RESERVE

MONTANA ADMINISTRATIVE REGISTER

1980 ISSUE NO. 23
PAGES 2983-3056

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.

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 23

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BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the ADOPTION OF RULES establishing standards for the employment of personnel in Vocational Education and for the continuing development or improvement of their competencies and skills.	NOTICE OF PROPOSED ADOPTION OF RULES CONCERNING STANDARDS FOR THE EMPLOYMENT AND PROFESSIONAL DEVELOPMENT OF PERSONNEL IN VOCATIONAL EDUCATION NO PUBLIC HEARING CONTEMPLATED

1. On December 28, 1980, the superintendent of public instruction proposes to adopt rules setting standards for the employment and professional development of personnel in vocational education.

2. The proposed rules provide as follows:

10.41.132 AFFIRMATIVE ACTION PLANS (1) Recruitment, selection, employment, and advancement of vocational education personnel shall be consistent with current approved institution and/or agency affirmative action plans.

(a) Each educational institution requesting funds for vocational programs shall operate administratively under an approved affirmative action plan.

10.41.133 OCCUPATIONAL & PROFESSIONAL STANDARDS FOR EMPLOYMENT. Vocational education instructional and administrative personnel shall satisfy minimum occupational and professional standards established and periodically reviewed and updated by the superintendent of public instruction and shall continually meet the state's standards established by the superintendent of public instruction if any part of their salary is to be paid from funds appropriated for vocational education.

(1) The state administrator/director of vocational education shall have the following minimum qualifications:

(a) A master's degree in an occupational field with extensive preparation as a teacher, supervisor, or administrator of vocational education.

(b) A minimum of three years full-time experiences as an administrator of vocational education programs. At least five years experience as a vocational education instructor, consultant, or journeyman vocational craftsman.

(2) Assistant administrator/director shall have the following minimum qualifications:

(a) A master's degree in an occupational field with extensive preparation as a teacher, supervisor, or administrator of vocational education.

(b) A minimum of three years full-time experiences as a vocational education supervisor or consultant or any combination of five years as a vocational education instructor, consultant, or journeyman vocational craftsman.

(3) State program consultants shall have the following minimum qualifications:

(a) Shall meet qualification for certification as a

teacher in the area of specialization in vocational education and shall hold a master's degree or equivalent education and/or experience with a major in the vocational area of specialization or a closely related area.

(b) A minimum of three years experience as a vocational instructor in the area of specialty or a closely related area. A minimum of one year of vocational experience in the world of work in the area of specialty or a closely related area.

(4) Qualifications of vocational administrators, supervisors, instructors, counselors, or others in vocational positions must meet the qualification requirements established by the superintendent of public instruction prior to employment, if any part of their salaries is to be paid from funds appropriated for vocational education. Individuals applying for postsecondary center director positions must meet superintendent of public instruction's approved qualifications prior to local employment as a center director.

(5) Deans, directors, or supervisors of vocational education shall hold a minimum of a master's degree in an occupational field from an accredited college or university, shall have at least one year of successful experience in business or industry, and shall be knowledgeable in and have an understanding of the vocational education programs of the state. Deans, directors, or supervisors of vocational education shall also have at least three years of teaching or administrative experience in vocational education.

(6) Local vocational guidance counselors shall hold a graduate degree in an appropriate counseling program from an accredited college or university and shall have one year of wage earning experience (postsecondary--three years) outside the field of professional education. One year of this wage earning experience shall be recent and continuous. One year of appropriate teaching may be considered by the state director in lieu of one year of employment experience when specifically recommended by the local education institution. The candidate must have demonstrated the ability to work successfully in a counseling situation.

(7) Vocational education instructors must have a combination of work experience and education that directly contributes to the competencies required in the occupational area being taught. (See Certification Requirements.)

10.41.134 RESPONSIBILITY FOR DEVELOPMENT & MAINTENANCE OF INSTRUCTION COMPETENCIES. The development of instruction competencies and the maintenance and improvement of occupational skills shall be the shared responsibility of the individual, the local education institution, the teacher training institutions, and the state director of vocational education.

(1) To discharge his/her responsibilities, the state director may initiate, but is not limited to the following activities.

(a) Plan programs, seminars, conferences and workshops to develop or improve instructional competencies of personnel.

(b) Plan programs or systems that will provide for periodically sending vocational education personnel back to business or industry to keep them abreast of current practices.

(c) Review and make recommendations to the superintendent of public instruction for plans on courses and workshops submitted for funding by the teacher training institutions for the development and improvement of instructional competencies.

10.41.135 RESPONSIBILITY OF THE STATE DIRECTOR FOR IN-SERVICE & PRESERVICE EDUCATION. The state director of vocational education shall promote programs of preservice and inservice education for instruction, supervisory, administrative, teacher training, and support personnel in vocational education.

(1) The state director shall encourage teacher training institutions to submit plans for preservice programs which shall prepare individuals to function as administrators, supervisors, teachers and counselors.

(2) The state director shall encourage and assist in planning inservice education programs submitted by teacher training institutions.

(3) The state director shall encourage local and state vocational staff to attend industrial schools, seminars or other activities in vocational education in order that staff may be better prepared for their professional assignment in vocational education.

3. The rules are proposed to replace rules repealed by the board of public education in response to amendments of sections 20-7-301, 20-7-302, 20-7-312, and 20-7-324, MCA enacted by the forty-sixth legislature. These rules establish guidelines for the employment of professional staff in vocational education by the superintendent of public instruction and local boards of trustees. Their intent is to ensure quality programming by the office of public instruction, school districts and postsecondary vocational-technical centers.

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing by December 19, 1980.

