

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF DENTISTS

assistants. Such objections came from licensed dentists and from the Executive Council of the Montana Dental Association, all of whom appeared to feel that assistants were capable through existing training programs of performing such function. Comment in favor of removing such allowable function came from some dentists, but primarily from dental hygienists who felt that assistants did not have such capabilities and that such function was part of prophylaxis which is permited by statute only to hygienists. Only one dental assistant testified, which was on behalf of the Montana Dental Assistant Association, asking that polishing coronal surfaces be allowed with a narrow definition to prevent extending such function to general prophylaxis.

The testimony presented also centered around the proposed definition of supervision for dental hygienists in hospitals, institutions, or nursing homes. With few exceptions, testimony favored the rule as proposed.

In light of the testimony presented for and against the deletion of polishing coronal surfaces as an allowable expanded duty function for assistants, the Board determined that for the reasons stated in the notice, the deletion should be made as proposed; however, with that deletion the Board did add polishing amalgam restorations as an allowable function in recognition of the assistant's capabilities and in determining that this should not lead to abuse through extention into general prophylaxis.

ED CARNEY
DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State August 1, 1978.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE STATE ELECTRICAL BOARD

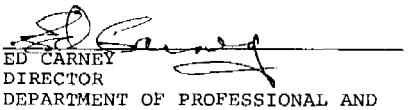
In the matter of the Proposed) NOTICE OF ADOPTION OF ARM
Adoption of a new rule relating) 40-3.38(2)-P3815 PUBLIC
to Public Participation in Board) PARTICIPATION
decision making functions.)

TO: All Interested Persons:

1. On June 23, 1978 the State Electrical Board published notice of a proposed adoption of a rule concerning public participation in Board decision making functions at page 856, 1978 Montana Administrative Register, issue number 6.

2. The Board has adopted the rule as proposed.

3. No comments or testimony were received. The Board has adopted the rule because such action is mandated by Section 82-4228, R.C.M. 1947. That section requires all agencies to adopt rules which specify the means by which the public may participate in decision making functions. Rather than adopt its own set of rules and for the sake of expediency, the Board has reviewed and approved the department rules and has incorporated them as their own.



ED CARNEY
DIRECTOR
DEPARTMENT OF PROFESSIONAL AND
OCCUPATIONAL LICENSING

Certified to the Secretary of State August 1, 1978.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF MASSAGE THERAPISTS

In the matter of the Proposed Adoption of a new rule relating to Public Participation in Board decision making functions.) NOTICE OF ADOPTION OF ARM 40-3.50(2)-P5015 PUBLIC PARTICIPATION

TO: All Interested Persons:

1. On June 23, 1978, the Board of Massage Therapists published a notice of a proposed adoption of a rule concerning public participation in Board decision making functions at page 857, 1978 Montana Administrative Register, issue number 6.

2. The Board has adopted the rule as proposed.

3. No comments or testimony were received. The Board has adopted the rule because such action is mandated by Section 82-4228, R.C.M. 1947. That section requires all agencies to adopt rules which specify the means by which the public may participate in decision making functions. Rather than adopt its own set of rules and for the sake of expediency, the Board has reviewed and approved the department rules and has incorporated them as their own.

In the matter of the Proposed Amendment of ARM 40-3.50(6)-S5030 Set and Approve Requirements and Standards: Minimum Educational Requirements.) NOTICE OF AMENDMENT OF ARM 40-3.50(6)-S5030 SET AND APPROVE REQUIREMENTS AND STANDARDS: MINIMUM EDUCATIONAL REQUIREMENTS

TO: All Interested Persons:

1. On June 23, 1978, the Board of Massage Therapists published a notice of proposed amendment of 40-3.50(6)-S5030 concerning setting and approving requirements and standards for minimum educational requirements at page 858, 1978 Montana Administrative Register, issue number 6.

2. The Board has amended the rule as proposed.

3. No comments or testimony were received. The Board has amended the rule because the requirements state that they must be graduated from an approved school of Massage with 1,000 hours, making it unnecessary to state the necessary courses.

In the matter of the Proposed Amendment of ARM 40-3.50(6)-S5070 Inactive List - Hardship) NOTICE OF AMENDMENT OF ARM 40-3.50(6)-S5070 INACTIVE LIST - HARDSHIP

TO: All Interested Persons:

1. On June 23, 1978, the Board of Massage Therapists published a notice of proposed amendment of 40-3.50(6)-S5070 concerning the inactive list and hardship at page 858 and 859,

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF MASSAGE THERAPISTS

1978 Montana Administrative Register, issue number 6,

2. The Board has amended the rule as proposed.

3. No comments or testimony were received. The Board has amended the rule because in the past the Board charged a $5.00 fee strictly to place the name on the mailing list. Most individuals did not pay the fee and let the license be revoked. To reinstate a license, all an individual was required to do was appear before the Board or write a letter giving his reasons for non-payment. The entire process was time consuming and very ineffective.

In the matter of the Proposed Amendment of ARM 40-3.50(6)-S5080 Grandfather clause.) NOTICE OF AMENDMENT OF ARM 40-3.50(6)-S5070 GRANDFATHER CLAUSE

TO: All Interested Persons:

1. On June 23, 1978, the Board of Massage Therapists published a notice of proposed amendment of 40-3.50(6)-S5080 concerning the grandfather clause at page 859, 1978 Montana Administrative Register, issue number 6.

2. The Board has amended the rule as proposed.

3. No comments or testimony were received. The Board has amended the rule because Section 66-2905 R.C.M. 1947 no longer provides for grandfather applicants.

ED CARNEY
DIRECTOR
DEPARTMENT OF PROFESSIONAL AND OCCUAPTIONAL LICENSING

Certified to the Secretary of State August 1, 1978

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF PLUMBERS

In the Matter of the Proposed) Amendment of ARM 40-3.82(6)-) S8280 Examination (1)(c) and) (2).)	NOTICE OF AMENDMENT OF ARM 40-3.82(6)-S8280 EXAMINATIONS

TO: All Interested Persons:

1. On June 23, 1978,the Board of Plumbers published a notice of a proposed amendment to 40-3.82(6)-S8280 concerning examinations at page 861, 1978 Montana Administrative Register, issue number 6.

