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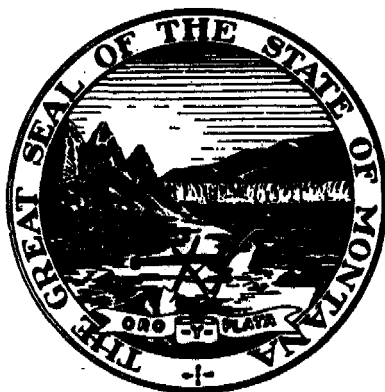
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JUN 13 1980

OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

**1980 ISSUE NO. 11
PAGES 1557-1630**



NOTICE

Information Relating to
New Subscriptions to the

ADMINISTRATIVE RULES OF MONTANA

The Administrative Rules of Montana are being recodified and will be available in September, 1980. A set is comprised of the rules of the executive agencies of Montana which have been designated by the Montana Administrative Procedure Act for inclusion in the code. There are 17 loose leaf binders to a set housing approximately 7000 pages. Cost, per set, is \$175.00. An additional charge of \$15.00 will be made for the September and December 1980 replacement pages to the recodified set. If you are interested in purchasing a set please use the order blank below and submit prior to June 1, 1980.

Price of replacement pages for 1981 will be set and billed approximately December 15, 1980.

This information is for new subscribers only. Current subscribers will receive information on replacement pages by mail.

To: FRANK MURRAY
Secretary of State
Capitol Bldg, Rm 202
Helena, MT 59601

Please place my order for Administrative Rules of Montana as indicated below. I understand a statement for this order will be sent July 15, 1980, and must be paid before my order will be shipped in September, 1980.

Administrative Rules of Montana ____ set(s) @ \$175.00 = \$ ____
September and December pages ____ set(s) @ \$ 15.00 = \$ ____

Name _____

Address _____

City, State & Zip Code _____

11-6/12/80

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

The Administrative Code Committee reviews all proposals for adoption of new rules or amendment or repeal of existing rules filed with the Secretary of State. Proposals of the Department of Revenue are reviewed only in regard to the procedural requirements of the Montana Administrative Procedure Act. The Committee has the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. In addition the Committee may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a Joint Resolution directing an agency to adopt, amend, or repeal a rule.

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with existing or proposed rules. The address is Room 138, State Capitol, Helena, Montana 59601.

NOTICE: The July 1977 through June 1979 Montana Administrative Register have been placed on microfiche. For information, please contact the Secretary of State, Room 202, Capitol Building, Helena, Montana, 59601.

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

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

| | |
|----------------------------------|-----------------------|
| In the matter of the amendment) | NOTICE OF PROPOSED |
| of rule 16-2.18(10)-S1852,) | AMENDMENT OF RULE |
| Reportable Diseases) | 16-2.18(10)-S1852 |
|) | (Reportable Diseases) |
| NO PUBLIC HEARING CONTEMPLATED | |

TO: All Interested Persons

1. On July 16, 1980, the Department of Health and Environmental Sciences proposes to amend rule 16-2.18(10)-S1852 which provides requirements for reporting certain communicable diseases.

2. The rule as proposed to be amended provides as follows:

16-2.18(10)-S1852 REPORTABLE DISEASES Reportable
communicable diseases include:

- (1) Category A diseases:
- Botulism, including Infant Botulism
 - Cholera
 - Diphtheria
 - Measles
 - Plague
 - Poliomyelitis, paralytic
 - Poliomyelitis, non-paralytic
 - Rabies, Human
 - Relapsing Fever (louse-borne)
 - Smallpox
 - Typhus (louse-borne)
 - Yellow Fever

Category A diseases also include an undiagnosed febrile illness in a person recently returning from a foreign country such as Ebola Hemorrhagic Fever, Lassa Fever, or Marburg Virus disease.

(a) A Category A disease must be reported within 6 hours of diagnosis to a local health officer followed by a written report submitted within 48 hours. The report must include the name, address, and telephone number of the infected person; the name, address, and telephone number of the reporter; and the name of the disease.

- (2) Category B diseases:

- Anthrax
- Amebiasis
- Brucellosis (Undulant Fever)
- Chancroid
- Encephalitis or Encephalomyelitis (post-infectious, arthropod-borne, other or unspecified)
- Giardiasis
- Gonococcal disease (including gonorrhea)
- Granuloma inguinale

Hepatitis, Type A (Infectious, Type B (Serum), Unspecified
Legionnaires' Disease
Leprosy
Leptospirosis
Lymphogranuloma venereum
Malaria
Meningitis, Aseptic (viral)
Meningococcal Disease (Meningococcemia, Meningococcal
meningitis, or other illness)
Mumps
Ornithosis (Psittacosis)
Rabies, animal (species, county, date)
Rocky Mountain Spotted Fever (Tick-borne Typhus)
Rubella (German Measles)
Rubella, Congenital
Salmonellosis
Shigellosis (bacillary dysentery)
Syphilis
Tetanus
Trichinosis
Tuberculosis (including non-pulmonary and atypical)
Tularemia
Typhoid and Paratyphoid Fever
Whooping Cough-like illness (Pertussis)
(a) A Category B disease must be reported within 24
hours of diagnosis to a local health officer. The report
must include the name of the infected person, the reporter,
and the disease.
(3) Category C diseases:
Chickenpox
Epidemic Gastroenteritis
Epidemic Kerato-conjunctivitis
Food-borne
Influenza
Nosocomial
Pediculosis (lice)
Ringworm (Dermatophytosis)
Scabies
Streptococcal Infections (including Scarlet Fever and
"Strep Throat")
Suspected non-polio enteroviral infections
Swimmer's Itch (cutaneous larva migrans)
Water-borne
(a) Only an epidemic of a Category C disease must be
reported to a local health officer. A report may be made by
mail or telephone without identification of an infected person.
The department may request further information.
(4) Category D diseases:
Animal Bites

Bacterial Meningitis (other than meningococcal)
Colorado Tick Fever
Guillain-Barre Syndrome
Heavy metal poisoning (lead, cadmium, arsenic, phosphorus,
mercury, other)
Helminth infestations
Q-Fever
Reye's Syndrome
Rheumatic Fever (acute)
Subacute Sclerosing Panencephalitis (SSPE)
Typhus, murine
Viral exanthum in pregnant women
Exotic diseases (including but not limited to meliodosis,
histoplasmosis, echinococcosis, coccidioidomycosis, and
cryptococcus)

(a) An exotic disease must be reported within 24 hours of diagnosis to a local health officer. The report must include the name of the infected person, the reporter, and the disease.

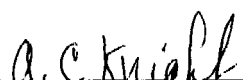
3. The rule is proposed to be amended to add venereal diseases to category B diseases thus fulfilling the Department's responsibilities under 50-1-202 and Title 50, Chapter 18 of the Montana Code Annotated.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59601, no later than July 15, 1980.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana, 59601, no later than July 15, 1980.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25 based on population statistics of the State of Montana.

7. The authority of the Department to make the proposed amendment is based on sections 50-1-202, 50-18-105, and 50-18-106, MCA, and the rule implements sections 50-1-202, 50-18-102, and 50-18-106, MCA.


A. C. KNIGHT, M.D., Director

By 
JOHN W. BARTLETT, Deputy Director

Certified to the Secretary of State June 3, 1980

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

In the matter of the amendment) NOTICE OF PUBLIC HEARING
of rule 16-2.14(10)-S14381,) OF PROPOSED AMENDMENT OF
Public Water Supplies) OF RULE 16-2.14(10)-S14381
) (Public Water Supplies)

TO: All Interested Persons

1. On July 18, 1980, at 9:00 a.m., or as soon thereafter as the matter can be heard, a public hearing will be held in the Highway Department Auditorium, 2701 Prospect Avenue, Helena, Montana, to consider the amendment of rule 16-2.14(10)-S14381.

2. The proposed amendment replaces present rule 16-2.14(10)-S14381 found in the Administrative Rules of Montana. The proposed amendment would raise the laboratory fee for standard microbiological analyses (total coliform) of public water supply samples from four dollars to six dollars.

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

16-2.14(10)-S14381 PUBLIC WATER SUPPLIES

(1) through (5)(e) Same as existing rule.

(f) Laboratory fees.

(i) Fees for analysis made by the department laboratories are as follows:

| | | |
|-----------------------------------|-----|--------------|
| Standard microbiological analyses | \$4 | \$6 per test |
| (total coliform) | | |

| | |
|------------------------------|---------------|
| Chemical analyses (complete) | \$45 per test |
|------------------------------|---------------|

| | |
|--------------------------------|--------------|
| Nitrate test for non-community | \$2 per test |
|--------------------------------|--------------|

supplies, when done separately

The department shall bill only for the work actually performed by the state laboratories.

(ii) Same as existing rule.

(6) through (8) Same as existing rule.

4. The Board is proposing this amendment to its rule in order to implement increased costs incurred by the department's laboratory for performing standard microbiological analyses.

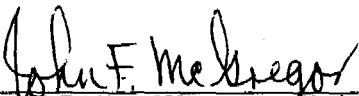
5. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Douglas B. Olson, Attorney, Legal Division, Department of Health and Environmental Sciences, Capitol Station, Helena, Montana, no later than 5:00 p.m., July 17, 1980.

6. C. W. Leaphart, Jr., 1 North Last Chance Gulch, Helena, Montana, 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 75-6-103, MCA, and it implements section 75-6-104(6), MCA.

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7. The authority of the agency to make the proposed amendment is based on section 75-6-103, MCA, and it implements section 75-6-104(6), MCA.


JOHN F. MCGREGOR, M.D., Chairman

By 
JOHN W. BARTLETT

Certified to the Secretary of State June 3, 1980

11-6/12/80

MAR Notice No. 16-2-145

BEFORE THE COAL BOARD
OF THE STATE OF MONTANA

| | |
|-----------------------------------|--------------------------------|
| In the matter of the adoption) | NOTICE OF PROPOSED ADOPTION |
| of rules specifying submittal) | OF RULES (Application Require- |
| deadlines and defining eligible) | ments) |
| state agencies.) | |

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 1, 1980 the Montana Coal Board proposes to adopt rules specifying submittal deadlines and defining eligible state agencies.

2. The proposed rules provide as follows:

RULE I SUBMITTAL DEADLINES (1) Grant pre-applications and applications shall be submitted to the administrative officer 30 days prior to board consideration.

(2) Other matters shall be submitted to the administrative officer 10 days prior to board consideration.

(3) Exceptions to (1) and (2) shall be at the Board's discretion.

RULE II STATE AGENCIES (1) An eligible state agency is one that:

(a) is seeking a grant to assist a local governmental unit in providing a service which the local government unit is legally responsible to provide in whole or in part, and such service must be expanded because of coal development impact, and the applicant state agency is either joined in the application by the local governmental unit's governing body or has received letters of support from such authority; or

(b) is applying to provide a direct service to the Coal Board to enable the Board to more effectively discharge its statutory responsibilities.

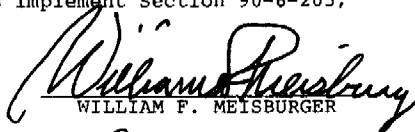
3. The new rules are being proposed to implement the provisions of Section 90-6-205, MCA, which authorize the board to adopt rules governing its proceedings, and to award grants to state agencies seeking to assist local governments.

4. Any person may submit data, views, or comments in writing to William F. Meisburger, Chairman, Montana Coal Board, 1424 9th Avenue, Helena, Montana 59601, no later than July 10, 1980.

5. If a person who is directly affected by the proposed adoption wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to William F. Meisburger, address in paragraph 4, no later than July 10, 1980.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental sub-division or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 15 persons.

7. The authority of the board to adopt these rules is Section 90-6-205, MCA. These rules implement Section 90-6-205, MCA.


WILLIAM F. MEISBURGER

Certified to the Secretary of State June 3, 1980.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
DIVISION OF WORKERS' COMPENSATION
OF THE STATE OF MONTANA

| | |
|----------------------------------|------------------------------|
| In the matter of the amendment) | NOTICE OF PUBLIC HEARING |
| of Rule 24-3.18A(2)-S1810(3)(a)) | ON PROPOSED AMENDMENT OF |
| regarding minimum safety stan-) | RULE 24-3.18A(2)-S1810(3)(a) |
| dards for logging departments) | MINIMUM SAFETY STANDARDS FOR |
| and logging operations.) | LOGGING DEPARTMENTS AND |
| | LOGGING OPERATIONS. |

TO: All Interested Persons.

1. On July 14, 1980, at 10:00 a.m., a public hearing will be held in the old Highway Building Auditorium (Scott Hart Building), 6th and Roberts, Helena, Montana, to consider the proposed amendment of Rule 24-3.18A(2)-S1810(3)(a).

2. The proposed amendment would replace in its entirety present Rule 24-3.18A(2)-S1810(3)(a) found in the Administrative Rules of Montana, concerning logging departments and logging operations.

3. The Division proposes to replace the current rules concerning logging departments and logging operations in order to update the rules on this subject. The rules relate to matters concerning the inspection and other matters related to the safe operation of logging departments and logging operations. A copy of the proposed rules may be obtained from the Division of Workers' Compensation by contacting Mr. Max B. Salazar, Chief, Bureau of Safety and Health, Division of Workers' Compensation, 815 Front Street, Helena, Montana 59601.

4. Rationale: The reason the Division is proposing to completely replace the present rules concerning logging departments and logging operations is that changes in technology have taken place which should be addressed through new rules, and it is believed a more modern and clearly understood set of rules is required for the safe operation of logging departments and logging operations in this state.

5. Interested persons may present their data, views and arguments either orally or in writing at the hearing. Written arguments, views or data may also be submitted to the Division of Workers' Compensation, 815 Front Street, Helena, Montana 59601, no later than July 23, 1980.

6. William R. Palmer has been designated to preside over and conduct the hearing.

7. The authority of the Division to make the proposed amendment is based on Section 50-71-311, Montana Code Annotated, and implements Sections 50-71-201, 50-71-202, 50-71-203, 50-71-301 and 50-71-311, Montana Code Annotated.



FRED BARRETT, Acting Commissioner
Department of Labor and Industry

Certified to the Secretary of State June 3, 1980

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF PUBLIC ACCOUNTANTS

IN THE MATTER of the proposed) NOTICE OF PROPOSED REPEAL OF
Repeal of ARM 40-3.94(6)-) ARM 40-3.94(6)-S9460
S9460 applications.) APPLICATIONS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 12, 1980 the Board of Public Accountants proposes to repeal rule ARM 40-3.94(6)-S9460 concerning applications.

2. The proposed action will repeal ARM 40-3.94(6)-S9460 APPLICATIONS in its entirety. The rule is located at page 40.382 Administrative Rules of Montana.

3. The board is proposing the repeal as the rule refers to a postmark date of December 31, 1969 and is obsolete.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to the Board of Public Accountants, Lalonde Building, Helena, Montana 59601 no later than July 10, 1980.

5. If a person who is directly affected by the proposed repeal wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Public Accountants, Lalonde Building, Helena, Montana 59601 no later than July 10, 1980.

6. If the board receives requests for a public hearing on the proposed repeal from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed repeal; from the Administrative Code Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register.

7. The authority of the board to make the proposed repeal is based on sections 37-50-201, and 203 MCA.

BOARD OF PUBLIC ACCOUNTANTS
SHERMAN VELTKAMP, CHAIRMAN

BY: 

ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, June 3, 1980.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|----------------------------|---|------------------------------|
| IN THE MATTER OF THE |) | NOTICE OF PROPOSED AMENDMENT |
| AMENDMENT OF RULE |) | OF RULE 42-2.14(1)-S1470, |
| 42-2.14(1)-S1470, relating |) | relating to cigarette tax |
| to cigarette tax refunds. |) | refunds. |

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 14, 1980, the Department of Revenue proposes to amend Rule 42-2.14(1)-S1470, relating to cigarette tax refunds.
2. The rule as proposed to be amended provides as follows:

42.2.14(1)-S1470 CIGARETTE TAX REFUNDS (1) Cigarette tax refunds will be issued only to cigarette manufacturers, as provided in subsection (2), and to Indian Tribes, as provided in subsection (3).