5. Any interested person desiring to submit his data, views or arguments at a public hearing must request the opportunity to do so in writing. If ten percent or twenty-five, whichever is less, of the persons directly affected or a governmental subdivision or agency; or an association having not less than 25 members who will be affected so request, a public hearing will be held after appropriate notice is given. Ten percent of the population directly affected has been estimated to be 150. All written responses should be addressed to Larry C. Key, Administrator; Department of Vocational & Occupational Services, Office of Public Instruction, State Capitol, Helena, Montana 59620 and received not later than December 23, 1980.

6. The authority for the superintendent of public in-

struction to make the rules is contained in section 20-7-301 MCA; the rules implement sections 20-7-301(5); 20-7-301(6); and 20-7-302.1(3) MCA.

ALVE THOMAS
DEPUTY SUPERINTENDENT OF PUBLIC INSTRUCTION

Certified to the Secretary of State November 28, 1980.

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

In the matter of the amendment of Rule 12.3.103 relating to priorities for special permits) APPOINTMENT OF HEARING EXAMINER

TO: All Interested Persons.

1. On October 30, 1980, a notice of hearing for a proposed amendment modifying the present ARM Rule 12.3.103 was published at page 2845 of the 1980 Montana Administrative Register, issue No. 20.

2. By said notice of public hearing, F. Woodside Wright was designated to preside over and conduct the hearing. It now appears that Mr. Wright is unable to attend and therefore Gregory C. Taylor of the department's legal staff, Helena Office, is appointed the hearing examiner in the above matter.

Fletcher E. Newby

Fletcher E. Newby, Acting Director
Dept. of Fish, Wildlife & Parks

Certified to Secretary of State December 2, 1980

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the amendment of a rule for the use of Delivery Zone Permits.	))))	NOTICE OF PROPOSED AMENDMENT OF RULE 18.8.421, DELIVERY ZONE PERMIT. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 12, 1981, the Department of Highways proposes to amend Rule 18.8.421 which pertains to Delivery Zone Permits.

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

18.8.421 DELIVERY ZONE PERMIT (1) Delivery Zone Permits are issued to trucks or truck tractors licensed under 61-10-201 (Schedule I Fees) to draw a trailer or semi trailer in the local delivery zone of a specific city when the trailer or semi trailer has entered the State in combination with a truck or truck tractor licensed under 61-10-203 (Scheudle III Fees).

(2) Additional fees are not due when the above licensing requirements are met.

(3) Upon completion of an application, which can be obtained from the Gross Vehicle Weight Division, Box 4639, Helena, Montana 59604, a Permit-Cab Card is issued to the truck or truck tractor. This Permit-Cab Card must be carried in the vehicle at all times and is non-transferrable, unless the transfer is requested and is made by the Gross Vehicle Weight Division.

(4) ~~A Delivery Zone Plate is also issued to each truck or truck tractor and must be affixed to the applicable vehicle. The plate has a white background with black lettering. Large letters "DZ" are on the left side of the plate with a number on the right. Underneath this data is a city abbreviation designating~~ The Permit-Cab Card will designate the local delivery area in which the vehicle may operate. ~~The Permit-Cab Card and Plate must both be with the proper vehicle at all times.~~

(5) The permit ~~and identification are~~ is issued at no charge and ~~have~~ has no expiration date as long as ~~they are~~ it is used in compliance with these regulations and with section 61-10-203 (4) and (5), MCA.

3. The rule is proposed to be amended to delete the necessity of the issuance and use of the license plate. Section 61-10-203 (5) states that a permit must be issued, but it makes no mention of a plate. All pertinent information is contained on the Permit-Cab Card and the issuance of a plate is a duplication of information and an additional cost to

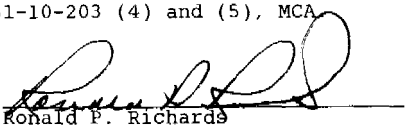
both the Department of Highways and the trucking industry.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Ronald P. Richards, Director, Department of Highways, 2701 Prospect Avenue, Helena, Montana 59620, no later than January 8, 1981.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit the request along with any written comments to Ronald P. Richards, Director, Department of Highways, 2701 Prospect, Helena, Montana 59620, no later than January 8, 1981.

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 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 883 persons based on the number of companies licensed under proportional registration from January through October 1980.

7. The authority of the Department to make the proposed amendment is based on Sections 60-2-201 and 60-3-101, MCA, and the rule implements Sections 61-10-203 (4) and (5), MCA.

By: 
Ronald P. Richards
Director of Highways

Certified to the Secretary of State December 2, 1980.

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the Amendment of a rule regarding Overweight Single Trip Permits.	)	NOTICE OF PROPOSED AMENDMENT OF RULE 18.8.601(6), OVERWEIGHT SINGLE TRIP PERMITS.
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 12, 1981, the Department of Highways proposes to amend Rule 18.8.601 which pertains to the issuance of Overweight Single Trip Permits.

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

18.8.601 OVERWEIGHT SINGLE TRIP PERMITS. The text will remain unchanged. However, the illustration mentioned in 18.8.601(6) (ARM page 297) will be revised as shown on the attached page.

3. The rule is proposed to be amended to allow additional weight on axles and to remove speed restrictions on certain non-built-up loads. These changes are being proposed because the Bridge Bureau of the Department of Highways has advised that the additional weight allowance and the removal of the speed restrictions will not present any danger of damage to road surfaces or structures.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Ronald P. Richards, Director, Department of Highways, 2701 Prospect Avenue, Helena, Montana 59620, no later than January 8, 1981.

5. If a person who is directly affected by the proposed amendment wishes to express data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit the request along with any written comments to Ronald P. Richards, Director, Department of Highways, 2701 Prospect, Helena, Montana 59620, no later than January 8, 1981.

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 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 58,000 persons based on the number of licensed Montana drivers.