2. The Board has amended the rule as proposed.

3. No comments or testimony were received. The Board has amended the rule because at present the number of examinees is reaching 50 individuals per examination. The facilities, which are the best available, and the number of Board members to monitor the examination are not adequate to administer a fair and equitable examination to more than thirty individuals at a given time. Therefore the Board amended the rule to limit the number of examinees and provide for more frequent examinations.

ED CARNEY
DIRECTOR
DEPARTMENT OF PROFESSIONAL AND
OCCUPATIONAL LICENSING

Certified to the Secretary of State August 1, 1978.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF WATER WELL CONTRACTORS

In the matter of the Proposed) Adoption of a New Rule to) Implement Section 66-2602.2,) R.C.M. 1947 defining super-) vision.)	NOTICE OF ADOPTION OF RULE ARM 40-3.106(6)-S10645 SUPERVISION

TO: All Interested Persons:

1. On April 24, 1978 the Board of Water Well Contractors published a notice of hearing on the proposed adoption of a new rule concerning implementation of Section 66-2602.2 R.C.M. 1947 at page 493 and 494, 1978 Administrative Register, issue number 4.

2. At the hearing, 3 persons spoke in favor of the proposed rule, including the directors of the Montana Water Well Drillers Association. There were 10 persons speaking in opposition to the rule as proposed and one person who spoke neither as a proponent or opponent. The opposition centered around the argument that the personal presence of the contractor is overly restrictive and not necessary in that a check is imposed on the work of the unlicensed person by the fact of the contractors liability for improper work by his employees. It was further suggested that the problem would better be controlled by more inspections and enforcement. Several of the individuals speaking in opposition and in favor of the proposed rule, referred to the need for a separate drillers license. The argument suggested that rather than require on site supervision of employees, the Board should exam these people for competency and issue a type of drillers license for persons in the employ of a licensed contractor.

In a letter dated July 7, 1978, the Administrative Code Committee questioned whether requiring an employer-employee relationship is reasonably necessary to effectuate the purposes of the statute. They further commented that the physical presence requirement should sufficiently insure actual supervision and protection of the public interest. There were three additional letters opposing the proposed rule and 2 letters in favor of the rule. Of the individuals who wrote letters, 4 appeared at the hearing and testified.

The reasons for the proposed rule are that the Board has found numerous instances where unlicensed persons are operating drilling rigs on their own, with little or no direction or supervision of a licensed contractor, and feels that this was not the intent of the statutory exception, that direction and supervision must be made over such persons in order to insure that the drilling operation is attended to by a qualified and licensed contractor. The Board further feels that the legislature intended these assurances as proper protection of the public water supply and for the recipient of the well.

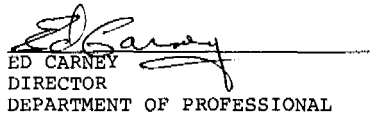
In light of the testimony presented and the Code Committee

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF WATER WELL CONTRACTORS

recommendation, the Board adopts the proposed rule with the following deletion:

"~~The word 'direct' is defined as an employer-employee relationship.~~ 'Personal supervision' is defined to mean that a licensed water well contractor must be present at the job site when the drilling rig is in operation."

In overruling the objection presented, the Board feels that the legislature intended personal supervision as the check on unlicensed employees, in addition to checks imposed by contractor liability and inspection enforcement. Further, the Board feels that if a drillers license is an alternative solution to the problem that such can be imposed only through legislative amendment of the water well contractors act.



ED CARNEY
DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State August 1, 1978.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

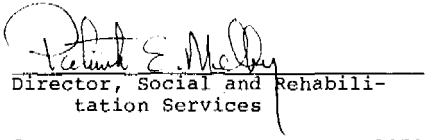
In the matter of the repeal of Rule 46-2.10(18)-S11440(1)(g)(vi)(ac) pertaining to Intermediate Care B.	))))	NOTICE OF REPEAL OF RULE 46-2.10(18)-S11440(1)(g)(vi)(ac)

TO: All Interested Persons:

1. On May 25, 1978, the State Department of Social and Rehabilitation Services published notice of a proposed repeal to Rule 46-2.10(18)-S11440(1)(g)(vi)(ac) which pertains to Intermediate Care B at page 708 of the 1978 Montana Administrative Register, issue number 5.

2. The agency has repealed the rule as proposed.

3. No comments or testimony were received. The agency has repealed the rule because in 1974 the federal government published rules pertaining to reimbursement for Long-Term Care services. Those rules referred to Intermediate Care B as a Medicaid benefit. However, when the final federal regulations were published in April, 1976, all references to Intermediate Care B were deleted. In the meantime, SRS had revised its rules to include Intermediate Care B as a Medicaid service, and thus to allow payment at three levels of care (Skilled Nursing, Intermediate A and Intermediate B) until July 1, 1976. On that date, payment was limited, in accordance with governing federal regulations, to two levels of care (Skilled Nursing and Intermediate Care). The ARM has not been revised to reflect this change, and this is the purpose of this repeal of this subsection.



Director, Social and Rehabilitation Services

Certified to the Secretary of State August 1, 1978.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of Rule 46-2.10(18)-S11490 pertaining to third party liability.	NOTICE OF THE AMENDMENT OF A RULE PERTAINING TO THIRD PARTY LIABILITY.

TO: All Interested Persons:

1. On May 25, 1978, the State Department of Social and Rehabilitation Services published notice of a proposed amendment to Rule 46-2.10(18)-S11490 which pertains to third party liability at pages 689-692 of the 1978 Montana Administrative Register, issue number 5.

2. The agency has amended the rule as proposed.

3. On May 25, 1978, the Montana Department of Social and Rehabilitation Appeals gave notice of its intent to amend Rule 46-2.10(18)-S11490 which deals with third party liability. The rule has been amended as proposed in that notice.