(2) Refund claims by a cigarette manufacturer must contain a notarized affidavit that the cigarette tax meter units claimed are all State of Montana cigarette tax insignia which are affixed to the unsalable cigarettes; that credit or refund for the net cost of the tax insignia has been given to a Montana cigarette dealer; and that the cigarettes will not be sold at any time. Refund claims must be accompanied by a copy of the credit memo or invoice issued to the Montana dealer.

(3) Cigarette tax refunds are made to an Indian Tribe pursuant to an agreement between the tribe and the department of revenue. This agreement provides for the collection of Montana cigarette tax on the reservation and a refund to the tribe based on the portion of the tax collected that is attributable to tax exempt purchasers.

3. In order to more fairly administer the cigarette tax laws and to ensure compliance for purchases of cigarettes by non-Indians on Indian reservations, the Department of Revenue proposes to enter agreements with Indian Tribes. These agreements provide in general that the tribe will insure the collection and remittance of the cigarette tax on all purchases on the reservation. Since many of these purchases are by Indians, the tax may not be imposed by the state. The state will therefore make a refund to the tribe based on the number of tax exempt purchasers and statistics on average cigarette consumption. This approach is modeled on one adopted by Oregon. Because of the outlined procedure, it is necessary to amend rule 42-2.14(1)-S1470 to reflect the proposal.

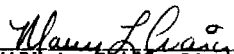
4. Interested persons may submit their data, views, or arguments concerning the proposed amendment in writing no later than July 14, 1980, to:

Laurence Weinberg
Legal Division
Department of Revenue
Mitchell Building
Helena, Montana 59601

5. If a person who is directly affected by the proposed amendment wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Laurence Weinberg at the address given in paragraph 4 above no later than July 14, 1980.

6. If the department receives request for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons directly affected; from the Revenue Oversight Committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who are directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been estimated to be at least 25 based upon the number of cigarette vendors in Montana.

7. The authority of the department to make the proposed amendment is based on 16-11-103, MCA. The proposed amendment implements 16-11-111, MCA.


MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 6/2/80

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

| | | |
|-------------------------------------|---|----------------------|
| In the matter of the repeal of |) | NOTICE OF PROPOSED |
| Rules 48-2.26(2)-S2610 through |) | REPEAL OF RULES FOR |
| 48-2.26(2)-S26010; Rules 48-2.26 |) | VOCATIONAL EDUCATION |
| (6)-S26020 through 48-2.26(6)- |) | |
| S26050; Rules 48-2.26(10)-S26140; |) | |
| Rules 48-2.26(14)-S26150 through |) | |
| 48-2.26(14)-S26200; and Rules |) | |
| 48-2.26(18)-S26210 through 48-2.26 |) | |
| (18)-S26230, concerning the govern- |) | |
| ance and administration, personnel, |) | |
| programs, funding and evaluation |) | NO PUBLIC HEARING |
| for vocational education. |) | CONTEMPLATED |

TO: All interested persons

1. On August 1, 1980 the superintendent of public instruction will repeal the rules in sub-chapters 2, 6, 10, 14, 18 in Chapter 26 of Title 48 concerning governance and administration, personnel, programs, funding and evaluation for vocational education.

2. The rules to be repealed are on pages 48-476 through 48-501 of the Administrative Rules of Montana.

3. The superintendent is repealing these rules because they do not conform to the changes in governance for vocational education provided in House Bill 634 enacted by the 46th Legislature and signed into law by the Governor.

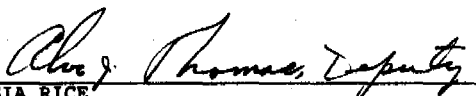
4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Larry Key, Administrator, Department of Vocational and Occupational Services, Office of Public Instruction, State Capitol, Helena, Montana 59601. If written comments are to be considered they must be received no later than July 18, 1980.

5. A person who is directly affected and wishes to express his data, views and arguments orally or in writing at a public hearing, must make a written request for a hearing and submit this request, along with any written comments to Dr. Key at the above-stated address no later than June 27, 1980.

6. If the department receives request for a public hearing on the proposed repeal from either 10% or 25, whichever is less; from the Administrative Code Committee of the legislature, from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

-1573-

7. The authority of the agency to make the proposed repeal is based on Sec. 20-7-302 and implements Sec. 1, Ch. 598, L. 1979.



GEORGIA RICE
SUPERINTENDENT OF PUBLIC INSTRUCTION

Certified to the Secretary of State May 2, 1980.

11-6/12/80

MAR Notice No. 48-2-23

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

| | |
|--------------------------------------|----------------------|
| In the matter of the repeal of rule) | NOTICE OF PROPOSED |
| 48-2.18(1)-S1801: Concerning) | REPEAL OF A RULE FOR |
| special education supervision and) | SPECIAL EDUCATION |
| policy on planning prepared for the) | |
| Board of Public Education by the) | |
| Superintendent of Public Instruc- | NO PUBLIC HEARING |
| tion.) | CONTEMPLATED |

To: All Interested Persons

1. On August 1, 1980 the superintendent of public instruction will repeal rule 48-2.18(1)-S1801 concerning planning, supervision and policy for special education.

2. The rule appears on pages 48-356.2, 48-356.3 and 48-357 of the Administrative Rules of Montana.

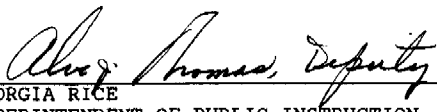
3. The superintendent is repealing this rule to bring the special education rules into conformity with changes in special education statutes resulting from enactments of the 45th Legislature.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Shirley Miller, Director, Special Education, Office of Public Instruction, State Capitol, Helena, Montana 59601. If written comments are to be considered they must be received no later than July 18, 1980.

5. A person who is directly affected and wishes to express his data, views and arguments orally or in writing at a public hearing, must make a written request for a hearing and submit this request, along with any written comments to Ms. Miller at the above-stated address no later than June 27, 1980.

6. If the department receives request for a public hearing on the proposed repeal from either 10% or 25, whichever is less; from the Administrative Code Committee of the legislature, from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the agency to make the proposed repeal is based on Sec. 20-7-403(1), M.C.A., and implements Sec. 20-7-402, M.C.A.



GEORGIA RICE
SUPERINTENDENT OF PUBLIC INSTRUCTION

Certified to the Secretary of State May 6, 1980.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adop-) NOTICE OF THE AMENDMENT OF RULES
tion of Rule 4.12.1008;) 4.12.1008; 4.12.1010; and 4.12.3007
4.12.1010; and 4.12.3007.)

TO: All interested persons

1. On Apr. 24, 1980, the Montana Department of Agriculture published notice of a proposed amendment to rules 4.12.1008; 4.12.1010; and 4.12.3007, concerning Licensing of Grain Merchandisers - Fees - Exemptions; Charges of Public Warehousemen for Handling, Cleaning, and Storage of Grain; and Agricultural Seed Licensing Fees at page 1194 of the Mt. Administrative Register.

2. The agency has amended the rules with the following changes:

RULE 4.12.1008 LICENSING OF GRAIN MERCHANTISERS - FEES - EXEMPTIONS (1) "Grain Merchandiser License Categories" and fees:

(d) Grain merchandisers owning, leasing, or controlling any truck or tractor trailer unit used in the merchandising of grains other than activities directly related to public storage shall pay a license fee of ~~\$15.00~~ \$20.00 for each year or part of year before July 1. A separate license is required for each truck or tractor unit. A decal, provided by the department, indicating the license number shall be securely placed on the windshield of each truck or tractor trailer unit. The decal license is not transferable from one vehicle to another. If the truck or trailer unit is sold or otherwise disposed of, a duplicate decal may be issued by the department upon receiving satisfactory evidence that the original decal was destroyed. The licensee shall notify the Department of Agriculture.

RULE 4.12.1010 CHARGES OF PUBLIC WAREHOUSEMEN FOR HANDLING, CLEANING, AND STORAGE OF GRAIN (1) Not more than a total of ~~ten~~ twelve cents ~~{10¢}~~ (12¢) per bushel for receiving, elevating, weighing, and immediate delivery on a car of the identical grain without mixing. Immediate delivery means that the total period of assemblage and delivery does not exceed seventy-two (72) hours.

(2) Not more than a total of ~~ten~~ twelve cents ~~{10¢}~~ (12¢) per bushel, for all grains, for receiving, grading, weighing, elevating, insuring, and delivery to the owner.

(3) Not more than one ~~twelfth~~ tenth ~~{1/12}~~ (1/10) of one cent (.01) per bushel for each day in storage after the period of free storage has elapsed. The first fifteen (15) days of storage shall be without charge.

(4) Not more than ten cents (10¢) per bushel for cleaning grain where there are cleaning facilities. All screenings shall be handled in accordance with Section 80-5-204 MCA.

RULE 4.12.3007 AGRICULTURAL SEED LICENSING FEES (1) All seed processing plants, seed labelers, seed buyers, and public agricultural seed warehouses shall obtain a license at a cost of ~~\$25~~ \$35 per year from the department before doing business in this state.

(2) No person may distribute seed without obtaining a dealer's license at the cost of ~~\$10~~ \$15 per year for each place of business.

3. No adverse comments or testimony were received.

W. Gordon McOmber
W. Gordon McOmber, Director

BY: Mary C. Evans
Mary C. Evans, Administrator
Centralized Services Bureau

Certified to the Secretary of State, June 3, 1980

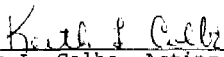
-1574-

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

| | | |
|-------------------------------|---|------------------------|
| In the matter of the amend- |) | NOTICE OF AMENDMENT OF |
| ment of Rule 12-2.10(6)-S1080 |) | RULE 12-2.10(6)-S1080 |
| relating to Outfitter and |) | |
| Guide Regulations |) | |

TO: All Interested Persons.

1. On April 24, 1980, the Department of Fish, Wildlife, and Parks published notice of a proposed amendment of a rule relating to outfitter and guide regulations at page 1198 of the 1980 Montana Administrative Register, issue No. 8.
2. The agency has amended the rule as proposed.
3. No comments or testimony were received.



Keith L. Colbo, Acting Director
Dept. of Fish, Wildlife & Parks

Certified to Secretary of State May 27, 1980

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

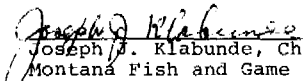
In the matter of the amendment) NOTICE OF AMENDMENT OF
of Rule 12-2.10(14)-S10190) RULE 12-2.10(14)-S10190
relating to water safety)
regulations)

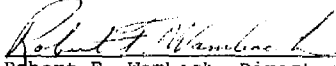
TO: All Interested Persons.

1. On March 27, 1980, the Montana Fish and Game Commission published notice of a proposed amendment of a rule relating to water safety regulations at page 997 of the 1980 Montana Administrative Register, issue No. 6.

2. The agency has amended the rule as proposed.

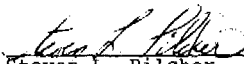
3. Two comments from Department of Fish, Wildlife & Parks region 4 personnel were received. The first asks for the removal of Axtman and Feys Reservoirs from the listing of waters closed to motor-propelled water craft in this proposed amendment. The reason for removal is that they are private ponds and not under department management. As their removal is a substantive change which requires the department to follow complete MAPA notice and publication requirements, no action will be taken at this time. The second request asks that Fitzpatrick Reservoir be designated as a lake since it is a natural body of water. As this change is not substantive, it will be made as part of the ARM recodification process.


Joseph D. Klabunde, Chairman
Montana Fish and Game Commission


Robert F. Wambach, Director
Dept. of Fish, Wildlife & Parks

Certified to Secretary of State May 30, 1980

Reviewed and Approved:


Steven L. Pilcher
Water Quality Bureau
Environmental Sciences Division
Dept. of Health & Environmental Sciences

BEFORE THE FISH AND GAME COMMISSION
OF THE STATE OF MONTANA

| | | |
|-----------------------------|---|-------------------------|
| In the matter of the amend- |) | NOTICE OF AMENDMENT OF |
| ment of Rule 12-2.10(14)- |) | RULE 12-2.10(14)-S10190 |
| S10190 relating to water |) | |
| safety regulations |) | |

TO: All Interested Persons.

1. On February 14, 1980, the Montana Fish and Game Commission published notice of a proposed amendment of Rule 12-2.10(14)-S10190 relating to water safety regulations at page 448 of the 1980 Montana Administrative Register, issue number 3. Because the required number of persons requested a public hearing, a notice of public hearing on the rule was published at page 1004 of the 1980 Montana Administrative Register, issue number 6.

2. The agency has amended the rule as proposed.

3. The comments received at public hearing, and at the Helena office by letter, number some 178. For this reason, individual responses will not be made to each and every comment received in this matter. Rather, a general statement of those who spoke in favor and of those who spoke against the proposed amendment to the above-cited rule will be presented with a response. The written comments and report of the presiding officer and the tape and minutes of the hearing are available for review by interested persons during normal office hours at the department's Helena office, 1420 E. 6 Ave., Helena, Montana.

A summary of the comments of those in favor of the proposed amendment finds the following reasons:

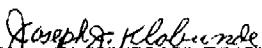
individual personal preferences and personal feelings that the river should be opened to all types of recreational use; power boating should be afforded the same consideration as other uses of the state's waters; jet boats are roomier, safer than other boats, and the Missouri River in the reach between Headwaters and Toston Dam is sufficiently large enough to handle power boats of over 10 h.p., particularly jet boats; use of power boats is one of the best ways to utilize fishing and hunting resources; individuals who don't like power boats should not be permitted to monopolize the beauty and the sport of fishing the Missouri River; the use of power boats is viable with other water recreation and should not be reduced to a lake activity; the elimination of the use of power boats would unfairly reduce the use and enjoyment of the state's rivers; with limited access to waters for fishing, power boats should not be kept off any portion of the Missouri River; there should be no restriction on size of boats on navigable streams the size of the Missouri River; the opening of this portion of the river will provide more recreation and assist in the sale of power boats, and while there are rivers in

Montana that should be closed to power boating like the Gallatin, Madison, Jefferson, Big Hole, and rivers of that nature, the Missouri is a larger river that should be open to all size boats.


Response: The rule is amended as proposed.

Comments of those in opposition to the proposed amendment are as follows: the personal feelings of the individuals and preferences relating to the types of use of water; general opposition to boats of over 10 h.p. on the Missouri River upstream from Toston Dam; larger power boats will increase the safety hazard for rafters and other users of the water on the Missouri River between Toston Dam and Headwaters State Park; the larger boats will erode the river banks, scatter and harass wildlife and disrupt fish eggs from the bottom of the river; create noise pollution; larger boats will endanger shore fishermen, waders, and floaters due to the disruption of the water as they pass by; the aesthetics and quiet serenity of the river will be destroyed on this reach of the Missouri River; the fishery and wildlife habitat will be disrupted, particularly the nesting of ducks and geese; a safety hazard in that area of the river near Lombard as it is too shallow for prop-driven boats; the increase in the use of large boats will decrease the recreational use of the river as the bank fishermen and float fishermen will not use the same area that the power boats are using; there are sufficient areas within the state where jet boats can now be used; the noise, speed, and efficiency of use of jet boats on the upper Missouri is detrimental to the use of the river; the quality of the area for recreation will be degraded; the interest of those people presently using the river in its present state would not be served; opening to larger boats would be a waste of gasoline in this time of energy conservation; there is a possible negative impact that would be felt in Townsend from change of use on that portion of the Missouri River; it would not be compatible with fly fishermen; it would increase the difficulty for enforcement of fish and game violations for the taking of game and birds on this portion of the river; and the preferences of those who live near the river should be given greater consideration in a matter of this type.