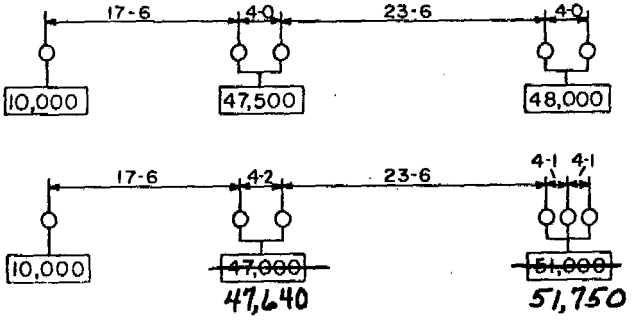
7. The authority of the Department to make the proposed amendment is based on Section 61-10-121, MCA, and the rule implements Sections 61-10-101 through 61-10-148, MCA.

By: 
Ronald P. Richards
Director of Highways

Certified to the Secretary of State December 2, 1980.

ILLUSTRATION FOR ARM 18.8.601(6)

THE MAXIMUM LOAD AND THE MINIMUM AXLE SPACING FOR WHICH AN OVERWEIGHT PERMIT IS ISSUED FOR A NON-BUILT-UP LOAD IS AS FOLLOWS:



Permits may be issued to the above limits for both combinations without any speed restrictions other than "As Posted" on the road being travelled. No other speed restrictions are imposed.

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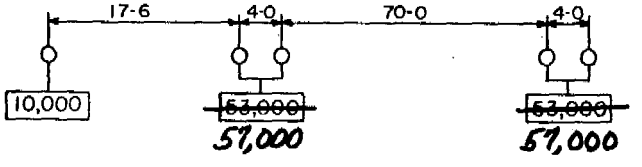
THE MAXIMUM AXLE LOADS AND THE MINIMUM AXLE SPACING FOR WHICH OVERWEIGHT PERMITS MAY BE ISSUED UNDER SPECIAL CONDITIONS FOR NON-BUILT-UP LOADS WITHOUT ANALYSIS SHALL CONFORM TO THE FOLLOWING:



Speed shall not exceed 35 m.p.h. at any time.

Before crossing any structure, the unit shall come to a complete stop when approximately fifty (50) feet from the bridge end.

After flagmen have stopped all traffic onto the structure, the vehicle shall proceed at a speed not to exceed two (2) m.p.h.

Flagmen shall not permit any other traffic on the structure until the overloaded vehicle is completely off the structure.

Any violation of any of the above conditions will automatically prohibit the owner from receiving any other permits for roading any similar unit under his jurisdiction or control.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF COSMETOLOGISTS

IN THE MATTER of the proposed amendment of ARM 40.12.202 concerning public participation.	NOTICE OF PROPOSED AMENDMENT OF ARM 40.12.202 CITIZEN PARTICIPATION RULES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 10, 1981, the Board of Cosmetologists proposes to amend ARM 40.12.202 citizen participation rules.

2. The proposed amendment will read as follows: (deleted matter interlined)

"40.12.202 CITIZEN PARTICIPATION RULES (1) The board of cosmetologists hereby adopts and incorporates by this reference the public participation rules of the department of professional and occupational licensing as listed in Chapter 2 of this title~~,-with-the-following revision-to-subsection-(3)(a)-of-ARM-40.2.202.~~

~~(a)----...the-termination-must-be-approved-by-a-majority-vote-of-the-board-committee-on-public-participation.-This-committee-is-composed-of-the-board-and-the-executive officers-of-the-Montana-State-Cosmetologists-Association.~~"

3. The board is proposing the amendment to avoid control by the association of any matters that may involve public participation.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Cosmetologists, Lalonde Building, Helena, Montana 59620 no later than January 8, 1981.

5. If a person who is directly affected by the proposed amendment 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 Cosmetologists, Lalonde Building, Helena, Montana 59620 no later than January 8, 1981.

6. If the board 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 agency or subdivision; 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 amendment is based on section 37-31-203, MCA and implements sections 2-3-103, 2-4-201 (2), MCA.

BOARD OF COSMETOLOGISTS
JUNE BAKER, PRESIDENT

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

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

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS

IN THE MATTER of the proposed amendment of ARM 40.32.414 subsections (3) and (4) concerning examinations.	NOTICE OF PROPOSED AMENDMENT OF ARM 40.32.414 (3) & (4) EXAMINATIONS NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On November 28, 1980, the Board of Nursing Home Administrators published a notice of proposed amendment of ARM 40.32.414 at page 2962, 1980 Montana Administrative Register, issue number 22. The board is at this time renoticing the proposed amendment as the proposed new material under subsection (4)(c) was inadvertently omitted. The board is proposing the amendment on January 10, 1981.

2. The proposed amendment as renoticed will remain the same as originally proposed with the addition of subsection (4)(c) and will read as follows: (New matter underlined, deleted matter interlined)

"40.32.414 EXAMINATIONS.....

(3) ~~Applicant must provide a recent photograph approximately 2 1/2 x 2 1/2" in size of head and shoulders only.~~

(4) ~~--Any one or a combination of t~~The following will establish eligibility for admission to the examination.

(a) ~~at least an Associate Degree or its equivalent, in hospital or nursing home administration, subject to board approval~~ 2 years of college in business administration; and

(b) ~~presenting evidence satisfactory to the board of sufficient education, training or experience in the foregoing fields to administer, supervise and manage a long term care facility; and~~ 2 years of experience under a licensed nursing home administrator or hospital administrator.

(c) ~~four of the last six years as an administrator or assistant in a licensed health care facility~~. Exceptions to the above rule may include a minimum of a BS or BA Degree in health care administration.

....."

3. The board is proposing the amendment to clearly define requirements for admission to the nursing home administrators examination with regard to education and experience. The proposed amendment of (4)(c) will provides alternatives to subsection (4)(a) and (b).

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Nursing Home Administrators, Lalonde Building, Helena, Montana 596 20 no later than January 8, 1981.

5. If a person who is directly affected by the proposed amendment 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 Nursing Home Administrators, Lalonde Building, Helena, Montana 59620 no later than January 8, 1981.