On July 1, 1977, the Director of Montana Department of Social and Rehabilitation Services certified to the Secretary of State a notice of intent to amend the above rule. A public hearing was subsequently held on August 22, 1977. On or about September 5, 1977, the Department adopted the proposed amendment to the above rule. On December 29, 1977, an action was commenced by the Montana Hospital Association contesting the Department's authority to adopt those amendments. On January 3, 1978, the District Court of the First Judicial District enjoined the Department from enforcing the amendments as adopted. On February 9, 1978, the consent order embodying a stipulation between the Department and the Montana Hospital Association was entered, dissolving the temporary restraining order and requiring the Department to amend the rule in accordance with the principles embodied in the stipulation.

May 15, 1978, the Director of the Montana Department of Social and Rehabilitation Services certified to the Secretary of State the Department's notice of amendment to the above rule with no public hearing contemplated. No public hearing was requested nor was a public hearing held.

Comment A comment was received that the rule could result in hospital providers waiting up to seven and one-half (7½) months for payment, and that this length of time was excessive and unfair to the hospitals.

Response: The rule provides that in the case where an insurer or other identified source of payment is billed by the hospital provider and no response is received within 45 days of the date of billing, then the Department shall make payment in all cases within 180 days of the receipt of the bill. The rule further provides that the Medicaid program shall pay 90% of all claims for which no further written information or substantiation is required within 30 days of receipt of the

claims and shall pay 99% of such claims within 90 days of receipt of such claims. Under the rule only those cases which require the Department to pursue identified insurers or other liable third parties who have declined to pay or respond to the hospital providers' bills will result in a delay beyond 90 days. The 180-day time period is necessary for the Department to pursue those liable third parties prior to expending Medicaid funds. It should be noted that this 180-day period will only be necessary in an extremely small proportion of all Medicaid cases. Further, it is unlikely that the full 180 days will lapse prior to payment by the Medicaid program in any case.

Comment A comment was received that the enlistment of hospital providers to identify and initially pursue liable third parties was unlikely to result in a cost saving to the Department, and that the Department should assume this function.

Response: In view of the Department's lack of financial and human resources necessary to carry out the pursuit of liable third parties in all cases, the Department feels that the proposed amendments will in fact result in a cost saving greater than that which would be realized if the Department were to assume the function itself.

Patricia E. Melby

Director, Social and Rehabilitation Services

Certified to the Secretary of State August 1, 1978.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of rules pertaining to emergency grants-in-aid to counties and the amendment of Rule 46-2.10 (38)-S102040 pertaining to payment procedures.	NOTICE OF THE ADOPTION OF RULES 46-2.10(40)-S102041, 46-2.10(40)-S102042, 46-2.10(40)-S102043, 46-2.10(40)-S102044, AND 46-2.10(40)-S102045 AND THE AMENDMENT OF RULE 46-2.10(38)-S102040.

TO: All Interested Persons:

1. On May 25, 1978, the State Department of Social and Rehabilitation Services published notice of a proposed adoption to rules pertaining to emergency grants-in-aid to counties and the amendment to Rule 46-2.10(38)-S102040 which pertains to payment procedures at pages 693-696 of the 1978 Montana Administrative Register, issue number 5.

2. The agency has adopted and amended the rules as proposed with the addition of a subparagraph (2)(d) to Rule V (46-2.10(40)-S102045) which reads as follows:

(d) Notwithstanding the provisions of this section, the Department may approve a request for a state grant-in-aid if a county demonstrates to the satisfaction of the Department that costs incurred in the operation of a county facility which are not attributable to services to indigent persons, and which resulted in an operating deficit, were necessary in order to provide services to indigent persons, and that reasonable steps are being implemented to make the county facility self-supporting. This subparagraph (d) shall be effective only until July 1, 1979.

3. It is the intent of the Department in adopting these rules to limit the payment of grant-in-aid monies to counties which have expended their poor fund monies solely for the legitimate welfare purposes provided by statute. To accomplish this end the rules require counties to provide specific information verifying the nature and purpose of expenditures from the county poor fund as a prerequisite to receipt of grant-in-aid money.

Comment The comment was received that the rules were contrary to statute and contrary to the intent of the legislature, in that the legislature did not differentiate between hospitalization of the indigent or nonindigent while the rule clearly allows grant-in-aid monies to be applied only for hospitalization of the indigent.

Response: Under no circumstances does the provision of medical care to the nonindigent citizens of a county, those who have the means to purchase the services themselves or who receive the services under the auspicious of another agency or program, constitute a legitimate county welfare activity. It was clearly not the intent of the legislature to subsidize, by

means of grants-in-aid, the hospital services received by such nonindigent persons. Rather, it was the intent of the legislature, and the statutes so reflect, to limit the application of grant-in-aid monies to those costs associated with welfare activities. The proposed rules allow for grants-in-aid to meet the deficits which result from providing services to the indigent or needy in a county, and so fulfills the intent of the legislature.

Comment Comment was received that the practical consequences of implementation of these rules would be demise of county owned facilities, which provide needed medical services to the residents of the counties.

Response: The rules will not require closure of any county owned or operated facility. Counties may opt to recover any operating deficits resulting from the provision of services to nonindigent persons by means of a mill levy separate and distinct from the poor fund mill levy, or by increasing charges to all patients served in the county owned facility to the extent necessary to meet operating costs. Pragmatically speaking, if the operating deficits are the result of underutilization or low occupancies then there may be no real need for those county operated facilities. If the operating deficits are a result of a county "charity policy" which benefits all residents of a county by maintaining artificially low charges at the facilities, then it seems only equitable that those residents who receive the benefits should bear the burden. The state income tax payers should not be required to subsidize the provision of medical care to the residents of one particular county. The rule has been amended to permit the Department to approve applications of grant-in-aid funds to costs which are not attributable to provision of services to indigent persons where such costs are necessary to the continued provision of those services.

Comment Comment was received that the term indigent person should be defined to include Medicaid and Medicare recipients as well as those eligible for county medical benefits and that grant-in-aid monies should be applicable to deficits resulting from providing services to those persons.

Response: The term "indigent person" as defined in Rule III (46-2.10(40)-S102043) of the proposed rules does include persons who are eligible for Medicaid. Medicare is not a need based program and so persons eligible for that program are not indigent by definition.