Response: While the concerns raised by these comments are valid, there will be no detrimental effect to the fishery and wildlife habitat, the boat user/fisherman conflict will not be solved by exclusion of the boat users, and the public health, public safety, and protection of property of individuals utilizing that portion of the Missouri River will not be detrimentally affected by the adoption of this amendment.



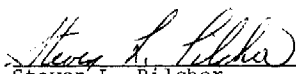
Joseph J. Klabunde, Chairman
Montana Fish and Game Commission



Robert F. Wambach, Director
Dept. of Fish, Wildlife, & Parks

Certified to Secretary of State 6-3, 1980

Reviewed and Approved:



Steven L. Pilcher
Water Quality Bureau
Environmental Sciences Division
Dept. of Health & Environmental Sciences

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

| | | |
|-----------------------------|---|-----------------------------|
| In the matter of the repeal |) | NOTICE OF THE REPEAL |
| of ARM 16-2.18(10)-S1840, |) | OF CERTAIN RULES PERTAINING |
| 16-2.18(10)-S1850, |) | TO COMMUNICABLE DISEASES |
| 16-2.18(10)-S1860, |) | AND DEAD BODIES |
| 16-2.18(10)-S1870, |) | |
| 16-2.18(10)-S1880, |) | |
| 16-2.18(10)-S1890, |) | |
| 16-2.18(10)-S18000, |) | |
| 16-2.18(10)-S18010, |) | |
| 16-2.18(10)-S18020, |) | |
| 16-2.18(10)-S18040, |) | |
| and 16-2.18(10)-S18055 |) | |
| relating to communicable |) | |
| diseases and dead bodies |) | |

TO: All Interested Persons

1. On April 24, 1980, the Department of Health and Environmental Sciences published notice of a proposed repeal of rules 16-2.18(10)-S1840--Communicable and Reportable Diseases, Definitions; 16-2.18(10)-S1850--Reportable Diseases; 16-2.18(10)-S1860--Forms and Procedures for Reporting; 16-2.18(10)-S1870--Quarantine Disease Measures; 16-2.18(10)-S1880--Diseases Requiring Warning Placard; 16-2.18(10)-S1890--Isolation Procedures; 16-2.18(10)-S18000--Release, Quarantine or Isolation; 16-2.18(10)-S18010--Funerals; 16-2.18(10)-S18020--Specific Disease Control Measures; 16-2.18(10)-S18040--Transportation of Dead Human Bodies; and 16-2.18(10)-S18055--Measles Quarantine at page 1200 of the 1980 Montana Administrative Register, issue no. 8.

2. The agency has repealed the rules as proposed.

3. A comment regarding failure to include 16-2.18(10)-S18040(5)(b) in the proposed adoption of rules relating to dead human bodies is acknowledged and accepted in the Department's notice of adoption following this notice.

| | | |
|-------------------------------|---|---------------------------|
| In the matter of the adoption |) | NOTICE OF THE ADOPTION OF |
| of rules relating to |) | RULES RELATING TO |
| communicable diseases, |) | COMMUNICABLE DISEASES |
| and transportation of |) | AND DEAD HUMAN BODIES |
| dead human bodies |) | |

TO: All Interested Persons

1. On April 24, 1980, the Department of Health and Environmental Sciences published notice of proposed adoption of rules relating to communicable diseases and dead human

bodies at page 1201 of the 1980 Montana Administrative Register, issue no. 8.

2. The Department has adopted the rules with the following changes:

Chapter 19

Communicable Diseases

Sub-chapters 1 through and including 4: same as proposed rules

Sub-Chapter 5

Isolation, Quarantine and Disinfection

Rules I through and including IV: same as proposed rules

RULE V TERMINAL CLEANING A person released from ~~quarantine or~~ isolation shall bathe, wash his hair with soap and hot water, and use clean clothing. The area of isolation ~~or quarantine~~ must be disinfected in accordance with instructions of a local health officer.

Sub-Chapter 6

Specific Control Measures

Rule I: same as proposed rule

RULE II AMEBIASIS (1) No isolation or quarantine is required for a case of amebiasis.

~~(2)--A person excreting Entamoeba histolytica in the feces is subject to the prohibition in sub-chapter 37-Rule 17, until 3 feces specimens, taken at intervals of not less than 3 days, are negative for the infectious agent.~~

Rules III through and including XXXVIII: same as proposed rules

Sub-chapters 9 and 10: same as proposed rules

Sub-Chapter 11

Venereal Diseases

Rule I: same as proposed rule

RULE II GONOCOCCAL DISEASE (1) These measures are required for genital and non-genital disease including pelvic inflammatory disease (gonorrhea).

(2) Modified isolation must be imposed for the first 24 hours after administration of an antibiotic. No quarantine is required.

Rules III through and including V: same as proposed rules

Chapter 20

DEAD HUMAN BODIES -- EMBALMING AND TRANSPORTATION

Rules I through and Including V: same as proposed rules

RULE VI EXCEPTIONS An exception to the provisions of 16-2.18(10)-SI8043(2), 16-2.18(10)-SI8043(3), or 16-2.18(10)-SI8044(1) may be granted by the department or a local health

officer if such exception is requested prior to transportation of the dead human body and if such exception does not constitute a hazard to public health, create a public nuisance, or violate the provisions of Title 50, Chapter 15, Part 4 of the Montana Code Annotated.

Following is an index showing the assignment of number of the rules relating to communicable diseases and dead human bodies:

CHAPTER 19
COMMUNICABLE DISEASES AND DEAD BODIES

Sub-Chapter 1
General Provisions

RULE I 16-2.18(10)-S1841 DEFINITIONS
RULE II 16-2.18(10)-S1842 LOCAL BOARD RULES

Sub-Chapter 2
Reporting Requirements

RULE I 16-2.18(10)-S1851 REPORTERS
RULE II 16-2.18(10)-S1852 REPORTABLE DISEASES

Sub-Chapter 3
General Prohibitions

RULE I 16-2.18(10)-S1875 PUBLIC FOOD HANDLERS
RULE II 16-2.18(10)-S1876 FUNERALS
RULE III 16-2.18(10)-S1877 TRANSPORTATION OF COMMUNICABLE DISEASE CASES
RULE IV 16-2.18(10)-S1878 IMPORTATION OF DISEASE

Sub-Chapter 4
Local Health Officer

RULE I 16-2.18(10)-S1881 DISEASE REPORTING
RULE II 16-2.18(10)-S1882 QUARTERLY REPORT
RULE III 16-2.18(10)-S1883 INVESTIGATION OF A CASE
RULE IV 16-2.18(10)-S1884 POTENTIAL EPIDEMICS

Sub-Chapter 5
Isolation, Quarantine and Disinfection

RULE I 16-2.18(10)-S1891 STRICT ISOLATION
RULE II 16-2.18(10)-S1892 MODIFIED ISOLATION
RULE III 16-2.18(10)-S1893 QUARANTINE OF CONTACTS
RULE IV 16-2.18(10)-S1894 QUARANTINE OF PATIENTS
RULE V 16-2.18(10)-S1895 TERMINAL CLEANING

Sub-Chapter 6
Specific Control Measures

| | | |
|--------------|--------------------|---|
| RULE I | 16-2.18(10)-S18101 | MINIMAL CONTROL MEASURES |
| RULE II | 16-2.18(10)-S18102 | AMEBIASIS |
| RULE III | 16-2.18(10)-S18103 | ANTHRAX |
| RULE IV | 16-2.18(10)-S18104 | BOTULISM-INFANT BOTULISM |
| RULE V | 16-2.18(10)-S18105 | BRUCELOSIS |
| RULE VI | 16-2.18(10)-S18106 | CHOLERA |
| RULE VII | 16-2.18(10)-S18107 | DIPHTHERIA |
| RULE VIII | 16-2.18(10)-S18108 | ENCEPHALITIS |
| RULE IX | 16-2.18(10)-S18109 | GIARDIASIS |
| RULE X | 16-2.18(10)-S18110 | GONOCOCCAL OPHTHALMIA NEONATORUM |
| RULE XI | 16-2.18(10)-S18111 | HEPATITIS TYPE A (INFECTIOUS) |
| RULE XII | 16-2.18(10)-S18112 | HEPATITIS TYPE B (SERUM) |
| RULE XIII | 16-2.18(10)-S18113 | LASSA FEVER |
| RULE XIV | 16-2.18(10)-S18114 | LEGIONNAIRE'S DISEASE |
| RULE XV | 16-2.18(10)-S18115 | LEPROSY (HANSEN'S DISEASE) |
| RULE XVI | 16-2.18(10)-S18116 | LEPTOSPIROSIS |
| RULE XVII | 16-2.18(10)-S18117 | MALARIA |
| RULE XVIII | 16-2.18(10)-S18118 | MEASLES--RUDEOLA |
| RULE XIX | 16-2.18(10)-S18119 | ASEPTIC MENINGITIS--VIRAL MENINGITIS |
| RULE XX | 16-2.18(10)-S18120 | MENINGOCOCCAL MENINGITIS-- MENINGOCOCCEMIA |
| RULE XXI | 16-2.18(10)-S18121 | MUMPS |
| RULE XXII | 16-2.18(10)-S18122 | PSITTACOSIS (ORNITHOSIS) |
| RULE XXIII | 16-2.18(10)-S18123 | PERTUSSIS (WHOOPING COUGH) |
| RULE XXIV | 16-2.18(10)-S18124 | PLAGUE |
| RULE XXV | 16-2.18(10)-S18125 | POLIOMYELITIS |
| RULE XXVI | 16-2.18(10)-S18126 | RABIES--HUMAN |
| RULE XXVII | 16-2.18(10)-S18127 | RELAPSING FEVER--TICK-BORNE-- LOUSE-BORNE |
| RULE XXVIII | 16-2.18(10)-S18128 | ROCKY MOUNTAIN SPOTTED FEVER |
| RULE XXIX | 16-2.18(10)-S18129 | RUBELLA--CONGENITAL RUBELLA |
| RULE XXX | 16-2.18(10)-S18130 | SALMONELLOSIS (OTHER THAN TYPHOID FEVER) |
| RULE XXXI | 16-2.18(10)-S18131 | SHIGELLOSIS--BACILLARY DYSENTERY |
| RULE XXXII | 16-2.18(10)-S18132 | SMALLPOX |
| RULE XXXIII | 16-2.18(10)-S18133 | TETANUS |
| RULE XXXIV | 16-2.18(10)-S18134 | TRICHINOSIS |
| RULE XXXV | 16-2.18(10)-S18135 | TULAREMIA |
| RULE XXXVI | 16-2.18(10)-S18136 | TYPHOID FEVER |
| RULE XXXVII | 16-2.18(10)-S18137 | TYPHUS FEVER--FLEA-BORNE-- LOUSE-BORNE |
| RULE XXXVIII | 16-2.18(10)-S18138 | YELLOW FEVER |

Sub-Chapter 9
Rabies Control

| | | |
|----------|--------------------|-------------------------------------|
| RULE I | 16-2.18(10)-S18011 | SUSPECTED RABIES--CLOSE CONTACT |
| RULE II | 16-2.18(10)-S18012 | ISOLATION OR DISPOSITION OF ANIMALS |
| RULE III | 16-2.18(10)-S18013 | ANIMAL CONTACTS |

Sub-Chapter 10
Tuberculosis Control

| | | |
|----------|--------------------|-------------------------------------|
| RULE I | 16-2.18(10)-S18021 | ISOLATION |
| RULE II | 16-2.18(10)-S18022 | TUBERCULOSIS--COMMUNICABLE STATE |
| RULE III | 16-2.18(10)-S18023 | DIAGNOSIS |
| RULE IV | 16-2.18(10)-S18024 | ATTAINMENT OF NONCOMMUNICABILITY |
| RULE V | 16-2.18(10)-S18025 | EMPLOYEE--SCHOOLS--DAYCARE FACILITY |

Sub-Chapter 11
Venereal Diseases

| | | |
|----------|--------------------|--------------------------|
| RULE I | 16-2.18(10)-S18031 | CHANCROID (SOFT CHANCER) |
| RULE II | 16-2.18(10)-S18032 | GONOCOCCAL DISEASE |
| RULE III | 16-2.18(10)-S18033 | GRANULOMA INGUINALE |
| RULE IV | 16-2.18(10)-S18034 | LYMPHOGRANULOMA VENEREUM |
| RULE V | 16-2.18(10)-S18035 | SYPHILIS |

CHAPTER 20
DEAD HUMAN BODIES--EMBALMING AND TRANSPORTATION

| | | |
|----------|--------------------|---|
| RULE I | 16-2.18(10)-S18041 | DEFINITIONS |
| RULE II | 16-2.18(10)-S18042 | DEATH FROM A SPECIFIED COMMUNICABLE DISEASE |
| RULE III | 16-2.18(10)-S18043 | TRANSPORTATION OF DEAD HUMAN BODIES |
| RULE IV | 16-2.18(10)-S18044 | PROHIBITIONS |
| RULE V | 16-2.18(10)-S18045 | DUTY OF LOCAL REGISTRAR |

3. (1) Roland D. Pratt, representing the Montana Funeral Directors Association, Helena, Montana, opposed omitting from the proposed rules relating to dead human bodies a provision allowing exceptions similar to 16-2.18(10)-S18040(5)(b). The Department has adopted a rule on exceptions (RULE VI above) substantially similar to the repealed rule 16-2.18(10)-S18040(5)(b) which alleviates Mr. Pratt's primary concern regarding incidents in which bodies must be transported from place of death to a mortuary without a burial-transit permit.

(2) Dr. Winship of Missoula, Montana had a number of written comments. He believed, based on an example of collecting data on hospital infections, the reporting requirements for category A diseases in Rule II of sub-chapter 2 of Chapter 19 unworkable because of the time requirements and requiring physicians to report. The Department believes that the example is not relevant because hospital infections are not category A diseases. Furthermore, the diseases listed as category A diseases are of such public health importance that immediate action is necessary and effective. The Department also believes that physicians and other reporters will comply with the reporting requirements for those diseases. The commentator disagreed with the classification of some diseases as serving no benefit to the state of Montana or whether people should be quarantined or isolated. The Department believes that although some diseases do not require quarantine or isolation, information on the occurrence of such diseases is warranted to inform persons what actions or localities pose a public health risk, and to determine whether and how such risks may be reduced by other public health measures or by individual actions. The commentator believed that the rule on public food handlers, Rule I of sub-chapter 3 of chapter 19, did not indicate that there are some diseases that some "folks can certainly have and still handle food. . . ." The Department believes the lack of scientific certainty in exempting diseases from the rules necessitates inclusion of any infection to protect public health, and that the provisions of Rule I on public food handlers allow for the very flexibility called for by the comment since the local health officer makes case-by-case determinations. Dr. Winship indicated that Rule IV of sub-chapter 3 of chapter 19, Importation of Disease, is "another means of 'nailing somebody to the mast' if the Health Department so wishes." The Department believes that Rule IV is necessary and one of the most effective means to protect residents of Montana from diseases occurring outside the boundaries of this state.

Dr. Winship thought penalties and enforcement should be "spelled out in detail." Penalties for violation of public health laws or rules are found in sections 50-1-103 and 50-1-104 of the Montana Code Annotated (MCA). In relation to Rule IV of sub-chapter 5 of chapter 19, Terminal Cleaning, Dr. Winship stated: ". . . I would like to see the information that makes this a particular hazzard (sic). There are only a few things that would be carried in the hair, I would be most interested to see these spelled out." The Department's review of this comment resulted in deleting the term "quarantine" from rule IV, sub-chapter 5 of chapter 19 (see paragraph 2 of this notice). Since the bodily washing required

is to reduce or eliminate any residual contamination of the infected individual and particularly his or her skin, the Department deems that exempting "the hair" from this requirement is inconsistent and potentially hazardous.