6. If the board 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 agency or subdivision; 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 amendment is based on section 37-9-201 (1), MCA and implements sections 37-9-203 (1), 301 and 304, MCA.

BOARD OF NURSING HOME
ADMINISTRATORS
MRS. H.E. GERKE, CHAIRMAN

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

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

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF RADIOLOGIC TECHNOLOGISTS

IN THE MATTER of the proposed amendments of ARM 40.54.402 concerning applications, 40.54.404 concerning certificates of license, 40.54.405 concerning permit examinations, and proposed adoption of a new rule concerning temporary permits	NOTICE OF PROPOSED AMENDMENTS OF ARM 40.54.402 APPLICATIONS, 40.54.404 CERTIFICATE OF LICENSE, 40.54.405 PERMIT EXAMINATIONS, AND PROPOSED ADOPTION OF A NEW RULE CONCERNING TEMPORARY PERMITS
	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 10, 1981, the Board of Radiologic Technologists proposes to amend rules ARM 40.54.402 concerning applications, 40.54.404 concerning certificates of license, 40.54.405 concerning permit examinations, and proposes to adopt a new rule concerning temporary permits.

2. The proposed amendment of ARM 40.54.402 will read as follows: (new matter underlined, deleted matter interlined)

"40.54.402 APPLICATIONS (1) All applications for licensure or permit shall be made on printed forms provided by the board office. Completed applications shall be examined for compliance with the board rules. ~~Applications properly completed and accompanied by the proper fees shall be entered in the records of the board. Incomplete applications or those not accompanied by the proper fees will be returned to the applicant with instructions as to the correction thereof, and the application will be held in abeyance until proper completion.~~

~~(2) All applications for licensure or permit shall be made on printed forms provided by the board.~~

(a) The information requirements which appear on the application form ~~are incorporated into these rules by this reference. G~~generally includes, ~~the application asks for the~~ applicant's educational history, work experience, ~~as a radiologic technologist,~~ and verifications of licenses or permits in other states~~,~~. ~~and asks for verification of education and work experience by the appropriate institute(s) and formal employer(s).~~

(b) The board may, in its discretion, require statements of good moral character and references from all of the applicant's places of employment.

(2) The board further requires that all applications for a license shall be submitted to the board office with copies of the following documents:

(a) copy of board approved 24-month x-ray course certificate;

(b) copy of current A.R.R.T. wallet card;

(c) three names and addresses of persons who can

attest to the applicant's good moral character;
(d) $15.00 original certificate fee; and
(e) renewal license fee of $20.00 for odd numbered years or $10.00 for even numbered years. (based on biennial renewals)
(3) The board further requires that all applications for a permit shall be submitted to the board office with copies of the following documents:
(a) copy of 24 hours x-ray course certificate;
(b) three names and addresses of persons who can attest to the applicant's good moral character;
(c) letter from the employing physician or administrator stating that the applicant is employed; and has at least 6 months practical experience in the x-ray profession;
(d) examination fee of $10.00; and
(e) original permit fee of $10.00.
~~(c)~~ (4) All applications and related data will be kept in permanent files and maintained by the board office.
~~(3)~~ (5) At any time within one year after date of notice of action by the board, a written request may be made for reconsideration of an application. ~~which has been rejected.~~ After one year has expired from the date the application is received by the board, a new application must be ~~made~~ submitted."

3. The amendment is proposed to set out specific procedures and documents required when filing an application. The authority of the board to make the proposed amendment is based on section 37-14-202,MCA and implements sections 37-14-302 and 306, MCA.

4. The proposed amendment of ARM 40.54.404 will read as follows: (new matter underlined, deleted matter interlined)

"40.54.404 CERTIFICATE OF LICENSURE (1) A certificate of licensure will be issued by the board after approval of the application and successful completion of the A.R.R.T. examination, where required, and will bear a licensure number for that applicant.
(a) Applicants approved for licensure as radiologic technologists will receive one permanant certificate along with a biennial renewable license, authorizing the practice of radiologic technology.

5. The board is proposing the amendment to name a specific examination and to make the licensees aware that renewals are biennial. The authority of the board to make the proposed amendment is based on section 37-14-202, MCA and implements sections 37-14-304, and 305, MCA.

6. The proposed amendment of ARM 40.54.405 will read as follows: (new matter underlined, deleted matter interlined)

"40.54.405 PERMIT EXAMINATIONS (1) ~~A non-refundable~~--

~~fee of $10.00 will be assessed for the examination.~~ The permit examination will cover basic radiation, dark room procedures, anatomy and physiology, radiation protection, and health and safety to the patient.

(2) ~~The examinee may review his/her examination papers in the office of the board within 90 days after notification of the results.~~ The permit examination will be administered by the board office at least twice a year. Applicants for examination will be notified at least 30 days in advance of the scheduled examination.

(a) Applicants for examination may request to take the examination in the board office any day of the working week. This request must be in writing and must be received in the board office at least five days prior to the requested examination date.

(b) Board members may administer the examination to examination applicants. Applicants shall make the request directly to the board member. If the board member agrees to proctor the examination, the applicant shall notify the board office in writing of the board member who shall be proctoring the examination, the examination date, time and place. All requests shall be received in the board office at least 5 days prior to the scheduled examination date.

(3) Examination results will be mailed out to each examination applicant by the board office at least 5 days after taking the examination.

(4) Applicants may review their examination papers with board members at a regularly scheduled board meeting only.

(5) Applicants failing the examination may re-take the examination five days after the date of failure.

(6) A non-refundable fee of $10.00 will be assessed for the examination. After failing the examination three times, the applicant will be required to resubmit an additional $10.00 examination fee and must comply with rule ARM 40.54.406.