The provisions of Rule II (46-2.10(40)-S102042), however, preclude applications of grant-in-aid funds to costs associated with provision of care to Medicaid eligible persons. The Medicaid program reimburses the reasonable cost of providing hospital or other services to persons eligible for those programs. Therefore, no county operated facility should suffer an operating loss as a result of providing services to Medicaid patients. Even should such a loss be incurred, the Medicaid program requires that providers of service, including county owned and operated facilities, must accept as payment in full

the amount paid under those programs. The provider of services may not seek supplementation of the amount paid under the programs from any other source, including the state. Including Medicaid patients in the definition of indigent, and thus allowing grant-in-aid monies to be applied to the total cost of providing services to those patients results in just such a supplement by the state to the Medicaid program.

Comment The comment was received that statutory provisions governing grants-in-aid refer to "needy" and "any welfare activity," while the rule allows grant-in-aid monies to be applied solely for the benefit of indigent persons. Comment was further received that indigent and needy are "obviously not the same persons under any semantic interpretations." As stated above, under no circumstances may the provision of medical care to persons who can afford to purchase the medical services themselves or for whom the services are purchased by another agency or program be considered a county welfare activity. It was clearly the intent of the legislature to restrict the application of grant-in-aid funds to lawful welfare activities. Although many persons who are not indigent within the definition included in these rules may have some need (e.g. Medicaid and Medicare patients) if those needs may be adequately met by any other program or agency then they clearly should not be further subsidized by the state. Nor does the general "need" of the residents of a particular area for medical care require that all such residents be considered "needy" and thus eligible for subsidized medical care at the expense of the state income tax payers.

Comment The comment was received that the rules do not specify the type of detailed documentation required to justify a grant-in-aid.

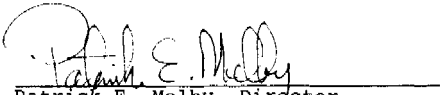
Response: It is not the intent of the Department to impose unduly stringent accounting requirements upon the counties. However, the county must at a minimum report and verify the items of information required in Rule IV(1)(a). Nursing home or hospital Medicaid or Medicare cost reports may provide some of the required information and to that extent they will be acceptable documentation.

Comment Comment was received that the single facility concept does not lend itself to isolation of actual costs attributable to nonindigent persons and the operating deficits resulting therefrom.

Response: It was not the intent of the Department to require the allocation of costs between classes of patients to be made in a more restrictive or detailed manner than required by the Medicaid or Medicare programs. Isolation of an actual operating deficit for each particular class, rather than allocating a total deficit among the various classes, is not required by the rules.

Comments Comments were received that the rule requiring that claims be made to counties on county claim forms should be clarified to allow such billing and a subsequent transfer of funds from the welfare fund to the hospital or nursing home fund within the county poor fund.

Response: The Department agrees, and such billing and subsequent transfer of funds will meet the requirements of the rule as it is written.



Patrick E. Melby, Director
Social & Rehabilitation Services

Certified to the Secretary of State August 1, 1978.

BEFORE THE SUPERINTENDENT OF PUBLIC
INSTRUCTION OF THE STATE OF MONTANA

In the matter of the adoption of rules on hearing procedures for special education applications to the Superintendent of Public Instruction.	) NOTICE OF THE ADOPTION OF) RULE 48-2.18(42)-P18780) CONCERNING THE HEARING PRO-) CEDURES FOR SPECIAL EDUCA-) TION APPLICATIONS TO THE) SUPERINTENDENT OF PUBLIC) INSTRUCTION.

TO: All Interested Persons:

1. On June 23, 1978, the Office of Public Instruction published notice of a proposed adoption of rule 48-2.18(42)-P18780 concerning hearing procedures for special education applications to the Superintendent of Public Instruction at pages 870-873 of the 1978 Montana Administrative Register, Issue No. 6. The Superintendent of Public Instruction proposed to adopt rule 48-2.18(42)-P18780 on July 27, 1978. No public hearing was contemplated.

2. The agency has adopted the rule with the following changes:

48-2.18(42)-P18780. HEARING ON APPLICATIONS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION. (1) Scope. A parent, guardian or board of trustees may initiate a hearing when the Superintendent of Public Instruction disapproves an application for special education made pursuant to title 75, chapter 78, of the Revised Codes of Montana, 1947, which affects the identification, evaluation, or educational placement of a handicapped child or which affects the provision of a free appropriate public education to a handicapped child.

(2) Requests for Hearing. A parent, guardian, the board of trustees of the district in which a child's parent or guardian resides, or the board of trustees providing educational services to the child may initiate a hearing by filing a written request for a hearing, together with a statement of the reasons therefor and the names and addresses of the parties, with the Superintendent of Public Instruction within thirty (30) days after the date of the disapproval.

(3) Notification of Access of Information and Assistance. (a) Upon receipt of a request for hearing, the Superintendent of Public Instruction shall notify the parent or guardian in writing:

(i) That the parent, guardian or ~~his~~ a representative designated in writing shall have access to school reports, files and records pertaining to the child and shall be given copies at the actual cost of copying;

(ii) Of any free or low-cost legal and other relevant services available in the area of the parent's or guardian's residence.

(b) Upon request, a parent or guardian shall be informed by the Superintendent of Public Instruction of any free or low-cost legal and other relevant services available in the area of the parent's or guardian's residence.

(4) Conference and Informal Disposition. The Superintendent of Public Instruction shall make a reasonable effort to schedule conferences with the parties for the purpose of resolving differences about the application without a hearing.

(5) Notice of Hearing. (a) The Superintendent of Public Instruction shall schedule a hearing at a time and place which is reasonably convenient to the parent or guardian and child and the trustees.

(b) Written notice of the date, time and place shall be ~~sent~~ mailed to all parties ~~by certified mail~~ or personally served notice on them. Notice to the parent or guardian shall be written in language understandable to the general public and in the native language of the parent or guardian or other mode of communication used by the parent or guardian unless it is clearly not feasible to do so. If the native language or other mode of communication is not a written language, the Superintendent of Public Instruction shall direct the notice to be translated orally or by other means to the parent or guardian in his native language or other means of communication.