Dr. Winship stated that there was no provision for quarantine or isolation under psittacosis, Rule XXII of subchapter 6 of chapter 19, and quarantine of the individual ought to be required. Rule XXII, Psittacosis, expressly requires modified isolation which applies to the infected person. Quarantine of contacts not known to be infected is unwarranted.

(3) In response to the Lewis and Clark City-County Health Department's comment that Rule II, Quarterly Report, of subchapter 4 of Chapter 19 is unnecessary and redundant, the provisions of Rule II implement the reporting requirements in section 50-2-118(e), MCA, which are also for local boards of health and contain information not previously or otherwise required by the Department. Furthermore, many of the provisions of Rule II aid the exchange of public health information relating to policies, procedures and recommended changes which should improve communication between the state, local boards and members of the public as well as continue to improve the standard of public health care in Montana.

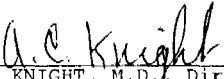
(4) In response to verbal comment from Dr. M. G. Schulz of the Center of Disease Control in Atlanta, Georgia, indicating that amebiasis is not a food-borne disease, the Department deleted (2) of Rule II of subchapter 6 of chapter 19 (see paragraph 2 of this notice).

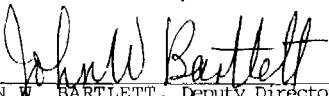
(5) Dr. William Gertson of Fort Benton, Montana, was concerned about the necessity of and time required for reporting category A, B and C diseases. Many of his comments were based on a misreading of the proposed rules. The diseases are deliberately classified on the basis of public health danger and the effectiveness and urgency of public health response. The Department believes the rapid response to the local health officer for category A diseases is necessary since these diseases are particularly hazardous and rapid response by a physician is an effective measure for containment of those diseases. For a number of other communicable diseases, those in category B, the local health officer needs to know about relatively promptly in order to determine if additional health control measures are necessary. A category C disease needs only to be reported when an epidemic occurs.

He stated also that the rules in subchapter 4 of chapter 19 would increase costs out of proportion to their benefit. These rules provide direction and clarity to activities more or less already being performed in the community or county for most areas of the state. The Department believes that a local health officer has a responsibility to investigate suspected threats to the public health and reasonably and

systematically assess risk and determine facts in order to guide current and future public health policy for the state.

The Department intends to continue and increase its capacity to provide forms, consultations and any other support activity necessary to improve and promote effective, efficient communicable disease control in all Montana counties.


A. C. KNIGHT, M.D., Director

By 
JOHN W. BARTLETT, Deputy Director

Certified to the Secretary of State June 3, 1980

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

| | | |
|--------------------------------|---|------------------------------|
| In the matter of the repeal |) | NOTICE OF ADOPTION OF RULES |
| of rules relating to |) | ARM 16.32.301 through |
| licensing and construction |) | 16.32.396 except |
| of hospitals and related |) | 16.32.346, 16.32.361 and |
| facilities (ARM 16-2.22(1)- |) | 16.32.362 |
| S2200 through ARM 16-2.22(2)- |) | AND REPEAL OF RULES |
| S2261 except 16-2.22(1)-S2210 |) | ARM 16-2.22(1)-S2200 through |
| (2) and (3) and 16-2.22(1)- |) | ARM 16-2.22(2)-S2261 |
| S2220(3)(j) and the adoption |) | except ARM 16-2.22(1)-S2210 |
| of rules relating to licensing |) | (2) and (3) and |
| and construction of health |) | ARM 16-2.22(1)-S2220(3)(j) |
| care facilities |) | |

TO: All Interested Persons

1. On April 24, 1980, the Department of Health and Environmental Sciences published notice of a proposed adoption of rules concerning licensing and construction of health care facilities and repeal of rules ARM 16-2.22(1)-S2200 through ARM 16-2.22(2)-S2261 concerning the licensing and construction of hospitals and related facilities at page 1225 of the 1980 Montana Administrative Register, issue number 8.

2. The Department has repealed the rules as captioned in this Notice and has adopted the rules as captioned in this Notice with the following changes:

(16-2.22(1)-S2301)

~~RULE-#~~ 16.32.301 DEFINITIONS

(1) "Administrator" means the individual responsible for the day-to-day operation of a hospital, skilled or intermediate care facility. This individual may also be known as, but not limited to, "chief executive officer," "executive director," or "president."

(2) through (11) same as proposed rule

(12) ~~"Outpatient" means a patient receiving treatment at a facility without being an inmate.~~ means a person receiving health care services and treatment at a facility without being admitted as an inpatient to the facility.

(13) "Supervise" means to oversee and direct staff by being present in the health care facility.

(16-2.22(1)-S2302)

~~RULE-#~~ 16.32.302 MINIMUM STANDARDS OF CONSTRUCTION FOR A LICENSED HEALTH CARE FACILITY -- ADDITION, ALTERATION OR NEW CONSTRUCTION -- GENERAL REQUIREMENTS Same as proposed rule.

(16-2.22(1)-S2303)

~~RULE-##~~ 16.32.303 SUBMISSION OF PLANS AND SPECIFICATIONS-- A NEW INSTITUTIONAL HEALTH SERVICE -- ALTERATION OR ADDITION TO A HEALTH CARE FACILITY (1) A person who contemplates construction of a new institutional health service and has been issued a certificate of need pursuant to Title 50, Chapter 5, Part 3, MCA, and ARM, Title 16, Chapter 32, Sub-chapter 1 shall submit plans and specifications to the department for preliminary

inspection and approval prior to commencing construction and shall comply with the following procedures.

(a) At least 9 months prior to the time a person commences construction, he shall submit a program and schematic plans to the department. This is a maximum time limit. A person may submit a program and schematic plans as soon as he desires after he receives a certificate of need.

(i) The program must include the following:

(A) A narrative description of the rooms or spaces to be included in each department, explaining the functions or services to be provided in each, indicating the size, the number of personnel and the kind of equipment or furniture it will contain.

(B) For inpatient facilities, a schedule showing total number of beds and number of bedrooms.

(ii) The schematic plans must include the following:

(A) Single line drawings of each floor which must show the relationship of the various departments or services to each other and the room arrangement in each department. The name of each room must be noted.

(B) The proposed roads and walks, service and entrance courts, and parking must be shown on the plot plan.

(C) Total floor area and number of beds must be noted on the plans.

(b) At least 3 months prior to the time a person commences construction, he shall submit working drawings and specifications to the department. This is a maximum time limit. A person may submit working drawings and specifications as soon as he desires after the department has approved his program and schematic plans.

(i) The working drawings must be complete and adequate for bid, contract and construction purposes and must be prepared for each of the following branches of the work: architectural, structural, mechanical and electrical.

(A) Architectural drawings must include a plot plan showing all new topography, newly established levels and grades, any existing structures on the site, new buildings and structures, roadways, walks and the extent of the areas to be seeded. Any structures and improvements which are to be removed as part of the work must be shown. A print of the site survey drawing must be included with the working drawings. The architectural drawings must also include the following:

(I) Plan of each basement, floor and roof.

(II) Elevations of each facade.

(III) Sections through building.

(IV) Required scale and full-size details.

(V) Schedule of doors and finishes.

(VI) Location of all fixed equipment.

(VII) Adequate details of any conveying system.

(B) Structural drawings must include plans for foundations, floors, roofs and all intermediate levels with sizes, sections and the relative location of the various structural members.

(C) Mechanical drawings must include plans for plumbing, heating, ventilation, air conditioning, and refrigeration.

(D) Electrical drawings must include the complete power and lighting layout of all electrical systems to be included in the construction and must include telephone layouts, nurse call system, fire alarm system and the emergency electrical system.

(c) Specifications must supplement the working drawings to fully describe types, sizes, capacities, workmanship, finishes and other characteristics of all materials and equipment.

(d) All plans and specifications must be certified by an engineer or architect licensed to practice in Montana and the certification must state that the plans and specifications are prepared in accordance with the requirements of this subchapter.

(2) A person who contemplates an alteration or addition to a health care facility which does not qualify as a new institutional health service shall submit plans to the department for preliminary inspection and approval prior to commencing construction and shall comply with the following procedures.

(a) A person who contemplates an addition to an existing health care facility shall comply with the requirements set forth in section (1) of this rule.

(b) If an alteration to a health care facility is contemplated, a program and schematic plans shall be submitted to the department at least 6 months prior to commencing construction of the alteration. Within 30 days after this submittal, the department may request a person to comply with the requirements set forth in ~~Rule-16.32.303(1)(b)~~ ARM 16.32.303(1)(b)

(c) The department's approval of an alteration or addition shall terminate one year after issuance.

(16-2.22(1)-S2304)

~~RULE-16.32.304~~ RULE-16.32.304 LICENSING -- PROCEDURE FOR OBTAINING A LICENSE -- ISSUANCE AND RENEWAL OF A LICENSE (1) A person shall comply with the following procedures when applying to the department for a license:

(a) A person shall submit a completed license application form to the department, at least 30 days prior to the opening of a facility and annually thereafter. A person can obtain a license application form from the department.

(b) A completed license application form must contain the following information.

(i) The name and address of the applicant if an individual; the name and address of each member of a firm, partnership, or association; or the name and address of each officer if a corporation;

(ii) The location of the facility;

(iii) The name of the person or persons who will administer, manage or supervise the facility;

(iv) The number and type of patients or residents for which care is provided;

(v) ~~The number, experience and training of employees in the health care facility~~, The number of employees in all job classifications. Remainder of this rule same as proposed

(16-2.22(1)-S2305)

~~RULE-V~~ 16.32.305 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES -- FOOD SERVICE ESTABLISHMENTS Same as proposed rule

(16-2.22(1)-S2306)

~~RULE-VI~~ 16.32.306 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES -- BLOOD BANK AND TRANSFUSION SERVICES Same as proposed rule

(16-2.22(1)-S2307)

~~RULE-VII~~ 16.32.307 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES -- COMMUNICABLE DISEASE CONTROL (1) Each employee of a health care facility shall provide documentation by a physician that he is free from communicable disease tuberculosis prior to the time of employment and annually thereafter.

(2) At time of admission and annually thereafter, a patient admitted to or residing in a long-term care facility shall provide documentation by a physician that he is free from communicable disease tuberculosis.

(16-2.22(1)-S2308)

~~RULE-VIII~~ 16.32.308 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES -- MEDICAL RECORDS Same as proposed rule

(16-2.22(1)-S2309)

~~RULE-IX~~ 16.32.309 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES -- PHYSICAL PLANT AND EQUIPMENT MAINTENANCE (1) Each facility shall have a written maintenance program describing the procedures ~~that must~~ ~~to~~ be utilized by maintenance personnel to keep the building and equipment in repair and free from hazards.

(2) A health care facility shall provide housekeeping services on a daily basis.

(3) All electrical, mechanical, plumbing, fire protection, heating and sewage disposal systems must be kept in operational condition.

(16-2.22(1)-S2310)

~~RULE-X~~ 16.32.310 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES -- ENVIRONMENTAL CONTROL (1) A health care facility shall take protective measures against the presence of insects and rodents.

(2) Hand cleansing soap or detergent and individual towels must be available at each lavatory in the facility. A waste receptacle must be located near each lavatory.

(3) A health care facility shall develop and follow a written infection control surveillance program describing the procedures that must ~~to~~ be utilized by the entire facility staff in the identification, investigation and mitigation of infections acquired in the facility.

(16-2.22(1)-S2311)

RULE-XI 16.32.311 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES -- DISASTER PLAN (1) A health care facility shall develop a disaster plan in conjunction with other emergency services in the community which must include a procedure ~~to~~ that will be followed in the event of a natural or man-caused disaster.

(2) A health care facility shall conduct a drill of such procedure at least once a year. After a drill, a health care facility shall prepare and retain on file a written report including, but not limited to, the following:

- (a) Date and time of the drill;
- (b) The names of staff involved in the drill;
- (c) The names of other health care facilities, if any, which were involved in the drill;
- (d) The names of other persons involved in the drill;
- (e) A description of all phases of the drill procedure and suggestions for improvement; and
- (f) The signature of the person conducting the drill.

(16-2.22(1)-S2312)

RULE-XII 16.32.312 MINIMUM STANDARDS FOR ALL HEALTH CARE FACILITIES -- WRITTEN POLICY AND PROCEDURE (1) A written policy and procedure for all services provided in a health care facility must be available to and followed by all personnel.

(16-2.22(1)-S2320)

RULE-XIII 16.32.320 MINIMUM STANDARDS FOR A HOSPITAL -- GENERAL REQUIREMENTS Same as proposed rule

(16-2.22(1)-S2321)

RULE-XIV 16.32.321 MINIMUM STANDARDS FOR A HOSPITAL -- CORONARY CARE UNIT Same as proposed rule

(16-2.22(1)-S2322)

RULE-XV 16.32.322 MINIMUM STANDARDS FOR A HOSPITAL -- INTENSIVE CARE UNIT Same as proposed rule

(16-2.22(1)-S2323)

RULE-XVI 16.32.323 MINIMUM STANDARDS FOR A HOSPITAL -- OBSTETRICAL SERVICES Same as proposed rule

(16-2.22(1)-S2324)

RULE-XVII 16.32.324 MINIMUM STANDARDS FOR A HOSPITAL -- NEWBORN NURSERY Same as proposed rule

(16-2.22(1)-S2325)

RULE-XVIII 16.32.325 MINIMUM STANDARDS FOR A HOSPITAL -- PEDIATRIC AND ADOLESCENT SERVICES Same as proposed rule

(16-2.22(1)-S2326)
~~RULE-XXIX~~ 16.32.326 MINIMUM STANDARDS FOR A HOSPITAL --
PSYCHIATRIC SERVICES Same as proposed rule
(16-2.22(1)-S2327)
~~RULE-XX~~ 16.32.327 MINIMUM STANDARDS FOR A HOSPITAL --
RESPIRATORY THERAPY Same as proposed rule
(16-2.22(1)-S2328)
RULE XXI 16.32.328 MINIMUM STANDARDS FOR A HOSPITAL --
MEDICAL RECORDS Same as proposed rule
(16-2.22(1)-S2329)
~~RULE-XXII~~ 16.32.329 MINIMUM STANDARDS FOR A HOSPITAL --
HOSPITAL RECORDS Same as proposed rule
(16-2.22(1)-S2330)
~~RULE-XXIII~~ 16.32.330 MINIMUM STANDARDS FOR A HOSPITAL --
LABORATORIES Same as proposed rule
(16-2.22(1)-S2340)
~~RULE-XXIV~~ 16.32.340 MINIMUM STANDARDS FOR AN INFIRMARY
Same as proposed rule
(16-2.22(1)-S2346)
~~RULE-XXV~~ 16.32.346 MINIMUM STANDARDS FOR A MENTAL HEALTH
CENTER See response on this proposed rule (paragraph 3 of
this Notice).
(16-2.22(1)-S2355)
~~RULE-XXVI~~ 16.32.355 MINIMUM STANDARDS FOR AN OUTPATIENT
FACILITY Same as proposed rule
(16-2.22(1)-S2360)
~~RULE-XXVII~~ 16.32.360 MINIMUM STANDARDS FOR A SKILLED AND
SKILLED/INTERMEDIATE CARE FACILITY -- GENERAL REQUIREMENTS
Same as proposed rule
(16-2.22(1)-S2361)
~~RULE-XXVIII~~ 16.32.361 MINIMUM STANDARDS FOR A SKILLED
AND SKILLED/INTERMEDIATE CARE FACILITY -- STAFFING See
response on this proposed rule (paragraph 3 of this Notice).
(16-2.22(1)-S2362)
~~RULE-XXIX~~ 16.32.362 MINIMUM STANDARDS FOR AN INTERMEDIATE
CARE FACILITY -- STAFFING See response on this proposed rule
(paragraph 3 of this Notice).
(16-2.22(1)-S2363)
~~RULE-XXX~~ 16.32.363 MINIMUM STANDARDS FOR A SKILLED AND
SKILLED/INTERMEDIATE CARE FACILITY -- DRUG SERVICES Same as
proposed rule
(16-2.22(1)-S2370)
~~RULE-XXXI~~ 16.32.370 MINIMUM STANDARDS FOR A HOME HEALTH
AGENCY Same as proposed rule
(16-2.22(1)-S2371)
~~RULE-XXXII~~ 16.32.371 MINIMUM STANDARDS FOR A HEALTH
MAINTENANCE ORGANIZATION Same as proposed rule

(16-2.22(1)-S2380)

~~RULE-XXXXXX~~ 16.32.380 MINIMUM STANDARDS FOR A PERSONAL CARE FACILITY -- ADMINISTRATION (1) A person employed by the facility having responsibility for residents must be at least 18 years of age.