~~(3)~~ (7) Passing score for the permit examination are listed as follows:

(a)	General knowledge portion	56 out of 75 correct answers
(b)	Chest, extremities, spine, skull	20 out of 25 correct answers
(c)	Other, including fluoroscopy	24 out of 30 correct answers

~~(4) The examination will cover basic radiation, dark room procedure, anatomy and physiology, radiation protection, and health and safety to the patient.~~

~~(5) Applicants for examination will be notified~~

~~at least 30 days in advance of a scheduled examination.~~"

7. The board is proposing the amendment to state specific procedures for administering and grading of the examination. The board also has rearranged the current subsections of the rule for clarity. The authority of the board to make the proposed amendment is based on section 37-14-202, MCA and implements sections 37-14-305, and 37-14-306, MCA.

8. The proposed new rule concerning temporary permits will read as follows:

"I. TEMPORARY PERMITS (1) Any person applying for a temporary permit must file with the board office an application, which shall include:

(a) a letter from the administrator stating the regional hardship or emergency condition which exists in the area;

(b) a letter from the applicant stating the total number of x-rays which the department has taken in the past month and the total number of x-rays which the applicant assisted on;

(c) a letter from the applicant stating why he or she at this time is not able to take the examination and be issued a permit; and

(d) a non-refundable temporary permit fee of $10.00.

(2) The entire board shall review the application and information submitted before voting on the issuance of the temporary permit.

(3) If the board should deny the issuance of the temporary permit, the board shall write to the administrator stating the reasons why the request was rejected. "

9. The board is proposing adoption of the new rule to set down procedures for applying for a temporary permit. The authority of the board to make the proposed adoption is based on section 37-14-202, MCA and implements section 37-14-306, MCA.

10. Interested parties may submit their data, views or arguments concerning the proposed amendments and adoption in writing to the Board of Radiologic Technologists, Lalonde Building, Helena, Montana 59620 no later than January 8, 1981.

11. If a person who is directly affected by the proposed amendments and adoption 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 Radiologic Technologists, Lalonde Building, Helena, Montana 59620 no later than January 8, 1981.

12. If the board receives requests for a public hearing on the proposed amendments and 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 subdivision; 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 and implements sections are listed after each proposed change.

BOARD OF RADIOLOGIC TECHNOLOGISTS
REYNOLD J. BENEDETTI, R.T.,
CHAIRMAN

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

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

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of a rule setting forth the schedule applicable to the Montana Administrative Register	))))))	NOTICE OF PROPOSED ADOPTION OF A RULE - FILING, COMPILING, PRINTER PICKUP AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 12, 1981, the Secretary of State proposes to adopt a rule setting forth the scheduled filing dates, filing time deadlines, compiling dates, printer pickup dates and publication dates pertaining to the Montana Administrative Register.

2. The proposed rule provides as follows:

RULE I - FILING, COMPILING, PRINTER PICKUP AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER. (1) The Montana Administrative Register is a twice monthly publication. The scheduled filing dates, time deadlines, compiling dates, printer pickup dates and publication dates for material to be published in the Montana Administrative Register are listed below:

1981 Schedule

Filing	Compiling	Printer Pickup	Publication
January 5	January 6	January 7	January 15
January 19	January 20	January 21	January 29
February 2	February 3	February 4	February 13
February 13	February 17	February 18	February 26
March 2	March 3	March 4	March 12
March 16	March 17	March 18	March 26
April 6	April 7	April 8	April 16
April 20	April 21	April 22	April 30
May 4	May 5	May 6	May 14
May 18	May 19	May 20	May 28
June 1	June 2	June 3	June 11
June 15	June 16	June 17	June 25
July 6	July 7	July 8	July 16
July 20	July 21	July 22	July 30
August 3	August 4	August 5	August 13
August 17	August 18	August 19	August 27
September 4	September 8	September 9	September 17
September 21	September 22	September 23	September 30
October 5	October 6	October 7	October 15
October 19	October 20	October 21	October 29
November 2	November 3	November 4	November 12
November 16	November 17	November 18	November 26
December 7	December 8	December 9	December 17
December 21	December 22	December 23	December 31

(2) A notice of proposed action or a notice of adoption that contains an adoption by reference must be submitted by noon of the scheduled filing date. All other material to be published must be submitted by 5:00 p.m. of the scheduled filing date. All material submitted after the listed deadlines will not be published until the next scheduled publication.

3. The rule is proposed to notify rulemaking agencies of the schedule for submission of material to be published in the Montana Administrative Register. The filing day and the deadline time for submission of notices that incorporate by reference has been moved ahead to afford my office more time for review and for compiling the register. This also gives an agency a grace period before the printer pickup date to correct and return material to be published and become effective as planned.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Mr. Leonard C. Larson, Chief Deputy, Secretary of State's Office, Room 202, Capitol Building, Helena, Montana, 59620, no later than January 8, 1981.

5. The authority of this office to make the proposed rule is based on section 2-4-312, MCA, and the rule implements section 2-4-312, MCA.

Dated this first day of December, 1980.

FRANK MURRAY
Secretary of State

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of a rule setting forth the schedule applicable to the Administrative Rules of Montana	))))))	NOTICE OF PROPOSED ADOPTION OF A RULE - SCHEDULED SUBMISSION DATES FOR REPLACEMENT PAGES TO UPDATE THE ADMINISTRATIVE RULES OF MONTANA NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 12, 1981, the Secretary of State proposes to adopt a rule setting forth the scheduled submission dates of replacement pages to update the Administrative Rules of Montana.

2. The proposed rule provides as follows:

RULE I SCHEDULED SUBMISSION DATES FOR REPLACEMENT PAGES TO UPDATE THE ADMINISTRATIVE RULES OF MONTANA (1) The replacement page schedule for updating the ARM is as follows:

5:00 p.m. March 31
5:00 p.m. June 30
5:00 p.m. September 30
5:00 p.m. December 31

(2) Rulemaking agencies must submit replacement pages on the scheduled date on all rule changes that have appeared in the rule section of the Montana Administrative Register during the preceding three months. Updated chapter table of contents pages, subchapter table of contents pages, cross reference pages and topical index pages must also be submitted by the scheduled date.