~~(6) Witnesses. At the request of the parent, the board of trustees of any district which is a party to the hearing shall require the attendance at the hearing of any officer or employee of the district who may have evidence or testimony relevant to the needs, abilities, proposed programs or status of the child.~~

(6) Witnesses. Neither the trustees nor any employee of a school district shall prevent or attempt to prevent any employee of the district from attending the hearing and giving evidence and testimony relevant to the issues. Nor shall the trustees or any employee of a school district take any action against an employee for appearing and giving evidence and testimony.

(7) Evidence. Evidence which a party intends to introduce at the hearing must be disclosed to the other parties at least 5 days before the hearing.

(8) Conduct of Hearing. (a) At the hearing an impartial hearing officer shall hear witnesses and take evidence according to the provisions of this rule and according to the common law and statutory rules of evidence which are not in conflict with the provisions of this rule.

(i) Objections to offers of evidence may be made and ~~the hearing officer will note them~~ will be ruled on and noted in the record.

(ii) To expedite the hearing, if the interests of the parties are not prejudiced, any part of the evidence may be received in written form.

(iii) The hearing officer may take notice of judicially cognizable facts. Parties shall be notified of materials noticed and be given an opportunity to contest materials noticed.

(iv) Where the original of documentary evidence is not readily available the best evidence rule is hereby modified to allow copies of excerpts.

(v) All testimony shall be given under oath or affirmation.

(vi) Special education controversy hearings will be conducted in accordance with the provisions of the Administrative Procedure Act, and the rules promulgated pursuant thereto, for the conduct of hearing contested cases which are not in conflict with the provisions of this rule.

(b) Any party to a hearing has the right to:

(i) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children;

(ii) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(iii) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 days before the hearing;

(iv) Obtain a written or electronic verbatim record of the hearing;

(v) Obtain written findings of fact and decisions.

(c) The parent or guardian shall have the right to have the child who is the subject of the hearing present.

(d) The hearing shall be closed to the public unless the parent or guardian requests an open hearing.

(e) A written or electronic verbatim record of the hearing shall be made.

(f) When necessary, interpreters for the deaf or interpreters in the native language or other mode of communication of the parent or guardian shall be provided throughout the hearing at public expense.

~~(g) The burden of proof initially shall be upon the party requesting the hearing.~~

(g) The party holding the affirmative of the issue must produce the evidence to prove it; therefore, the burden

of proof lies on the party who would be defeated if no evidence were given on either side.

(h) The expense of the hearing shall be borne in the same manner as the expense of a hearing is borne in other school controversies.

(9) Timeliness. Not later than 45 days after the request for a hearing is filed with the Superintendent of Public Instruction, plus specific time extensions granted at the request of a party and delays attributable to ~~a parent~~ the parties, the hearing officer shall:

(a) Reach a final decision in the hearing which is written in language understandable to the general public; and

(b) Insure that a copy of the findings of fact, conclusions of law, decision and notice of right to seek judicial review or bring a civil action is sent by certified mail to each party. The parent or guardian shall receive a copy of the decision in the native language of the parent or guardian or other mode of communication used by the parent or guardian unless it is clearly not feasible to do so. If the native language or other mode of communication is not a written language, the hearing officer shall direct the decision to be translated orally to the parent or guardian in his native language or other means of communication.

(c) Delays attributable to the parties include time during which the parties are submitting proposed findings of fact, conclusions of law and decisions.

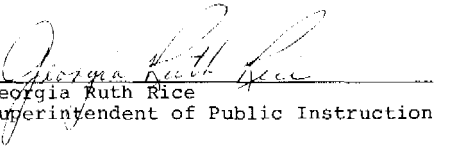
(10) Hearing Officer. Upon filing a request for hearing, the Superintendent of Public Instruction and the parties shall select an impartial hearing officer in the same manner as provided in Rule 48-2.18(42)-P18770(1), (3), (4), and (5).

(11) Court Action. The decision of the hearing officer is final unless a party seeks judicial review pursuant to section 82-4216, R.C.M. 1947, or brings a civil action pursuant to 20 U.S.C. 1415.

(12) Placement. The child shall remain in his current educational placement until the hearing officer enters a decision, except in an emergency situation when the health and safety of the child or other children would be endangered or when the child's presence substantially disrupts the educational programs for other children as provided in Rule 48-2.18(14)-S18120(1)(c)(vi). (History: Sec. 75-7802, R.C.M. 1947, IMP Sec. 75-7802, R.C.M. 1947.)

3. No petition for public hearing was received and no comments or testimony were received. The agency has

adopted the rule to provide better procedures for due process protection of handicapped children and their parents and to provide handicapped children, their parents and education agencies standard hearing procedures for special education applications to the Superintendent of Public Instruction.



Georgia Ruth Rice
Superintendent of Public Instruction

Certified to the Secretary of State July 18, 1978.

VOLUME NO. 37 OPINION NO. 151

CORPORATIONS - Health service - payment for services of psychologists;
HEALTH PRODUCTS AND SERVICES - Payment by Blue Cross and Blue Shield for services of psychologists;
INSURANCE - Blue Cross, Blue Shield as insurance companies;
INSURANCE - Health Service Corporations - requirement to pay for services rendered by psychologists;
PSYCHOLOGISTS - Payment by Blue Cross and Blue Shield;
SECTIONS - 40-2611, 40-4108, 40-5901 and 40-5902(2), R.C.M. 1947; Title 15, Chapter 23, and Title 40, Chapters 26-53, R.C.M. 1947.

HELD: 1. Montana Physicians Service (Blue Shield) and Blue Cross of Montana are not insurance companies but are health service corporations.

2. Montana Physicians Service (Blue Shield) and Blue Cross of Montana may pay for services rendered by psychologists but are not required to do so.