(2) The person who manages the facility shall not admit or continue to care for residents whose condition indicates the need for a level of service and care that is not available in the facility.

(3) A resident who requires skilled nursing or intermediate care shall not be admitted or allowed to remain in the facility.

(4) Employee daily work schedules must be kept in writing for the previous 3-month period showing the personnel on duty at any given time.

(5) Facility staff must be present in the facility on a 24-hour basis.

(6) The family or other person responsible for a resident must be notified promptly ~~by-teteephone~~ if the resident is removed from the facility. A notation of the ~~telephone call~~ contact must be made in the resident's record.

(7) There must be a written agreement with the facility and each resident or other person responsible for a resident pertaining to cost of care, type of care, services to be provided, and manner by which the responsible party will be notified of significant changes in a resident's condition.

(8) A resident shall have access to a telephone at a convenient location within the building.

(9) The individual in charge of each work shift shall have keys to all doors in his possession.

(10) Residents of one sex shall not pass through a bedroom occupied by a member of the opposite sex to reach a bathroom, living room, dining room, corridor or similar area.

(11) A manager shall institute a prompt investigation of the cause of any accident involving a resident. A record must be kept of all accidents and corrective measures taken.

(12) The facility shall provide opportunities for recreational and social activities.

(13) The facility shall make adequate provisions for identification of resident's personal property and for safe-keeping of valuables.

(14) A licensed personal care facility may be used only as a personal care facility.

(16-2.22(1)-S2381)
RULE-XXXIV 16.32.381 MINIMUM STANDARDS FOR A PERSONAL
CARE FACILITY -- RESIDENT RECORDS Same as proposed rule
(16-2.22(1)-S2382)
RULE-XXXV 16.32.382 MINIMUM STANDARDS FOR A PERSONAL
CARE FACILITY -- MEDICATION Same as proposed rule
(16-2.22(1)-S2383)
RULE-XXXVI 16.32.383 MINIMUM STANDARDS FOR A PERSONAL
CARE FACILITY -- NUTRITIONAL REQUIREMENTS Same as proposed
rule
(16-2.22(1)-S2384)
RULE-XXXVII 16.32.384 MINIMUM STANDARDS FOR A PERSONAL
CARE FACILITY -- FOOD SERVICE Same as proposed rule
(16-2.22(1)-S2385)
RULE-XXXVIII 16.32.385 MINIMUM STANDARDS FOR A PERSONAL
CARE FACILITY -- FURNISHINGS, EQUIPMENT AND SUPPLIES Same as
proposed rule
(16-2.22(1)-S2396)
RULE-XXXIX 16.32.396 MINIMUM STANDARDS FOR A KIDNEY
TREATMENT CENTER Same as proposed rule

3. Comments and testimony were received from various persons. Summaries of comments and testimony received in addition to the Department's responses are set forth below.

Comment: The Department of Social and Rehabilitation Services (SRS) suggested that Rule III, paragraph (1) reference certificate of need requirements.

Response: The Department has accepted this comment and has added language reference certificate of need requirements in Rule III, section (1).

Comment: SRS suggested that the license application contain a provision relating to job classification of employees.

Response: The Department has accepted this comment and has changed the language in Rule IV, section (1)(b)(v) accordingly, in addition to deleting part of the proposed language for clarification.

Comment: SRS suggested that Rule IV, section (2)(c) be changed by substituting the word "and" for the word "or" in order "to avoid circumstances that could not have been intended by the legislature."

Response: The Department overrules this proposed change since the rules of statutory construction prohibit the insertion of what has been omitted or the omission of what has been inserted.

Comment: SRS suggested that Rules IX, X, XI and XII expressly require a facility to follow its own policies and procedures and that the rules set forth the criteria by which

written documents will be evaluated.

Response: The Department has added language to those rules where necessary, in order to make the requirement of adherence clear. The Department overrules the latter part of the comment since it maintains that sufficient criteria is set forth in the rules by which written documents must be evaluated.

Comment: SRS commented that Rule IX, paragraph (3) does not address the elimination of certain dangerous conditions.

Response: SRS's comment is overruled. It is the Department's position that Rule IX does in fact address the elimination of dangerous conditions by use of language such as "to keep the building and equipment in repair and free from hazards" and that the systems enumerated in subsection (3) of the rule must be kept in operational condition.

Comment: Numerous persons commented on Rule XXV which sets minimum standards for a mental health center.

Response: Due to the substantive and technical nature of many of the comments, the Department is not taking final action on proposed Rule XXV and ARM 16-2.22(1)-S2210(2) and (3), "Mental Health and Retardation Facilities, Licensing", the existing rule, at this time. Rather, the Department intends to study and evaluate the comments made and to take final action on the proposed and above-designated sections of the existing rules by no later than October 15, 1980. The final action taken by the Department will be sent to all persons commenting on the rules and will be published in the Montana Administrative Register by October 15, 1980.

Comment: Numerous persons commented on Rules XXVIII and XXIX.

Response: Due to the substantive and technical nature of many of the comments, the Department is not taking final action on proposed Rules XXVIII and XXIX and ARM 16-2.22(1)-S2220(3)(j), "Long-Term Care Facilities, Licensing and Certification", at this time. Rather, the Department intends to study and evaluate the comments made and to take final action on the proposed and above-designated sections of the existing rule by no later than October 15, 1980. The final action taken by the Department will be sent to all persons commenting on the rules and will be published in the Montana Administrative Register by October 15, 1980.

Comment: SRS commented that proposed Rules XXIII through XXXVIII should provide further clarification regarding levels of service and care for "personal care" facility residents.

Response: The Department overrules this comment since section 50-5-101(16) (a) (iii), MCA, specifically defines the

type of care provided to "personal care" facility residents.

Comment: SRS suggests that the Department not repeal ARM 16-2.22(1)-S2221, "Community Homes for the Developmentally Disabled, Licensing" without proposing a new rule.

Response: Pursuant to section 53-20-207, MCA, the Department is licensing community homes for the developmentally disabled.

Comment: Legal Access for Older Americans commented on the state nursing home ombudsman and its access to nursing homes. Specifically, the group proposed a rule which would allow the ombudsman and its staff unlimited access to skilled and skilled/intermediate care facilities.

Response: The Department has adopted 42 CFR 405 Subpart K, including section (11), in Rule XXVII. The cited federal regulation entitles each patient in a facility to associate and communicate privately with persons of his choice. It is the Department's position that this federal regulation which it has adopted in Rule XXVII does and should provide access to the state nursing home ombudsman and its staff.

Comment: The Montana Nursing Home Association objected to the Department's policy of naming a Department employee to serve as a hearing examiner for rulemaking hearings such as the one on this rule.

Response: The Department's appointing of a Department employee as a rulemaking hearing officer is a matter of Departmental discretion allowed under the Administrative Procedure Act (Title 2, Chapter 4, MCA), rather than policy.

Comment: The Montana Hospital Association and Columbus Hospital objected to the Department's adopting federal regulations by reference; specifically, the Association objected to the Department's adopting of federal regulations on hospitals, hospital laboratories, skilled and intermediate care facilities, home health agencies, and kidney treatment centers. The Association requested the Department to print the full text of the federal rules in the state rules. The Association also commented that the adoption of federal regulations doesn't allow for the consideration of local concerns.

Response: This comment of the Association and Columbus Hospital is overruled. The Administrative Procedure Act, specifically section 2-4-307, MCA, allows an agency to omit from the Administrative Rules of Montana or the register and to incorporate by reference a federal agency rule or like publication, if the publication of the rule or document would be unduly cumbersome, expensive or otherwise inexpedient. In compliance with section 2-4-307, MCA, the Department has cited

the rules and documents incorporated by reference, their general subject matter, the place where a copy of the rules or documents may be obtained, and has also filed a copy of each rule and document with the Secretary of State. The Department is adopting the federal regulations cited, since it is the Department's position that the federal regulations fully implement Title 50, Chapter 5, MCA.

Comment: The Montana Hospital Association proposed changes to the "administrator" and "outpatient" definitions contained in Rule I.

Response: The Department has accepted the definitions proposed by the Montana Hospital Association and has incorporated them into Rule I.

Comment: The Montana Hospital Association objected to the proposed adoption of federal standards for construction and equipment for health care facilities since the Association maintains that such standards lack sensitivity to Montana's health care delivery system needs.

Response: The Department overrules the Association's recommendation to not adopt the federal standards for construction and equipment for health care facilities. The Department maintains that these standards provide patients and residents with a safe and healthful environment and better facilitate the delivery of quality health care to those housed within health care facilities.

Comment: The Montana Hospital Association and Columbus Hospital commented that the time requirements in Rule III relating to the submission of plans and specifications should not be adopted to achieve conformance with federal regulations. Further, the commentators proposed that the rule contain existing rule language on the submission of plans and specifications since the time requirements in Rule III would delay construction.

Response: The proposed and adopted time requirements in Rule III relating to the submission of plans and specifications were not proposed or adopted to achieve conformance with any federal regulations. Rather, the time requirements were developed to comply with Certificate of Need requirements set forth in Title 50, Chapter 5, Part 3, MCA. Specifically, Section 50-5-305, MCA, establishes a "period of validity" for a certificate of need. The cited section states that a certificate of need shall terminate one year after date of issuance, or may extended for one additional 6 months period, for good cause shown. The time requirements enable the Department to adequately perform its review duties under law, of plans and specifications, while at the same time provides persons with adequate time for plan preparation.

The language in Rule III pertaining to time requirements has been slightly modified so persons understand that plans and specifications may be submitted to the Department as soon as possible after the issuance of a Certificate of Need. The 9 and 3 months are maximum time limits for submissions.

Comment: Columbus Hospital commented that the adoption of federal regulations would force participation in the Medicare program.

Response: The adoption of the federal regulations cited do not force participation in the medicare program; participation in the medicare program remains voluntary.

Comment: Columbus Hospital objected to the adoption of future federal regulations.

Response: The Department has not adopted future federal regulations in these rules.

Comment: Columbus Hospital commented on Rule VII and specifically objected to the extent of documentation required of a person under this rule to demonstrate that he is free from communicable diseases.

Response: This comment is accepted and the rule has been modified so as to require an employee and patient to only show that he is free from active pulmonary tuberculosis at the time of employment, admission, and annually thereafter.

Comment: The Montana Association of Homes for the Aging commented that in proposed Rule VII, to require a physician to document that an employee is free from communicable disease prior to the time of employment and annually thereafter is cumbersome and will be difficult to accomplish. It therefore suggested that the language "by a physician" be deleted from the rule.

Response: The Department has not adopted this suggestion for it believes that a physician must be required to document that an employee is free from communicable disease in order to comply with the Medical Practice Act of Montana.

Comment: The Montana Association of Homes for the Aging suggested that it was unnecessary in proposed Rule XII that all employees must have available to them the written policies and procedures for all services provided in the health care facility.

Response: The Department believes that a master policy and procedure manual must be available to each employee; however, a complete manual need not be located in each department of the health care facility but all policies and procedures pertaining to a particular department must be available in that department. No change is deemed necessary to the text of the proposed rule to reflect this concern.

Comment: The Montana Association of Homes for the Aging suggested that proposed Rule XXX in subsection (3) be rewritten as it was too stringent to require that the patient's licensed physician be available 24 hours a day, 7 days a week, to authorize adjustments in a patient's medication. It was suggested that a registered nurse should be allowed the flexibility to use her own judgment and discretion in adjusting medications at those times when there is an unexpected drug reaction. Furthermore, it commented that it was unrealistic for the rule to require an incident report on every adjustment or minor deviation that a professional nurse made in drug administration.


Response: The Department has not adopted this suggestion because a professional nurse is not individually authorized by Montana law to adjust a patient's medication, only a licensed physician is. The patient's physician of record or designated alternate must be available for consultation 24 hours a day.

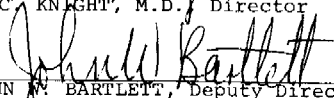
Comment: The Montana Association of Homes for the Aging requested that a definition be added for the term "current" as it is used in Rule XXX, subsection (4).

Response: The Department believes that no definition for the term "current" is necessary in the rule because the term is used in its normal dictionary meaning of the most recently published edition of a medication reference book. This suggestion has, therefore, not been adopted.

Comment: The Montnaa Association of Homes for the Aging suggested that the words "by telephone" be eliminated from proposed Rule XXXIII, subsection (6), relating to notification of relatives or guardians when a patient is removed from a facility because telephone communication is not always possible or the best means of communication available.

Response: The Department finds merit in this suggestion and has made changes to reflect this comment.


A. C. KNIGHT, M.D., Director

By 
JOHN W. BARTLETT, Deputy Director

Certified to the Secretary of State June 3, 1980

BEFORE THE BOARD OF COUNTY PRINTING
OF THE STATE OF MONTANA

| | |
|-----------------------------------|-----------------------------|
| In the matter of the amendment) | NOTICE OF AMENDMENT OF RULE |
| of Rule 22-3.10(6)-S1050 in-) | 22-3.10(6)-S1050 |
| creasing fees; deleting certain) | |
| items from the fee schedule;) | |
| and altering the schedule for-) | |
| mat.) | |

TO: All Interested Persons:

1. On June 26, 1979, the Board of County Printing published notice of a public hearing on a proposed amendment of a rule relating to the schedule of maximum prices which may be charged for county printing at page 767 of the 1979 Montana Administrative Register, issue no. 14.

2. On April 15, 1980, the board published notice of proposed amendment at page 1243 of the 1980 Montana Administrative Register, issue no. 8.

3. The board has amended the rule effective July 1, 1980, to its format, altering individual prices, and deleting certain items from the price schedule.

4. Formal hearings were held and extended comment period was granted to interested persons. The record of these proceedings are available in the offices of the board's administrative officer located at the Department of Community Affairs in Helena.

5. The board has provided copies of the new schedule to each board of county commissioners in the state. Because of the length, complexity, and limited interest in the schedule the board consents to the omission of its publication in the Montana Administrative Register and the Administrative Rules of Montana. A copy of the price schedule may be obtained free of charge by contacting the Centralized Services Division, Department of Community Affairs, 1424 Ninth Avenue, Helena, Montana 59601.

BY: George Nicholas
Chairman, Board of County
Printing

Certified to the Secretary of State June 2, 1980.