3. The rule is proposed to notify rulemaking agencies of the schedule for submission of replacement pages for the calendar years 1981 through 1983.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Mr. Leonard C. Larson, Chief Deputy, Secretary of State's Office, Room 202, Capitol Building, Helena, Montana 59620, no later than January 8, 1981.

5. The authority of this office to make the proposed rule is based on section 2-4-311, MCA, and implements section 2-4-311, MCA.

Dated this first day of December, 1980.

Frank Murray

FRANK MURRAY
Secretary of State

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 1.2.423 setting forth filing fees for publishing in the Montana Administrative Register	))))	NOTICE OF PROPOSED AMENDMENT OF RULE 1.2.423 AGENCY FILING FEES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 12, 1981, the Secretary of State proposes to amend rule 1.2.423 AGENCY FILING FEES.

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

1.2.423 AGENCY FILING FEES (1) Beginning July 1, ~~1979~~ 1981 all agencies will be required to pay a ~~$1.00~~ 2.00 per page filing fee for all pages submitted which are applicable to the notice and rule section of the Montana Administrative Register. The secretary of state will bill annually for all fees incurred by the agency for the fiscal year.

3. The agency filing fee is set in consultation with the Administrative Code Committee and is set to cover a portion of the publication and mailing costs of the ARM or the register. The actual cost to print and mail one page in the register to all of our subscribers is $10.48. The charge of $2.00 covers approximately 20% of the actual cost.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Mr. Leonard C. Larson, Room 202, Capitol Building, Helena, Montana, 59620, no later than January 8, 1981.

5. The authority of the department to make the proposed amendment is based on section 2-4-313(6), MCA, and the rule implements section 2-4-313(6), MCA.

Dated this first day of December, 1980.

Frank Murray

FRANK MURRAY
Secretary of State

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the repeal of rule 1.2.403 regarding biennial review of rules by agencies	))))	NOTICE OF PROPOSED REPEAL OF RULE 1.2.403 BIENNIAL REVIEW OF RULES BY AGENCY NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On January 12, 1981, the Secretary of State proposes to repeal rule 1.2.403 BIENNIAL REVIEW OF RULES BY AGENCY.

2. The rule proposed to be repealed is on page 1-28 of the Administrative Rules of Montana.

3. The agency proposes to repeal this rule because of lack of authority for the rule.

4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Mr. Leonard C. Larson, Chief Deputy, Office of Secretary of State, Room 202, Capitol Building, Helena, Montana, 59620, no later than January 8, 1981.

Dated this first day of December, 1980.

Frank Murray

FRANK MURRAY
Secretary of State

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

In the matter of the repeal of rule 16.10.1002 relating to railway stations and cars	)))	NOTICE OF THE REPEAL OF ARM 16.10.1002 (Railway Stations and Cars)

TO: All Interested Persons

1. On October 16, 1980, the Department of Health and Environmental Sciences published notice of a proposed repeal of rule 16.10.1002 concerning railway stations and cars at page 2704 of the 1980 Montana Administrative Register, issue no. 19.
2. The Department has repealed the rule as proposed.
3. No comments or testimony were received.

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

Certified to the Secretary of State December 2, 1980

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

In the matter of the amendment of rule 16.42.101 regulating occupational noise	)))	NOTICE OF AMENDMENT OF RULE 16.42.101 (Occupational Noise)

TO: All Interested Persons

1. On October 16 and 30, 1980, the Board published notices of the proposed amendment to rule 16.42.101, regulating occupational noise at pages 2706-2708, of issue number 19, and page 2848, of issue number 20, of the Montana Administrative Register.

2. The Board has adopted the rule as proposed with the following changes.

16.42.101 OCCUPATIONAL NOISE

(1) and (2) Same as proposed rule.

(3) For purposes of determining compliance with this rule, noise levels shall be determined by a sound level meter ~~satisfactory to the department~~ which operates on the decibals A-weighting network (dbA) with slow meter response. The department hereby adopts and incorporates herein by reference the specifications for sound level meters adopted by the American National Standards Institute, ANSI S1.4-1971 (R1976). This sets forth nationally recognized standards for sound level meters. A copy of these specifications may be obtained by writing to ANSI at 1430 Broadway, New York, New York 10018. Inquiries as to whether a particular meter is satisfactory may be answered by contacting the Occupational Health Bureau, Environmental Sciences Division, Cogswell Building, Capitol Complex, Helena, Montana 59620 telephone 449-3671.

(4) through (6) Same as proposed rule.

3. No public comments or testimony were received. Representatives of the Department's Occupational Health Bureau did suggest that a standard for sound level meters to determine compliance with the rule be specified in the rule in subsection (3) to clarify what sound level meters would be satisfactory. The Board accepted the Department's recommendations and specified the ANSI standard as shown

above, copies of which were to be filed with the Secretary of State of Administrative Code Committee.

JOHN F. McGREGOR, Chairman

RITA ANN SHEEHY

Certified to Secretary of State December 2, 1980

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

In the matter of the amendment of rule 16.42.102 regarding occupational air contaminants	)))	NOTICE OF AMENDMENT of ARM 16.42.102 (Occupational Air Contaminants)

TO: All Interested Persons

1. On October 16 and 30, 1980, the Board published notices of the proposed amendment of rule 16.42.102, concerning occupational air contaminants, at pages 2709-2728, of issue number 19, and page 2848, of issue number 20, of the Montana Administrative Register.

2. The board after a public hearing held on November 21, 1980, amended the rule as proposed with the following minor changes:

16.42.102 OCCUPATIONAL AIR CONTAMINANTS

(1) through (2)(e) Same as proposed.

(f) "Time weighted average value" means that for an air contaminant for which such threshold limit value has been established in an 8-hour work shift a worker may be exposed to ~~a single brief concentration~~ concentrations which ~~exceed~~ exceed this value so long as the average 8-hour cumulative exposure as computed by the formula in subsection (4) does not exceed this value.