25 July 1978

Michael M. Nash, Ph.D.
Board of Psychology
Box 1281
Bozeman, Montana 59715

Dear Mr. Nash:

I am in receipt of your correspondence wherein you asked for my opinion concerning payment by Montana Physician's Service (Blue Shield) and Blue Cross of Montana for services rendered by psychologists. I have stated your question in the following manner:

1. Are Montana Physicians Service (Blue Shield) and Blue Cross of Montana insurance companies?

2. Are Montana Physicians Service (Blue Shield) and Blue Cross of Montana required to pay for services rendered by psychologists?

Organizations which are in the business of indemnification, and insurance and indemnity contracts themselves, are governed generally by the Montana Insurance Code in Title 40, Chapters 26 through 53 of the Revised Codes of Montana, 1947. However, some organizations are not governed by the Insurance Code. Section 40-2611, R.C.M. 1947, states:

> This code shall not apply to health service corporations, to the extent that the existence and operations of such corporations are authorized by Section 15-1401 and related sections of the Revised Codes of Montana, 1947.

Section 15-1401, R.C.M. 1947, was a specific section authorizing the creation of nonprofit corporations designated as health service corporations. This section was repealed by Laws of Montana (1967), ch. 198, in a bill which recodified laws pertaining to nonprofit corporations and set forth one procedure for the creation of nonprofit corporations in Chapter 23 of Title 15, R.C.M. 1947.

Section 40-5901, R.C.M. 1947, defines health service corporations. It says:

> (1) "Health service corporation" means a nonprofit corporation organized or operating for the purposes of establishing and operating a nonprofit plan or plans under which prepaid hospital care, medical-surgical care and other health care and services, or reimbursement therefor, may be furnished to a member or beneficiary; ***

Blue Cross and Blue Shield (hereinafter, Blues) are nonprofit corporations pursuant to §15-1401 and its successor provisions and operate nonprofit plans as set forth in §40-5901. Therefore, the Blues are not health insurance corporations under the Insurance Code but rather are a special legislative creation exempt from the Insurance Code.

Your second question is whether or not the Blues must pay for services rendered members by psychologists. The Insurance Code contains a section which would appear to require insurance companies to pay for such services. It is entitled: "Policies to Provide for Freedom of Choice of Practitioners," and states:

> All policies ... shall provide the insured shall have full freedom of choice in the selection of

> any duly licensed physician, osteopath, chiropractor, optometrist, chiropodist or clinical psychologist for treatment of any illness or injury within the scope and limitations of his practice. ... (Emphasis supplied.)

Section 40-4108, R.C.M. 1947. However, this section is part of the Insurance Code from which the Blues are exempt.

Even if there is an argument that the Blues are not exempt from this section, there is a conflict between this section and the Health Services Corporation Act. Section 40-5918(8) of the Act provides:

> ***Nothing herein contained shall, however, restrict the right of a health service corporation within the discretion of its board of directors to limit or define the classes of persons who shall be eligible to become members, to limit and to define the benefits which it will furnish, and define such benefits as it undertakes to furnish into classes or kinds. A health service corporation may make available to its members health services, or reimbursement therefor, as the board of directors of that corporation may approve.

The Legislature foresaw such conflicting statutes arising. Section 40-5902(2) says:

> (2) A law of this state other than the provisions of this act applicable to health service corporations shall be construed in accordance with the fundamental nature of a health service corporation, and in the event of a conflict between that law and the provisions of this act, the latter shall prevail.

Insurance companies are required to pay for services rendered by psychologists. Health service corporations (the Blues) may make reimbursement available to its members for whatever services the board of directors approve. The Blues are not required to pay for psychologist services provided to their members unless they have contracted to pay for such services.

THEREFORE, IT IS MY OPINION:

1. Montana Physicians Service (Blue Shield) and Blue Cross of Montana are not insurance companies but are health service corporations.

2. Montana Physicians Service (Blue Shield) and Blue Cross of Montana may pay for services rendered by psychologists but are not required to do so.

Very truly yours,

MIKE GREELY
Attorney General

MG/DM/br

VOLUME NO. 37 OPINION NO. 152

COUNTY COMMISSIONERS - Capacity to purchase equipment without election;
PUBLIC FUNDS - County application of cash on hand and revenue sharing funds to reduce indebtedness;
PURCHASING - County power to contract for installment purchases where indebtedness exceeds statutory limit;
STATUTES - County indebtedness limit;
SECTIONS 16-807, 16-1407.1, 16-1407.2, 16-1803, 16-1901 through 16-1911, R.C.M. 1947.

HELD: 1. A county may contract for machinery and equipment for a single purpose without a vote of the county residents when the entire expenditure will exceed $40,000, but the remaining indebtedness after applying cash on hand and revenue sharing funds budgeted for that purpose must not exceed $40,000.

2. A county may not contract on an installment basis to purchase machinery for a single purpose without a vote of the county residents when the entire indebtedness exceeds $40,000 even though each annual installment is less than $40,000.

27 June 1978

Mr. Rae V. Kalbfleisch
Toole County Attorney
County Courthouse
Shelby, Montana 59474

Dear Mr. Kalbfleisch:

You have requested my opinion on the following questions:

1. May a county contract to purchase machinery or equipment without a vote of the electorate where the entire expenditure will exceed $40,000 but the remaining indebtedness to be budgeted for the next fiscal year will not exceed $40,000 after applying cash on hand and revenue sharing funds budgeted for the current fiscal year?

2. May a county contract on an installment basis to purchase machinery or equipment without an election when the entire indebtedness is in excess of $40,000 but each annual installment is less than $40,000?

Section 16-807 of the Revised Codes of Montana, 1947, states in part:

> No county may incur indebtedness or liability for any single purpose to an amount exceeding $40,000 without the approval of a majority of the electors thereof voting at an election to be provided by law, except as provided in 16-1407.1 and 16-1407.2.

This section refers to "indebtedness or liability" and is distinct from an "expenditure" of an amount exceeding $40,000. This was recognized by our Supreme Court in State ex rel. Deiderichs v. Board of Trustees, 91 Mont. 300, 7 P.2d 543 (1932). Construing Article XIII, Section 5 of the 1889 Montana Constitution, which was similar to Section 16-807, the Court said that this debt limitation:

> does not apply to the expenditure of cash on hand provided for a specific purpose; but rather to the creation of an obligation to be met and paid for in the future by the taxpayers.
> ...
> ... Limitations of the amount of a debt or liability of a county were never intended to prohibit the expenditure of cash on hand usable only for a designated purpose already approved by the people. Had the framers of the Constitution so intended, the word "expenditure" would have been used as in Section 12 of Article XII. The county does not create a debt or liability within the meaning of this constitutional limit where the payment is to be made from funds already provided.