BEFORE THE COMMISSIONER OF LABOR AND INDUSTRY
STATE OF MONTANA

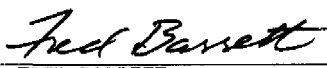
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|--------------------------------|---|--------------------------|
| In the Matter of the Repeal of |) | NOTICE OF REPEAL OF RULE |
| Rule 24-3.14B(1)-S1400 |) | ARM 24-3.14B(1)-S1400 |
| Functions of the Standards |) | |
| Bureau |) | |

TO: All Interested Persons

1. On April 24, 1980, the Commissioner of Labor and Industry, State of Montana published notice of a proposed repeal of ARM 24-3.14B(1)-S1400 Functions of the Standards Bureau at page 1247 and 1248 of the 1980 Montana Administrative Register, issue number 8.

2. The Commissioner has repealed the rule as proposed.

3. No comments or testimony were received.

By 
FRED BARRETT
Acting Commissioner of
Labor and Industry,
State of Montana.

Certified to the Secretary of State June 2, 1980.

BEFORE THE COMMISSIONER OF LABOR AND INDUSTRY
STATE OF MONTANA

| | | |
|--------------------------------|---|-----------------------------|
| In the Matter of the Amendment |) | NOTICE OF AMENDMENT OF RULE |
| of Rule 24-3.14BII(42)-S14650 |) | 24-3.14BII(42)-S14650 |
| Payment of Back Wages |) | |

TO: All Interested Persons

1. On April 24, 1980 the Commissioner of Labor and Industry, State of Montana published notice of a proposed amendment of ARM 24-3.14BII(42)-S14650 Payment of Back Wages at page 1244 to 1246 of the 1980 Montana Administrative Register, issue number 8.

2. The Commissioner has amended the rule as proposed.

3. No comments or testimony were received.

By



FRED BARRETT
Acting Commissioner of
Labor and Industry,
State of Montana

Certified to the Secretary of State, June 2, 1980.

BEFORE THE BOARD OF LIVESTOCK
STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of rules relating to the dating) OF RULES 32.8.201
of milk and liquid dairy) through 32.8.206
product containers for fresh-)
ness)

TO: All Interested Persons

1. On January 31, 1980 the Department of Livestock published notice of the proposed adoption of rules concerning the dating of milk containers for freshness on page 375 of the 1980 Montana Administrative Register, Issue No. 2.

2. The agency has adopted the rules with the following changes: (new material underlined, deleted material inter-lined.)

Rule I, designated 32.8.201. SCOPE OF RULES

These rules apply to whole milk, low fat milk, nonfat milk, ~~buttermilk~~, chocolate milk, whipping cream, half and half and/or any other liquid milk product designed to be consumed in the form in which it is packaged except buttermilk. For purposes of ~~these rules~~ this sub-chapter "milk" means any of the above products.

Rule II, designated 32.8.202. TIME FROM PROCESSING
THAT FLUID MILK MAY BE SOLD FOR HUMAN CONSUMPTION

(1) No grade A pasteurized milk may be sold, offered for sale, or otherwise disposed of for human consumption at retail or wholesale more than ~~48 through 14~~ 12 days after pasteurization.

(2) No grade A raw milk may be sold, offered for sale, or otherwise disposed of for human consumption at retail or wholesale more than ~~48 through 14~~ 12 days after the milk is bottled.

(3) For purposes of this rule ~~48 through 14~~ 12 days after pasteurization or bottling means the midnight closest to ~~192 through 336~~ 288 hours following the hour that pasteurization or bottling of the milk is completed.

Rule III, designated 32.8.203. LABELING OF MILK CONTAINERS
TO SHOW LAST DAY OF LEGAL SALE

(1) Each container into which grade A pasteurized or grade A raw milk is placed for sale for human consumption must be marked with a pull date. The pull date will state in arabic numerals or standard abbreviations for months, the month and day which is the last day the milk may be sold as set forth in ~~rule II~~ ARM 32.8.202.

(2) Language in substance the same as "sell by" or "not to be sold after" must be placed by the date in a manner which clearly shows that the milk must be sold by the

date on the container.

Alternatives A and B to Rule III were not adopted.

Rule IV, designated 32.8.204. EXEMPTION FROM LABELING REQUIREMENT

(1) Licensed grade A raw milk dairies are exempt from the labeling requirements imposed by ~~{Rule III or its alternatives}~~ ARM 32.8.203 when all milk packaged for human consumption is sold directly to the consumer either at the licensed retail raw dairy or through a delivery route directly operated by the licensed retail raw dairy.

Rule V, designated 32.8.205. MANNER, POSITIONING, AND SIZE OF LABELING

(1) Labels required by ~~{Rule III or its alternatives}~~ ARM 32.8.203 must be of a color clearly contrasting with the area immediately surrounding the label. The labels may be put on by printing, stamping, or burning, a combination of any of those methods, or by some other method specifically approved in writing by the department.

(2) Labels placed on "pure paks" or similar containers must be located on the top sealing fin. Labels on molded plastic jugs may be placed anywhere on the upper half of the container (or on the printed product label) except the lid. ~~Labels for containers shall be at least 1/8 inch in height.~~

(3) All characters in the labels required by ~~{Rule III or its alternatives}~~ ARM 32.8.203 must be at least 1/8 inch in height.

Rule VI, designated 32.8.206. WHEN MILK OFFERED FOR SALE SUBJECT TO SEIZURE

(1) Milk offered for sale contrary to the provisions to ~~{Rule II or III}~~ ARM 32.8.202 or 32.8.203 may be seized and destroyed by agents of the department of livestock.

3. At the public hearing, comments were received which questioned whether buttermilk should be subject to the rules, placed in controversy the number of days after processing which should be used for a pull date, and placed in controversy whether or not "sell by" language positioned by the pull date is necessary to clarify the pull date's meaning. No support was given alternatives A and B to Rule III which respectively provided for a fill date, or both a fill date and pull date. All other aspects of the proposed rules were either supported or unopposed. The Board of Livestock in making its decisions carefully reviewed the report of the hearing examiner. That report is incorporated by reference into this notice and is available upon request

to the Department of Livestock, Milk & Egg Bureau, Helena, MT 59601.

With respect to buttermilk: The Board excluded it from the scope of these rules because evidence revealed as a result of processing, it has a much longer shelf life than other milk products, and that no health or aesthetic benefits would result from its being thrown away when not sold within 12 days of processing.

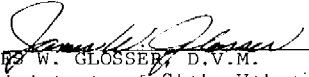
With respect to the number of days after processing that milk should be lawfully sold: Evidence was introduced which variously suggested pull dates of 10, 12, and 14 days. Evidence supported the fact that the keeping quality of milk after proper processing was dependent upon two principal variables, the amount of time after processing and the temperature at which the milk was stored after processing. The Board rejected the 10 day pull date because, while there is little doubt that milk with a 10 day pull date will be fresh and wholesome, there was insufficient data as to average temperature conditions, shelf life, and use to demonstrate that there is significant deterioration of the milk's quality between 10 and 12 days after processing. At the same time, there was credible evidence that a 10 day pull date would greatly increase costs to plants because of more returns on unsold milk, and greater distribution costs created by the need to more frequently service retail outlets. The Board rejected the requests of the major processing plants to go to a 14 day pull date because of evidence that, particularly during the summer months, variations in temperatures to which milk could be subjected provides persuasive reasons for setting a shorter period. The 12 day pull date was thus selected as an acceptable compromise.

With respect to the inclusion of "sell by" language: The Board rejected requests to eliminate this requirement because such language will add to the consumers information. The cost associated with adding such language was shown to be negligible on a per container basis.

4. The effective date of these rules is July 1, 1980. Plants planning to use preprinted containers to be the "sell by" language requirement will be allowed to exhaust existing stocks, or containers already on order. Plants having to order extra equipment in order to meet the labeling requirements of the rules must do so before July 1, but will be allowed a reasonable time after order to get the equipment installed and in operation.


ROBERT G. BARTHELMESS
Chairman, Board of Livestock

-1606-

By: 
JAMES W. GLOSSER, D.V.M.
Administrator & State Veterinarian
Animal Health Division

Certified to the Secretary of State June 3, 1980.


STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF PHYSICAL THERAPY EXAMINERS

In the matter of the amendments) NOTICE OF AMENDMENT OF ARM
of ARM 40.40.403 subsection (1)) 40.40.403 FEES; 40.40.402
(b) concerning fees; 40.40.402) EXAMINATION; and 40.40.406
subsection (4) concerning) RECIPROCITY LICENSES
examinations and 40.40.406 con-) cerning reciprocity)

TO: All Interested Persons:

1. On April 24, 1980 the Board of Physical Therapy Examiners published a notice of proposed amendment of ARM 40.40.403 subsection (1)(b) concerning fees; 40.40.402 subsection (4) concerning examinations and 40.40.406 concerning reciprocity licenses at pages 1250 and 1251, 1980 Montana Administrative Register, issue number 8.
2. The board has amended the rules exactly as proposed.
3. No comments or testimony were received.

BOARD OF PHYSICAL THERAPY
EXAMINERS
JOE LUCKMAN, CHAIRMAN

BY: 
ED CARNEY, DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State, June 3, 1980.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|-----------------------------|---|-----------------------------|
| IN THE MATTER OF THE |) | NOTICE OF AMENDMENT OF RULE |
| AMENDMENT OF RULES RELATING |) | 42-2.22(46)-S22940, EQUALI- |
| TO THE ASSESSMENT AND |) | ZATION AND APPORTIONMENT. |
| TAXATION OF INTERSTATE AND |) | |
| INTERCOUNTY PROPERTY. |) | |

T0: All Interested Persons:

1. On December 27, 1979, the Department of Revenue published notice of the proposed amendment of rules relating to the assessment and taxation of interstate and intercounty property, commonly referred to as centrally assessed property, at pages 1641 through 1644 of the 1979 Montana Administrative Register, issue no. 24. On March 27, 1980, the Department published notice of the amendment of rules 42-2.22(46)-S22890, S-22900, S22910, and S22930, either as proposed or with changes, and the adoption of a new rule, relating to motor vehicles and mobile equipment, at pages 1091 through 1093 of the 1980 Montana Administrative Register, issue no. 6. At the same time the Department announced the amendment of rule 42-2.22(46)-S22940, relating to equalization and apportionment, on an interim basis. On May 29, 1980, the Department published notice of the amendment of the rule at pages 1543 and 1544 of the 1980 Montana Administrative Register, issue no. 10.


2. The Department has amended rule 42-2.22(46)-S22940 on a permanent basis with the following changes from the version first published in the 1979 MAR, issue no. 24 (deletions interlined and additions underlined and capitalized):

42-2.22(46)-S22940 EQUALIZATION AND APPORTIONMENT (1) and (2): No changes from proposal.

(3) The Montana situs property value is apportioned to the taxing units in which the property is situated by use of a factor based on installed cost. The factor is the ratio of the installed cost within the taxing unit to the total installed cost of situs property in Montana. TO ACCOMPLISH THIS, THE TOTAL INSTALLED COST OF SITUS PROPERTY IN EACH TAXING UNIT IS MULTIPLIED BY THE PERCENTAGE COMPUTED BY DIVIDING THE MSPV DEVELOPED IN SUBSECTION (1)(C) BY THE TOTAL INSTALLED COST OF MONTANA SITUS PROPERTY. Recognizing the difficulty in generating installed cost data, the department will, upon written request, grant an extension until December 31, 1980 1981, to any centrally assessed company in order to enable the company to provide the necessary cost information. If an extension is granted, the company is required to assist the department in developing an acceptable method of apportioning the 1980 valuation AND 1981 VALUATIONS.

3. The only change from the interim amendment is the change

of "1980" to "1981" in subsection (3). The Department had proposed to the hearings officer to make this change to accomodate those companies that felt they had a problem in accumulating the data needed for apportionment based on original cost. At the request of the Revenue Oversight Committee, the Department delayed making this change in order to give the Committee an opportunity to study the change. This delay was accomplished by means of the interim amendment. The Department has determined that the extension to 1981 is equitable and has therefore determined that the change from 1980 to 1981 should be made. In the notice of adoption published May 29, 1980, the change of "1980 valuation" to "1980 and 1981 valuations" was inadvertently omitted. This change is needed because of the extension from 1980 to 1981. This additional notice is designed to remedy the oversight. The rule is amended accordingly.



MARY L. CRAIG, Director
Department of Revenue

Certified to the Secretary of State 6/2/80.

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

In the matter of the adoption of) NOTICE OF THE ADOPTION
rules describing the organization) OF RULES DESCRIBING THE
and purpose of the Economic) ECONOMIC ASSISTANCE
Assistance Division) DIVISION

TO: All Interested Persons

1. On April 10, 1980, the Department of Social and Rehabilitation Services published notice of the proposed adoption of rules describing the organization and purpose of the Economic Assistance Division at page 1160 of the 1980 Montana Administrative Register, issue number 7.

2. The agency has adopted Rule 46-2.10(1)-S10051 DESCRIPTION and Rule 46-2.10(1)-S10052 PURPOSE as proposed.

3. No comments or testimony were received.

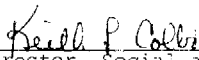
In the matter of the adoption of) NOTICE OF THE ADOPTION
a rule pertaining to establishing) OF A RULE PERTAINING TO
a fee schedule for attorneys') ESTABLISHING A FEE
services in third party recovery) SCHEDULE FOR ATTORNEYS'
cases) SERVICES IN THIRD PARTY
cases) RECOVERY CASES

TO: All Interested Persons

1. On April 24, 1980, the Department of Social and Rehabilitation Services published notice of the proposed adoption of a rule pertaining to establishing a fee schedule for attorneys' services in third party recovery cases at page 1252 of the 1980 Montana Administrative Register, issue number 8.

2. The agency has adopted Rule 46-2.10(18)-S11531 ATTORNEYS' FEES SCHEDULE as proposed.

3. No comments or testimony were received.



Director, Social and Rehabilitation
Services

Certified to the Secretary of State June 3, 1980.

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

In the matter of the amendment of) NOTICE OF THE AMEND-
46-2.10(18)-S11460(1)(a) and the) MENT OF 46-2.10(18)-
adoption of 46-2.10(18)-S11508 and) S11460 AND THE ADOP-
46-2.10(18)-S11505 pertaining to) TION OF 46-2.10(18)-
medical assistance program,) S11508 and 46-
reimbursement rates for eyeglasses) 2.10(18)-S11505 PER-
and optometric services) TAINING TO MEDICAL
) ASSISTANCE PROGRAM,
) REIMBURSEMENT RATES
) FOR EYEGLASSES AND
) OPTOMETRIC SERVICES

TO: All Interested Persons

1. On April 10, 1980, the agency published notice of a proposed amendment of 46-2.10(18)-S11460(1)(a) and the adoption of new rules pertaining to the medical assistance program, reimbursement rates for eyeglasses and optometric services at page 1152 of the 1980 Montana Administrative Register, issue number 7.