(3) When any worker employed at any work place is or would be exposed to an air contaminant exceeding the threshold limit values of this rule, the employer shall determine and implement feasible administrative or engineering controls first to reduce the air contaminant levels. If such controls fail to reduce the worker's exposure to air contaminant levels within the threshold limit values of this rule, personal protective equipment shall be provided by the employer for the worker and used to reduce the worker's exposure to air contaminants within the levels permitted by this rule. All personal protective equipment used for purposes of this rule must be approved for each particular use by a competent industrial hygienist or other technically qualified person. Whenever respirators are used as personal protective equipment, they must be satisfactory to the department. The department hereby adopts and incorporates by reference the ANSI practices for respiratory protection Z88.2-1980. These ANSI standards are nationally recognized standards. A copy of these standards may be obtained by writing to ANSI at 1430 Broadway, New York, New York 10018. Questions as to whether respirators are satis-

factory may be answered by contacting the Department's Occupational Health Bureau, Cogswell Building, Capitol Complex, Helena, Montana, 59620, phone 449-3671.

(4) - (4)(a) Same as proposed rule.

(b) An employer shall use the following formula to compute a worker's cumulative or time weighted average exposure to a mixture or combination of air contaminants during an 8-hour work shift:

(i) $Em = C_1/L_1 + C_2/L_2 + ... C_n/L_n$. "Em" is the equivalent exposure for the mixture; "C"n is the concentration of a particular air contaminant; and "L" is the threshold limit value for that contaminant from Tables I, II, or III of this rule. An employer shall not allow the value of Em to exceed unity (1).

(ii) The following example illustrates the formula prescribed in subsection (i). Assume that a worker was exposed to actual concentrations of 500 ppm of Acetone as listed in Table I, 45 ppm of 2-Butanone as listed in Table I, and 40 ppm of Toluene as listed in Table II, during an 8-hour period. The 8-hour time weighted average exposure limits for these air contaminants are 1000 ppm, 200 ppm, and 200 ppm, respectively. Putting this data into the formula, Em = 500/1000 + 45/200 + 40/200, or 0.925. Since Em is less than unity (1), the exposure of the worker to the combination or mixture of air contaminants is acceptable.

(5) No person may cause or permit the exposure of any worker employed at any work place ~~by inhalation, ingestion, skin absorption or contact~~ to air contaminant levels in excess of the threshold limit values listed in this rule. Compliance with this rule shall be determined by calculating the worker's exposure to air contaminants as individual substances or as the exposure to a mixture of substances according to the formulas stated in subsection (4).

(a) The threshold limit values in Table I of this rule are to be interpreted as follows:

(i) A worker's exposure to any air contaminant in Table I, the name of which is preceded by a "C", e.g., C Boran trifluoride, shall at no time exceed the threshold limit value listed which is expressed as a ceiling value for that air contaminant.

(ii) A worker's exposure to any material in Table I, the name of which is not preceded by a "C", shall not exceed the threshold limit value which is expressed as an 8-hour time weighted average.

(b) The threshold limit values in Table II of this rule are to be interpreted as follows:

(i) A worker's exposure to any air contaminant listed in Table II, in any 8-hour work shift of a 40-hour work week, shall not exceed the 8-hour time weighted average limit given for that air contaminant in Table II.

(ii) A worker's exposure to an air contaminant listed in Table II shall not exceed at any time during an 8-hour shift the acceptable ceiling concentration limit given for an air contaminant in Table II, except for a time period, and up to a concentration not exceeding the maximum duration and concentration allowed in the column under "acceptable maximum peak above the acceptable ceiling concentration for an 8-hour shift."

(iii) To exemplify subsection (i) and (ii), during an 8-hour shift, a worker may be exposed to a concentration of Benzene above 25 ppm, but never above 50 ppm, only for a maximum period of 10 minutes. Such exposure must be compensated by exposures to concentrations less than 10 ppm so that the cumulative exposure for the entire 8-hour work shift does not exceed a time weighted average of 10 ppm.

(c) The threshold limit values in Table III of this rule are to be interpreted as follows:

(i) A worker's exposure to any air contaminant listed in Table III, in any 8-hour work shift of a 40-hour work week, shall not exceed the 8-hour time weighted average limit given for that air contaminant in Table III.

(ii) For respirable quartz of crystalline silica, the percentage of crystalline silica in the formula for mppcf or mg/m^3 is the amount determined from airborne samples, except in those instances in which other methods have been shown to the department's satisfaction to be applicable.

(iii) For respirable quartz of crystalline silica, both concentration and percent quartz for the application of the limit of mg/m^3 are to be determined from the fraction passing a size-selector with the following characteristics in Table A.

TABLE A

Aerodynamics diameter (unit density sphere)	Percent passing selector
2	90
2.5	75
3.5	50
5.0	25
10	0

(iv) For non-asbestos forms of talc for silicates, the mppcf threshold limit value is to be used where less than 1% quartz exists but if greater than 1% quartz exists, the quartz threshold limit value in Table III is to be used.

(v) For all types of asbestos, the fibers per cubic centimeter level in Table III is to be determined by using the membrane filter method at 400 to 450 x (magnification) (4 millimeter objective) with phase contrast illumination.

(vi) An mppcf measurement may be converted into million particles per cubic meter and particles per C.C. by multiplying it by a factor of 35.3.

(d) The threshold limit values for air contaminants are listed in the following tables:

TABLE I

Air Contaminant	ppm	mg/m^3
Abate to Diborane	Same as proposed rule	
1,2-dibromoethane, see Ethylene dibromade, Table ~~III~~ II		
Dibutyl phosphate to Zirconium compounds	Same as proposed rule	

TABLE II

Same as proposed rule.