91 Mont. at 307, 7 P.2d at 545-546.

The debt limitation does not apply to expenditures of cash on hand. If application of cash on hand reduces the subsequent indebtedness and liability of the county to $40,000 or less, the purchase is within the statutory debt limitation, and does not have to be voted on by county residents.

The same situation applies to revenue sharing funds as indicated in Yovetich v. McClintock, 165 Mont. 80, 526 P.2d 999 (1974). In Yovetich, the Court, citing Diederichs, said:

> [I]t is plain the revenue sharing funds are not an obligation to be "met and paid for in the future by taxpayers."
> ***
> The expenditure of the federal revenue sharing does not incur an "indebtedness or a liability" of the county within the meaning of the statutory restriction. Section 16-807, R.C.M. 1947, was never intended to prevent the expenditure of revenue provided for a specific purpose, as noted in Diederichs....

165 Mont. at 85, 526 P.2d at 1001.

Application of the holdings in Diederichs, and Yovetich, to Section 16-807 answers the first question. A county may contract for the purchase of machinery equipment without an election when the expenditure will exceed $40,000 but remaining indebtedness after applying cash on hand and revenue sharing funds budgeted for that purpose does not exceed $40,000. However, some care should be taken that budgeting procedures for capital outlay items do not violate Sections 16-1901 through 16-1911, R.C.M. 1947 (County Budget System). See Burlington Northern v. Flathead County, 162 Mont. 371, 512 P.2d 710 (1973).

You also ask whether a county may contract on an installment basis to purchase machinery without an election when indebtedness exceeds $40,000. This would be prohibited by the express language of Section 16-807, since the remaining liability of over $40,000 would constitute "an obligation to be 'met and paid for in the future by taxpayers'". Yovetich, supra.

The language of a statute is to be construed in accordance with its usual and ordinary acceptance, with a view to be giving vitality to and making operative all provisions of the law and accomplishing the intention of the legislature when ascertainable. Burritt and Safeway v. City of Butte, 161 Mont. 530, 534, 508 P.2d 563, 565 (1973). There is no doubt as to the legislative intention regarding 16-807 determined from the following statement interpreting a similar debt limitation:

> Knowing the tendency of governments to run in debt, to incur liabilities, and thereby to affect the faith and credit of the state in matters of finance, thus imposing additional burdens upon the taxpaying public, the framers of the Constitution placed positive limitations upon the power of the Legislative Assembly to incur a debt or impose a liability upon the state beyond the limit prescribed, without referring the proposition to the electorate for its approval. As to this, the comprehensive language of the section leaves no doubt.

Burlington Northern v. Richland County, 162 Mont. 364, 369, 512 P.2d 707, 709 (1973) quoting from State ex rel. Diederichs v. State Highway Commission, 89 Mont. 205, 211, 296 P. 1033, 1035 (1931).

Section 16-807 provides for two exceptions only to the debt limitation. Those exceptions, set forth in Sections 16-1407.1 and 16-1407.2, relate to establishment and funding of a capital improvement fund by county fair commissions. There is no provision in these exceptions for accrual of debts in excess of the statutory limitation except possibly in relation to such capital improvement funds for county fair purposes.

You refer to Section 16-1803, R.C.M. 1947, and suggest that machinery valued at over $40,000 may be purchased on an installment basis over five years as permitted under the bidding provisions of 16-1803 without a vote. Section 16-1803 establishes procedures to be followed in obtaining bids for various amounts, and states in 16-1803(2) that when the amount to be paid exceeds $4,000 payments may be made on an installment basis. No reference is made to Section 16-807 which sets the debt limit in absence of an election. There is no repugnancy between the two statutes. Although machinery valued at over $40,000 may be purchased without an election as discussed above, the remaining debt after application of cash on hand or revenue sharing funds budgeted for that purpose still may not exceed $40,000. The bidding provisions of 16-1803 provide no means to contravene the express debt limitation provided by 16-807.

I conclude that a county may not contract on an installment basis to purchase machinery for a single purpose without an election when the indebtedness exceeds $40,000 but may do so

when remaining indebtedness after applying funds budgeted for that purpose does not exceed $40,000.

The foregoing analysis applies only to "indebtedness or liability for any single purpose." The words "single purpose" have often been litigated, and according to the Montana Supreme Court, "convey to the mind the idea of one object, project or proposition - a unit isolated from all others. In other words, to constitute a single purpose, the elements which enter into it must be so related that, when combined, they constitute an entity; something complete in itself, but separate and apart from other objects." State ex rel. Turner v. Patch, 64 Mont. 565, 570-71, 210 P.748, 750 (1922); Bennett v. Petroleum County, 87 Mont. 436, 288 P.1018 (1930); Nelson v. Jackson, 97 Mont. 299, 33 P.2d 822 (1934).

THEREFORE IT IS MY OPINION:

1. A county may contract for machinery and equipment for a single purpose without a vote of the county residents when the entire expenditure will exceed $40,000 but the remaining indebtedness after applying cash on hand and revenue sharing funds budgeted for that purpose must not exceed $40,000.

2. A county may not contract on an installment basis to purchase machinery for a single purpose without a vote of the county residents when the entire indebtedness exceeds $40,000 even though each annual installment is less than $40,000.

Very truly yours,

MIKE GREELY
Attorney General

MG/DM/ar

VOLUME 37 OPINION NO. 153

PUBLIC FUNDS - Use of school bus depreciation fund by school districts;
SCHOOL DISTRICTS - Use of school bus depreciation fund; replacement of school buses and two-way radios;
SECTIONS - 75-7024 and 75-6801(1), R.C.M. 1947.