2. The agency has amended 46-2.10(18)-S11460 as proposed.

3. The agency has adopted the following rule as proposed:

46-2.10(18)-S11508 ~~RULE-4~~ EYEGLASSES, REIMBURSEMENT Reimbursement for eyeglasses shall be the lowest of usual and customary charges which are reasonable, the amount payable by medicare, or the amount reflected in the following fee schedule:

(1) Lab costs for eyeglasses - optometrist

| | <u>Per Pair</u> |
|-------------------------------|-----------------|
| Hardened lenses-single vision | \$19.80 |
| Hardened lenses-bifocals | 30.80 |
| Hardened lenses-trifocals | 36.30 |
| Plastic lenses | |
| Add to single lenses | 2.20 |
| Add to bifocal/trifocal | 6.60 |
| Tinting, add to lense | 3.30 |
| Frames | 21.00 |
| Contact lenses | 35.00 |
| Cataract lense | 61.60 per lense |
| Balance lense | 22.00 per lense |

(2) Costs for eyeglasses - opticians and ophthamologist

| | <u>Per Pair</u> |
|-------------------------------|-----------------|
| Single vision | \$30.00 |
| Bifocal | 43.00 |
| Trifocal | 55.00 |
| Plastic lenses | |
| Add to single lenses | 4.00 |
| Add to bifocal/trifocal | 11.00 |
| Tint (soft light 1, 2, and 3) | 3.30 |
| Frame | 26.00 |
| Metal Frame | 30.00 |
| Cataract lense | 61.60 per lense |
| Balance lense | 22.00 per lense |
| 4 drop cataract | |
| Single vision | 165.00 |
| Bifocal | 190.00 |
| Balance lense | 67.50 |
| Frame (for 4 drop cataract) | 30.00 |

4. The agency has adopted the rule with the following changes (THE COMPLETE LIST OF COVERED OPTOMETRIC SERVICES AND FEES HAS BEEN ADDED TO RULE 46-2.10(18)-S11505:

46-2.10(18)-S11505 RULE-11 OPTOMETRIC SERVICES, REIMBURSEMENT Payments for optometric services shall be the lowest of usual and customary charges which are reasonable or the amount payable by medicare or the maximum amount calculated by applying the conversion factor of .155 to the Montana-optometric association relative value fee schedule, which is hereby incorporated and made a part of these rules. This reference shall include the appendix to the optometric service relative value fee schedule dated January, 1980. following fee schedule for covered optometric services:

- (I) Visual Examination for diagnosis only. The following procedures are included:
- (a) Case history, symptoms, and occupational vision evaluation,
 - (b) Analysis and neutralization of patients current lenses and frames
 - (c) Visual acuity testing, distance and near
 - (d) Eye health examination
 - (i) pupillary reflexes (direct, consensual, and accommodative),
 - (ii) ophthalmoscopy (media and fundus inspection)
 - (iii) external inspection (cornea, lids, and adnexa)
 - (iv) ocular motility (versions)
 - (e) Visual Analysis
 - (i) keratometry or ophthalmometry
 - (ii) preliminary oculomotor coordination evaluation (pursuits, saccadics, cover tests, N.P.C.)

- (iii) refraction at far point: static retinoscopy, subjective refraction
- (iv) refraction at near point: dynamic retinoscopy, subjective refraction
- (v) phorometric tests at far point and near point: phorias, ductions, blur points, accommodative measurements
- (f) The fee is: \$23.25
- (2) Visual Examination, prescription, and follow-up. The following procedures are included:
 - (a) Case history, symptoms, and occupational vision evaluation,
 - (b) Analysis and neutralization of patients current lenses and frames
 - (c) Visual acuity testing, distance and near
 - (d) Eye health examination
 - (i) pupillary reflexes (direct, consensual, and accommodative)
 - (ii) ophthalmoscopy (media and fundus inspection)
 - (iii) external inspection (cornea, lids, and adnexa)
 - (iv) ocular motility (versions)
 - (e) Visual Analysis
 - (i) keratometry or ophthalmometry
 - (ii) preliminary oculomotor coordination evaluation (pursuits, saccadics, cover tests, N.P.C.)
 - (iii) refraction at far point: static retinoscopy, subjective refraction
 - (iv) refraction at near point: dynamic retinoscopy, subjective refraction
 - (v) phorometric tests at far point and near point: phorias, ductions, blur points, accommodative measurements
 - (f) Prescribing: writing ophthalmic lens power prescription(s)
 - (g) Follow-up observation at visit following the delivery and fitting of new lens prescription: observation of patient's reactions and evaluation of visual performance with new glasses or other therapy performing of any indicated frame or lens adjustments re-prescribing of lens and/or frame if indicated
 - (h) The fee is: \$31.00
- (3) Measuring:
 - (a) measuring, verifying, single vision service (for standard frame and basic power ophthalmic lenses) - \$9.30
 - (b) measuring, verifying, bifocal lens service - \$12.40
 - (c) measuring, verifying, trifocal lens service - \$15.50
 - (d) measuring, verifying, cataract lens service - \$23.25
- (4) Fitting:
 - (a) fitting, servicing, single vision frame service - \$9.30
 - (b) fitting, servicing, bifocal frame service - \$12.40
 - (c) fitting, servicing, trifocal frame service - \$15.50

- (d) fitting, servicing, cataract frame service - \$23.25
- (5) Hearing Aid Dispensing Services
- (a) Add to measuring and verifying services - \$7.75
- (b) Add to fitting services - \$7.75
- (6) Non-basic Diagnostic Services
- (a) Visual examination, additional visits - \$7.75
- (b) Visual field, peripheral field examination, using perimeter or equivalent, white fields - \$7.75
- (c) Visual fields, peripheral field examination using perimeter or equivalent, color fields - \$10.85
- (d) Visual fields, central field examination using tangent screen or equivalent
 - (i) white fields - \$7.75
 - (ii) color fields - \$10.85
- (e) Screening, visual skills examination, using keystone tests or equivalent - \$6.20
- (f) Screening, multiple pattern visual fields, using harrington-flecks or equivalent - \$4.65
- (g) Screening, limited tests for completion of insurance, government or school forms - \$6.20
- (h) Color vision tests, using 20 isochromatic or equivalent - \$3.10
 - (i) Tonometry, tension - \$6.20
 - (j) Biomicroscopy - \$6.20
 - (k) Special reports - \$46.50 per hour
 - (l) Consultation (schools, government) - \$46.50 per hour
 - (m) Office Consultation - \$6.20
 - (n) Out-of-office calls (add to other service)
 - (i) day-time - \$7.75
 - (ii) night-time - \$12.40
- (o) Mileage charge (beyond 10 miles from office) - \$.15 per mile
- (p) Post cataract diagnostic examination - \$23.25
- (q) Cataract lens change or regrind - \$15.50
- (7) Non-Basic Ophthalmic Lens Services
- (a) Non-Basic spherical and Shero-Cylindric Powers (+ = + or - = +) for each 4 diopters of sphere over Basic Power up to 12.00D (not applicable to cataract lenses) - add, per pair \$4.65
 - (b) For each 2 diopters cylinder over basic power - add, per pair \$4.65
 - (c) Special base curve - add, per pair \$3.10
 - (d) Prism Power
 - (i) total prism power less than 5 prism diopters - add, per pair \$4.65
 - (ii) total prism power 5 diopters or more - add, per pair \$7.75
 - (e) Lenticular grinding
 - (i) concave - add, per pair \$7.75
 - (ii) convex - add, per pair \$7.75

- (f) Slab-off grinding - add, per pair \$7.75
- (g) Tinted or colored glass
- (i) single vision lenses - \$3.10
- (ii) multifocal lenses - \$3.10
- (h) Oversize, fused flat top multifocal segment, 35 & 45 mm wide - \$3.10
- (i) Dual segment bifocal (to be added to bifocal value units) - add, per pair \$15.50
- (j) Dual segment trifocal (to be added to trifocal value units) - add, per pair \$15.50
- (k) High add fused bifocal, 3.00 - 4.00 diopters - add, per pair \$3.10
- (l) High add fused bifocal, over - 4.00 - add, per pair \$7.75
- (m) High add one-piece bifocal over 4.00 diopters - add, per pair \$7.75
- (n) Plastic single vision lens - add, per pair \$3.10
- (o) plastic multifocal lens - add, per pair \$7.75
- (p) Coating, anti-reflection or color - add, per pair \$3.10
- (q) Iseikonic lens - add, per pair \$139.50
- (r) Safety Hardening - add, per pair \$3.10
- (8) Service Code for metal frames - \$6.20
- (9) Contact Lens Therapy: These services to be performed at visits following the visual examination.
- (a) Contact lens diagnostic examination include biomicroscopy, corneal measurements, ocular adnexa measurements, control lens observations, and contact lens refraction - \$15.50
- (b) Fitting Procedure, basic spherical lens include:
 - (i) integration of all diagnostic data to determine physical specifications and refractive prescription of initial lens,
 - (ii) ordering from laboratory,
 - (iii) verifying finished lenses for physical specifications and refractive properties,
 - (iv) biomicroscopic and fluorescein evaluation of finished lenses in patients eye,
 - (v) contact lens refraction with finished lens,
 - (vi) instructing patient in insertion and removal procedures,
 - (vii) subsequent office visits to evaluate lens performance as wearing-time is increased (biomicroscopic and fluorescein inspections),
 - (viii) determination of necessary lens modifications or complete lens changes, as indicated,
 - (ix) re-specifying, re-prescribing, and re-ordering of lenses as indicated,
 - (x) office laboratory modifications as indicated, and
 - (xi) re-verifying of new or modified lenses.

- (xii) The fee is: \$232.50
- (c) The following fees may be added to contact lens diagnostic examination or contact lens fitting procedure, basic spherical lens.
 - (i) Fitting Procedures, Spherical Prism Ballast Lenses - \$77.50
 - (ii) Fitting Procedures, Lenticular and/or Aphakic Lenses - \$38.75
 - (iii) Fitting Procedures, Toric Lenses - \$77.50
 - (iv) Fitting Procedures, Bifocal Lenses - \$155.00
 - (v) Fitting Procedures, Keratoconus Lenses - \$155.00
 - (vi) Office Call, observation and consultation - \$7.75
- (10) The following are independent procedures:
 - (a) Instruction visit for previous contact lens wearer;
 - (i) fitted elsewhere - \$23.25
 - (ii) fitted in your office - \$10.85
 - (b) Fitting Procedure for previous contact lens wearer - \$150.00
 - (c) Duplication of new contact lenses - \$58.12
 - (d) Fitting Procedure, monocular only - \$150.00
- (11) Contact Lens Laboratory Adjustments
 - (a) This service applies to new patients fitted elsewhere and your patients past customary servicing period. It includes edge-refinishing, size reducing, fenestrating, re-polishing and bleeding. The fee is \$7.75.
 - (b) Analysis and neutralization of contact lenses - \$9.30
- (12) Servicing and Repairs, Frame Adjustments. Apply to: new patients fitted elsewhere and your patients past customary servicing period
 - (a) Conventional frame (minor adjustments) - \$3.10
 - (b) Conventional frame (complete realignment) - \$6.20
 - (c) Iseikonic lenses \$6.20
 - (d) Low vision aid - \$7.75
 - (e) Special frame - \$7.75
 - (f) Hearing aid frame - \$7.75
- (13) Servicing and Repairs: Frame Replacements (standard frame)
 - (a) Duplicate frame ($\frac{1}{2}$ 003 + 004 using single vision service units) - \$13.95
 - (b) Different frame (requiring lens or frame reshaping) - \$17.05
 - (c) Front Replacement ($\frac{1}{4}$ 003 + 004 using single vision service units) - \$11.62
 - (d) Temple Replacement, per temple (service per pair) - \$3.88
 - (e) Hinge Repair - \$4.65
 - (f) Ptosis Crutch - \$15.50
- (14) Servicing and Repairs: Minor Frame Reports
 - (a) Replace Screws - \$1.55

- (b) Supply Jumbo Pads - \$1.55
- (c) Supply Temple Covers - \$1.55
- (d) Supply Pad Covers - \$1.55
- (e) Supply Hinge Springs or Tension Washers - \$3.10
- (f) Solder Repair - \$3.10
- (g) Rocking Pads added to Zyl or aluminum frame - \$3.10
- (h) Rightening hinge to front or temple - \$1.55
- (i) New top-rims - \$3.10
- (15) Servicing and Repairs: Lens
- (a) Neutralization of Lenses for Copy of Prescription - \$4.65
- (b) Lens replacment, one lens, single vision service - \$9.30
- (c) Lens replacement, one lens, bifocal service - \$12.40
- (d) Lens replacement, one lens, trifocal service - \$15.50
- (16) Diagnostic Drug Procedures
- (a) Cycloplegic examination/refraction, independent procedure - \$38.75
- (b) Supplemental mydiadic, add to fee for other procedures - \$7.75
- (c) Supplemental cycloplegic including post-cycloplegic office visit - \$15.50
- (d) Ophthalmoscopy, independent procedures, with mydriasis, direct and/or indirect - \$15.50
- (e) Ophthalmoscopy with contact fundus lens procedure, add to fee for other procedures - \$10.83
- (f) Gonioscopy, add to fee for other procedure - \$12.40
- (g) Gonioscopy, independent procedure - \$21.70
- (h) Tonography, independent procedure - \$31.00
- (i) Intra-ocular photography, independent procedure, anterior segment - \$15.50
- (j) Intra-ocular photography, independent procedure, posterior segment - \$31.00
- (k) Supplemental differential diagnostic procedures using topical pharmaceuticals, add to fee for other procedures - \$10.85
- (l) Ophthalmoscopy with contact fundus lens procedure, independent procedure - \$21.70
- (m) Ophthalmodynamometry, supplemental procedure, add to fee for other procedures - \$9.30
- (n) Ophthalmodynamometry, independent procedure - \$15.50
- (16) Visual training shall be reimbursed at the lowest of usual and customary charges, which are reasonable, the amount payable by medicare or eighteen dollars (\$18) per hour.

5. Comment. The Legislative Council commented that the Attorney General found the Optometric Relative Value Schedule to possibly be in violation of anti-trust law.

Response. The complete list of covered optometric services and fees have been added to rule 46-2.10(18)-S11505. The Optometric Relative Value Schedule has been eliminated from the rule and will no longer be used by the Department. This substitution does not involve any substantive changes.

Keith F. Calk
Director, Social and Rehabilitation Services

Certified to the Secretary of State June 3, 1980.

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

| | | |
|-----------------------------------|---|-------------------------|
| In the matter of the adoption of |) | NOTICE OF THE ADOPTION |
| rules and the repeal of Rule |) | OF RULES AND THE REPEAL |
| 46-2.10(18)-S11480 all pertaining |) | OF RULE 46-2.10(18)- |
| to provider sanctions |) | S11480 PERTAINING TO |
| |) | PROVIDER SANCTIONS |

TO: All Interested Persons

1. On March 13, 1980, the Department of Social and Rehabilitation Services published notice of the proposed adoption of rules and the repeal of Rule 46-2.10(18)-S11480 pertaining to provider sanctions, medical assistance at page 716 of the 1980 Montana Administrative Register, issue number 5.

2. The agency has repealed 46-2.10(18)-S11480 as proposed.

3. The agency has adopted the rules with the following changes:

46-2.10(18)-S11523 RULE # GROUND FOR SANCTIONING
Sanctions may be imposed by the department against a provider for any one or more of the following reasons:

(1) Presenting or causing to be presented for payment any false or fraudulent claim for services or merchandise.

(2) Submitting or causing to be submitted false information for the purpose of obtaining greater compensation than that to which the provider is legally entitled under the rules of the department.

(3) Submitting or causing to be submitted false information for the purpose of meeting prior authorization requirements.

(4) Failure to maintain and retain records required by the rules of the department.

(5) Failure to disclose or make available required records to the department, its authorized agent or other legally authorized persons, or organizations, or governmental entities.

(6) Failure to provide and maintain the quality of services to medicaid recipients that are within accepted within medical community standards as acceptable as adjudged by a body of peers.

(7) Engaging in a course of conduct or performing an act which the, ~~department~~ department's rule, or the decision of the applicable professional peer review committee, or applicable licensing board, have ~~has~~ determined to be improper or abusive of the Montana medicaid program or continuing such conduct following notification that the conduct should cease.

11-6/12/80

Montana Administrative Register

(8) Breach of the terms of the provider contract or failure to comply with the terms of the provider certification on the medicaid claim form or the failure to comply with requirements imposed by the rules of the department.

(9) Over-utilizing the Montana medicaid program by inducing, ~~furnishing~~, or otherwise causing a recipient to receive services or goods not medically necessary ~~otherwise required or requested by the recipient~~.

(10) Rebating or accepting a fee or portion of a fee or charge for a medicaid patient referral.