HELD: The trustees of a school district may pay for the entire cost of replacement of a bus or radio from a bus depreciation reserve fund established under §75-7024, R.C.M. 1947, if depreciation taken on the bus or radio since its acquisition has been credited to the reserve fund. In replacing any bus or radio which has contributed to the fund, the trustees are not limited to paying an amount from the fund which equals the accumulated depreciation credited to the fund on account of the replaced vehicle.

28 July 1978

Harold A. Fryslie, Director
Department of Community Affairs
Capitol Station
Helena, Montana 59601

Dear Mr. Fryslie:

You have requested my opinion concerning the following question:

> May the trustees of a school district pay the entire cost of replacement of any school bus from a school bus depreciation fund established under §75-7024, R.C.M. 1947, or is payment from the depreciation fund limited to an amount which is equal to the accumulated depreciation credited to the fund on account of the particular vehicle being replaced?

Section 75-7024, R.C.M. 1947, permits establishment of a bus depreciation reserve fund, providing:

> Bus depreciation reserve. (1) The trustees of any district owning a bus or a two-way radio used for purposes of transportation, as defined in 75-

7001, or for purposes of conveying pupils to and from school functions or activities may establish a bus depreciation reserve fund to be used for the replacement of such bus or radio.

(2) Whenever a bus depreciation reserve fund is established, the trustees may include in the district's budget, in accordance with the school budgeting provisions of this title, an amount each year that does not exceed 20% of the original cost of a bus or a two-way radio for such purposes. The annual revenue requirement for each district's bus depreciation reserve fund, determined within the limitations of this section, shall be reported by the county superintendent to the county commissioners on the second Monday of August as the bus depreciation reserve fund levy requirement for that district and a levy shall be made by the county commissioners in accordance with 75-6717.

(3) Any expenditure of bus depreciation reserve fund moneys shall be within the limitations of the district's final bus depreciation reserve fund budget and the school financial administration provisions of this title and may be made only for the purchase of buses or radios to replace the buses or radios for which the bus depreciation reserve fund was created.

(4) Whenever the trustees of a district maintaining a bus depreciation reserve fund consider it to be in the best interest of the district to transfer any portion or all of the bus depreciation reserve cash balance to any other fund maintained by the district, it shall submit such proposition to the electors of the district. The electors qualified to vote at the election shall qualify under 75-6410, and the election shall be called and conducted in the manner prescribed by this title for school elections. If a majority of those electors voting at the election approve the proposed transfer from the bus depreciation reserve fund, the transfer is approved and the trustees shall immediately order the county treasurer to make the approved transfer.

The purposes of the section are clear and obvious. Creation of a reserve fund spreads the cost of replacement buses and radios over the lifetime of the equipment, ensures that funds are on hand to pay for replacement at replacement time, and alleviates the necessity for levying taxes for the

entire cost of replacement in replacement years. Similarly, the purposes for which the reserve fund may be spent is explicit. Expenditures are limited to paying for the replacement of vehicles and radios which have contributed to the fund through depreciation charges, unless school district electors vote to transfer part or all of the fund to a different school district fund. Section 75-7024(3) and (4). However, §75-7024 is silent concerning the mode or manner of replacement of buses and radios or expenditure of the reserve fund. The absence of such express directive gives rise to the present question.

Ordinarily, a governmental subdivision of the state has all those powers which arise by necessary implication from expressly granted powers, see Roosevelt County v. State Board of Equalization, 118 Mont. 31, 37, 162 P.2d 887 (1947); and where no mode or manner of exercise of an express power is provided, the governing body may adopt any reasonable method of discharging its powers, see State ex rel. Thompson v. Gallatin County, 120 Mont. 263, 270, 184 P.2d 998 (1947).

Other than the requirement that the depreciation reserve fund be used to replace buses and radios for which the reserve fund was created, I find nothing in §75-7024 which restricts the manner in which trustees expend moneys to replace vehicles which have contributed to the fund. The section creates a single reserve fund which is funded by accumulated depreciation taken on participating buses and radios. References in §75-7024 to a bus depreciation reserve fund are in the singular and §75-6801(1), R.C.M. 1947, which defines budgeted funds for school district financial purposes, similarly speaks in terms of a singular bus depreciation reserve fund. There is no requirement that depreciation amounts attributable to each bus or radio be segregated.

Depreciation reserve funds, such as the one here, customarily cover classes of equipment rather than specific items. Even within a class of equipment, individual items do not wear out at the same rate and cannot be replaced at identical intervals. Actual depreciation and necessary replacement of equipment cannot be accurately determined to occur at the precise time it has been fully depreciated. One piece of equipment within a class having a five year depreciation period may need replacement after four years, while another piece within the same class may endure seven years of use. Provision for a bus depreciation reserve fund

was not intended to compel school districts to replace equipment on the last day of the last depreciation year, nor was it intended to forbid replacement of vehicles wearing out before such time. A depreciation reserve fund can thus account only for average depreciation and average intervals of replacement. Limiting payment from the bus depreciation reserve fund for replacement of a contributing bus or radio to an amount equal to the actual amount of depreciation taken on the old bus or radio would not promote the purpose of the fund. School districts may therefore pay for the cost of replacement of any bus or radio which contributes to the bus depreciation fund from the fund whether or not the bus has been fully depreciated.

This opinion is consistent with and confirms a letter opinion issued by Attorney General Forrest Anderson, dated September 30, 1963, and addressing the identical question. That opinion construed a depreciation reserve provision which is identical in material respects to the present provision and concluded:

> ***[T]here appears to be no intent to limit the expenditure of the reserve fund strictly to replacement of individual units in the amount their separate cost has contributed to the fund.

THEREFORE, IT IS MY OPINION:

> The trustees of a school district may pay for the entire cost of replacement of a bus or radio from a bus depreciation reserve fund established under §75-7024, R.C.M. 1947, if depreciation taken on the bus or radio since its acquisition has been credited to the reserve fund. In replacing any bus or radio which has contributed to the fund, the trustees are not limited to paying an amount from the fund which equals the accumulated depreciation credited to the fund on account of the replaced vehicle.

Very truly yours,

MIKE GREELY
Attorney General

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