(11) Violating any provision of the State Medical Assistance Act or any rule promulgated pursuant thereto, or violating any provision of Title XIX of the Social Security Act or any regulation promulgated pursuant thereto.

(12) Submission of a false or fraudulent application for provider status.

(13) Violations of any statutes, regulations or code of ethics governing the conduct of occupations or professions or regulated industries.

(14) Conviction of a criminal offense relating to performance of a provider agreement or contract with the state or for negligent practice resulting in death or injury to patients.

(15) Failure to meet requirements of state or federal law for participation (e.g. licensure).

(16) Exclusion from the medicare program (Title XVIII of the Social Security Act) because of fraudulent or abusive practices.

(17) Charging medicaid recipients for amounts over and above the amounts paid by the department for services rendered.

(18) Refusal to execute a new provider agreement when requested to do so.

(19) Failure to correct deficiencies ~~in provider operations~~ as defined by the ARM or federal regulation after receiving written notice of these deficiencies from the department, or the department of health and environmental sciences.

(20) Formal reprimand or censure by an association of the provider's peers for unethical practices.

(21) Suspension or termination from participation in another government medical program including but not limited to workman's compensation, crippled children's services, rehabilitation services and medicare.

(22) Criminal indictment for fraudulent billing practices or negligent practice resulting in death or injury to the provider's patients.

(23) Civil judgement for fraudulent billing practices or negligent practice resulting in death or injury to the provider's patients.

(24) Failure to repay or make acceptable arrangements

for the repayment of identified overpayments or otherwise erroneous payments.

(25) Threatening, intimidating or harassing patients or their relatives in an attempt to influence reimbursement rates or affect the outcome of disputes between the provider and the department.

(26) Submitting claims for reimbursement of costs which the provider knows or has reason to know are not reimbursable costs.

46-2.10(18)-S11524 RULE II SANCTIONS The following sanctions may be invoked against providers based on the grounds specified in Rule I.

(1) Termination from participation in the medicaid program.

(2) Suspension of participation in the medical assistance program.

(3) Suspension or withholding of payments to a provider.

~~(4)~~ (4) Referral to peer review for any action deemed necessary by the reviewing body.

~~(5)~~ (4) Shortening of an existing provider agreement as permitted by the terms of such agreement.

~~(6)~~ (5) Required attendance at provider education sessions, the cost of which shall not be reimbursed by the medicaid program.

~~(7)~~ (6) Required prior authorization for provision of services.

~~(8)~~ (7) One-hundred percent review of the provider's claims prior to payment.

~~(9)~~ (8) Referral to the appropriate state licensing board for investigation, and/or for any action deemed necessary by the reviewing body.

~~(10)~~ (9) Referral to the department of revenue for any action deemed necessary.

46-2.10(18)-S11525 RULE III FACTORS GOVERNING IMPOSITION OF SANCTION (1) The decision to impose sanctions and which sanctions to impose shall be within the discretion of the department except as provided in subsection (3).

(2) The following factors shall be considered in determining the sanction(s) to be imposed:

- (a) Seriousness of the offense(s);
- (b) extent of violations;
- (c) history of prior violations;
- (d) prior imposition of sanctions;
- (e) prior provision of provider education;
- (f) provider willingness to comply with program rules;
- (g) whether a lesser sanction will be sufficient to remedy the problem;

(h) actions taken or recommended by peer review groups or licensing boards.

(3) Where a provider has been found by a court of competent jurisdiction in either a civil or criminal proceeding to have defrauded the Montana medicaid program, or has been previously suspended due to program abuse, or has been terminated from the medicare program for fraud or abuse, the department ~~shall~~ may terminate the provider from the medicaid program.

46-2.10(18)-S11526 RULE IV SCOPE OF SANCTION (1) A sanction may be applied to all known affiliates of a provider, provided that each decision to include an affiliate is made on a case by case basis after giving due consideration to all relevant facts and circumstances. The violation, failure, or inadequacy of performance may be imputed to an affiliate where such conduct was accomplished within the course of the affiliate's official duty or was effectuated by the provider with the knowledge or approval of the affiliate.

(2) Suspension or termination from participation of any provider shall preclude such provider from submitting claims for payment, either personally or through claims submitted by any clinic, group, corporation or other association to the department or its fiscal agents for any services or supplies provided to persons eligible for the Montana medicaid program except for those services or supplies provided prior to the suspension or termination.

(3) No clinic, group, corporation or other association which is a provider of services shall submit claims for payment to the department or its fiscal agents for any services or supplies provided by a person within such organization who has been suspended or terminated from participation in the Montana medicaid program except for those services or supplies provided prior to the suspension or termination.

(4) When the provisions of subsection (3) of this rule are violated by a provider of services which is a clinic, group, corporation, the department may suspend or terminate such organization and/or any individual person within said organization who is responsible for such violation.

46-2.10(18)-S11527 RULE V NOTICE OF SANCTION (1) When a provider has been suspended or terminated ~~sanctioned~~, the department shall notify the appropriate professional society, board of registration or licensure, and federal or state agencies of the findings made and the sanctions imposed.

(2) Where a provider's participation in the Montana medicaid program has been suspended or terminated, the department shall notify the recipients for whom the provider has submitted claims for services within the previous 6 months that such provider has been suspended or terminated.

46-2.10(18)-S11528 RULE VI PROVIDER EDUCATION (1) Except where termination has been imposed, the department may in its discretion direct each provider, who has been sanctioned, to participate in a provider education program as a condition of continued medicaid participation.

(2) Provider education programs may include any of the following at the discretion of the department:

- (a) instruction in claim form completion;
- (b) instruction on the use and format of provider manuals;
- (c) instruction on the use of procedure codes;
- (d) instruction on statutes and regulations governing the Montana medicaid program;
- (e) instruction on reimbursement rates;
- (f) instructions on how to inquire about coding or billing problems;
- (g) any other matter as determined by the department.

46-2.10(18)-S11529 RULE VII NOTICE OF VIOLATION Should the department have information which indicates a provider may have submitted bills and/or has been practicing in a manner inconsistent with program requirements, and/or may have received payment to which he may not be properly entitled, the department shall notify the provider of the discrepancies noted. The notification shall set forth:

- (1) the nature of the discrepancies or violations;
- (2) the dollar value of such discrepancies or violations, if known;
- (3) the method of computing such dollar value, if applicable;
- (4) explanation of further actions to be taken or sanctions to be imposed by the department;
- (5) explanation of any actions required of the provider;
- (6) the provider's right to a ~~formal~~ fair hearing.

46-2.10(18)-S11530 RULE VIII SUSPENSION OR WITHHOLDING OF PAYMENTS PENDING FINAL DETERMINATION (1) Where the department has notified a provider of a violation or an overpayment pursuant to Rule VII, the department may withhold payments on pending and subsequently received claims in an amount reasonably calculated to approximate the amounts in question or may suspend payments pending a final determination.

(2) Where the department intends to withhold or suspend payments it shall notify the provider in writing and shall include a statement of the provider's right to request formal review of such decision.

4. The Department has thoroughly considered all written and oral comment received subsequent to the original notice

date and responds to those comments as follows:

Comment: Rule I(4) makes an offense out of every attempt to oppose a rule requiring the maintenance of records.

Response: This rule does not change the opportunity to oppose rules before they are adopted or to request changes in valid rules. 42 CFR 431.107, requires that the Department require providers to keep adequate records.

Comment: Rule I(5) is objectionable because it requires the provider to allow inspection of any records the Department requires to be made available regardless of confidentiality or relevancy.

Response: This rule does not require a provider to allow the Department to review irrelevant records. Recipients, as part of the application process, have authorized the Department to review their medical records.

Comment: Rule I(6) should describe the peer review system to be utilized.

Response: The designated review organization is defined in Rule II(8), Medical Assistance-Definitions MAR Notice 46-2-222.

Comment: Rule (6) fails to describe "quality services".

Response: The Department wishes to better state Rule (6) by changing the wording to:

"Failure to provide and maintain the quality of services to medicaid recipients that are accepted within medical community standards as acceptable as adjudged by a body of peers."

Comment: Rule I(7) would allow the Department to impose a sanction whenever it wants with no limitations.

Response: The Department wishes to better state Rule I(7) by changing the wording to:

"Engaging in a course of conduct or performing an act which the Department's rule, or the decision of the applicable professional Peer Review Committee, or applicable licensing board have determined to be improper or abusive of the Montana Medicaid program or continuing such conduct following notification that the conduct should cease."

Comment: Rule I(9) should be clarified. What is furnishing services "not otherwise required"? More specificity is needed as to what standards will be used to determine whether a service is "required" by the patient; who will make such determination; what procedures will be utilized.

Response: The Department wishes to better state rule I(9) by changing the wording to:

"Over-utilizing the Montana Medicaid program by inducing, or otherwise causing a recipient to receive services or goods not medically necessary."

Comment: Rule I(18) would impose sanctions upon any provider who does not agree with the Department.

Response: 42 CFR 431.107 requires the Department to have an agreement with all Medicaid providers.

Any provider not agreeing with the Department need not sign an agreement but will not be reimbursed for services under the Medicaid program.

Comment: Rule I(19) needs to define deficiencies and delete arbitrary language.

Response: The Department proposes the following rewording of Rule I(19):

"Failure to correct deficiencies as defined by the ARM or Federal regulation after receiving written notice of these deficiencies from the Department or the Department of Health and Environmental Science."

Comment: Rule I(25) limits freedom of speech to not allowing providers the opportunity to raise valid objections to Department regulations.

Response: The Department feels that this rule does not and never was intended to prevent providers from raising any objection to the Department's regulations. It prohibits, "threatening, intimidating or harassing patients). Freedom of speech does not give anyone the right to threaten, intimidate or harass individuals.

Comment: Rule I(26) should allow providers to submit claims so that a justiciable issue can be raised upon the erroneous position of the Department.

Response: If the Department's position is determined to

be erroneous the cost is reimbursable and there can be no sanction. The rule as written certainly allows justiciable issues to be raised.

Comment: The words "or has reason to know" should be deleted from Rule I(26) to insure that providers are not sanctioned for error due to recent rule changes.

Response: The Department does not intend to sanction for a mere mistake but rather a pattern and practice of intentional or otherwise abusive billing practice.

Comment: The Department has no right to withhold payments that are due as a means of punishment.

Response: The Department agrees that it has no right to withhold payments that are due. The Department does have a right to recover overpayments.

Comment: Rule II(4) is objectionable.

Response: Rule II(4) has been deleted and the rule sections renumbered accordingly.

Comment: The former Rule II(6), now Rule II(5), and Rule VI(1) is an unlawful requirement, especially when required at providers' expense.

Response: The Department views these rule sections as alternate action designed to help providers who do not understand the Department's rules. This education will always be in-state. This education is meant to be a positive step in lieu of a sanction.

Comment: Rule II(10), now Rule II(9), is unrelated to the objects of the Department and amounts to an abuse of authority.

Response: The Medicaid Fraud Control Bureau and the Montana Department of Revenue is the proper authority to investigate Medicaid provider fraud and abuse. It is the duty of the Department as well as the duty of any citizen to report a crime to the proper authority.

Comment: Rule IV(1) needs to define "affiliate".

Response: Sanctions may be applied only where the affiliate has a positive duty and has knowledge of the situation in which a violation, failure or inadequacy occurred.

Comment: Rule V(2) is a threat to embarrass the provider by reporting disciplinary action.

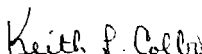
Response: The Department has dropped Rule V(2).

Comment: Are such regulations necessary?

Response: The Department has a duty to its recipients and to the public at large not to pay for or allow services by providers who have been proven to be inept, unethical, or fraudulent in the practice of their profession.

Comment: Rule VII(6) should better explain what a formal hearing is.

Response: Chapter 2 of the Department's ARM gives a full explanation of a fair hearing. The word "fair" has been substituted for "formal" in Rule VII(6).



Director, Social and Rehabilitation Services

Certified to the Secretary of State June 3, 1980.

VOLUME NO. 38

OPINION NO. 82

SUBPOENAS - Investigative subpoenas as court orders to compel release of medical records;
MEDICAL PRACTITIONERS - Release of confidential health care information;
HOSPITALS - Release of confidential health care information.
MONTANA CODE ANNOTATED - Sections 50-16-302, 50-16-311, 50-16-314, 46-4-301 through 306.

HELD: A county attorney may, in the course of a criminal investigation, employ an investigative subpoena to compel a health care provider to release confidential health care information.

19 May 1980

Ronald W. Smith, Esq.
Hill County Attorney
Havre, Montana 59501

Dear Mr. Smith:

You have requested my opinion on the following question:

May a county attorney employ an investigative subpoena to compel a health care provider to produce the results of an examination of a rape victim conducted on request of police officers?

Your question arose from a state of facts in which a hospital refused to divulge the results of an examination of a rape victim, conducted at the request of police, even though the patient/victim consented to release of the information to the county attorney.

Title 50, chapter 16, part 4, MCA, provides that health care providers, such as hospitals, clinics, and physicians, may release "confidential health care information" only if the patient consents or if certain narrowly defined circumstances are present. Section 50-16-311, MCA. The statute defines "confidential health care information" broadly to include any information "obtained by a health care provider relating to health care history, diagnosis, condition, treatment, or evaluation." Section 50-16-302(3), MCA. This broad definition would include the results of a physical examination of a rape victim.

The statute creates no right of access to confidential health care information. Even if the patient consents, the statute places the health care provider under no obligation to release the information unless compelled to do so by legal process under the limited circumstances set forth in section 50-16-314, MCA:

(1) Except as provided in subsection (2), confidential health care information is not subject to compulsory legal process in any type of proceeding, including any pretrial or other preliminary proceedings, and a person or his authorized representative may refuse to disclose and may prevent a witness from disclosing confidential health care information in any proceeding.

(2) The exemption or privilege provided in subsection (1) does not apply:

(a) when the individual's physical or mental condition is relevant regarding the execution or witnessing of a will or other document;

(b) when the physical or mental condition of an individual is introduced by a party claiming or defending as a successor or beneficiary of the individual;

(c) when an individual makes communications to a psychiatrist in the course of a court-ordered psychiatric examination after having been informed that the communications are admissible only as to issues involving the individual's mental condition;

(d) when required by Rule 35, M.R.Civ.P., or otherwise ordered by a court.

This provision implicitly renders confidential health care information subject to court process, with or without the patient's consent, in those circumstances set forth in subsection (2). In the case of an examination of a rape victim, subdivisions (a), (b) and (c) are inapplicable, as is Rule 35, Mont. R. Civ. P. The county attorney's only recourse is to seek a court order to compel disclosure.

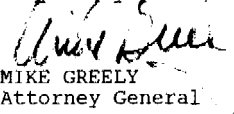
In my opinion, the statutory authority for such an order may be found in sections 46-4-301 through 306, MCA, which provide for the issuance by a district judge or supreme court justice of investigative subpoenas when the administration of justice so requires. Unlike common subpoenas or

subpoenas duces tecum, which may be issued without the express approval of a district judge, an investigative subpoena is a discretionary order issued by "any justice of the supreme court or district court judge...commanding the persons to whom they are directed to appear...and give testimony and produce such books, records, papers, documents, and other objects as may be necessary and proper to the investigation." As such it is an order of the court sufficient to compel production of confidential health care information. Compare In re TRW, Inc., 460 F.Supp. 1007 (E.D. Mich. 1978) (grand jury subpoena held to be a "court order" sufficient to compel production of credit records under 15 U.S.C. § 1681b, the Fair Audit Reporting Act).

THEREFORE, IT IS MY OPINION:

A county attorney may, in the course of a criminal investigation, employ an investigative subpoena to compel a health care provider to release confidential health care information.

Very truly yours,


MIKE GREELY
Attorney General