TABLE III - MINERAL DUSTS

Same as proposed rule except fifth line from bottom of table, as follows: Fibers per cubic centimeters (f/cm^3)

3. No comments or testimony were received. The Board at the request of the Department of Health and Environmental Sciences Occupational Health Bureau amended subsection (3) to specify in the rule what practices for respiratory protection the Department deemed to be satisfactory by incorporating by reference the ANSI standard Z88.2-1980 as shown above. Copies of the incorporated material were given to the Secretary of State and Administrative Code Committee when the notice amending this rule was filed.

JOHN F. McGREGOR, Chairman

RITA ANN SHEEHY

Certified to the Secretary of State December 2, 1980

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

In the matter of the repeal of rules 16.42.103 and 16.42.104, regulating laser energy restrictions and threshold limit charts	))))	NOTICE OF REPEAL OF RULES 16.42.103 and 16.42.104 (Laser Energy Restrictions, Threshold Limit Charts)

TO: All Interested Persons

1. On October 16, 1980, the Board of Health and Environmental Sciences published notice of the proposed repeal of rules 16.42.103 and 16.42.104, regulating laser energy restrictions and threshold limit charts at page 2705 of the 1980 Montana Administrative Register, issue number 19.

2. The Board after public hearing held on November 21, 1980, has repealed the rules as proposed.

3. No public comments or testimony were received.

JOHN F. McGREGOR,
Chairman

RITA ANN SHEEHY

Certified to the Secretary of State December 2, 1980

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of:	)	NOTICE OF ADOPTION
The adoption of rules and	)	OF RULES
Certification of Alcohol and	)	
Drug Abuse Personnel	)	

TO: All Interested Persons:

1. On June 17, 1980, the Department of Institutions gave notice (No. 20-3-4) that it intended to adopt rules for the certification of Alcohol and Drug Abuse personnel. On June 26, 1980, the notice was published in the Montana Administrative Register (Issue No. 12, pages 1667 through 1676.)

2. Public hearings were conducted by the Department on July 21, 1980, in Billings and Glendive, Montana. On July 22, 1980, in Havre and Kalispell, Montana. On July 23, 1980, at the Galen State Hospital.

3. Written comments were received by the Department through August 1, 1980. Three written comments were received in addition to testimony received by the hearings officer. Therefore, based on the public comments and testimony and the recommendations of the hearings officer, the Department adopts these rules with the following changes:

20.3.401: (Rule 1) is adopted as proposed.

20.3.402: (Rule 2) is adopted as proposed.

20.3.403: Due to public input on this particular rule, (Rule 3) is adopted with the following changes: "5 ~~points~~; 12 points are awarded for every documentable year of full time equivalent (FTE) work experience completed as counselor, educator, supervisor, or administrator working in an ~~approved~~ Alcohol or Drug program. The maximum of 65 points can be earned from such documented work experience. 1 point will be given for each FTE of work in the state approved program. Up to 10 points will be earned for such volunteer service plus service on a board. No more than 65 points can be counted toward the basic certificate from all types of work experience combined."

In table 2, work experience summary the point formula for employment in professional position will be changed from 5 to 12. The sentence, "For registry date only need to be repeated for certification must be documented" will be deleted.

20.3.404: (Rule 4) Due to testimony, instead of 1 point, 1¼ points will be given for each documented academic quarter hour earned.

20.3.405: (Rule 5) Will be amended by deleting the last sentence in paragraph 1. In paragraph 2, second sentence will read: "All workshop training completed after implementation of certification must be approved by ADAD training and certification section to gain certifi-

cation points". The third paragraph is amended by dropping the terms "one or more days". The fourth paragraph will be amended by deleting the prior requirements of 40 points and replacing it with 65 points.

20.3.406: (Rule 6) Will be adopted with the deletion of the sentence "they must wait at least 2 years at which time one final attempt may be made."

20.3.407: (Rule 7) The last sentence which was in parenthesis will be deleted.

20.3.408: (Rule 8) Will be adopted except that in the work experience, the 5 points for FTE year will be deleted and in the structure workshop training the Department drawn from the preferred list in the topic area will be deleted.

20.3.409: (Rule 9) is adopted as proposed except the reference to Table 7 will become Table 8.

20.3.410: (Rule 10) In (1) the first sentence will be deleted and read, "upon written request the registration form will be sent to the applicant. Address request to ADAD, Department of Institutions, 1539 11th Avenue, Helena, Montana 59601."

In (3) category A the term "Top candidate" will be deleted; in category B the term "realistic candidate" will be deleted; in category C the third sentence will include the term "these applicants are doubtful candidates and must earn more points before setting examines or submitting work samples".

Rule 11: The written examination is deleted.

20.3.411: (Rule 12) Which now becomes Rule 11 is adopted with the only change being the last paragraph will be deleted.

20.3.412: (Rule 13) Which becomes (Rule 12), is adopted as follows: The last sentence of the 5th paragraph is deleted. The sixth paragraph is deleted and the 7th paragraph is deleted.

20.3.413: (Rule 14) Which now becomes (Rule 13) is adopted the second sentence reading: "points can come from FTE work experience with up to 15 points workshop or academic courses taken within each 3 year period".

20.3.414: (Rule 15) Which now becomes (Rule 14) is adopted with the only change in the first sentence "~~in three ways~~" being deleted.

20.3.415: (Rule 16) Which now becomes (Rule 15) is adopted as proposed.

4. The authority for the agency to adopt these rules is Section 53-24-105 MCA and the implementing Section 53-24-204 MCA.

LAWRENCE M. ZANTO, Director
Department of Institutions

By: _____

CERTIFIED TO THE SECRETARY OF STATE December 2, 1980.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of rule 32.3.401 requiring a reduced dose of Brucella abortus vaccine in cattle	))))	NOTICE OF THE AMENDMENT OF RULE 32.3.401.

TO: All Interested Persons.

1. On October 16, 1980, the Department of Livestock published notice of a proposed amendment to rule 32.3.401, concerning the required dose of Brucella abortus Strain 19 vaccine in cattle at page 2729 of the 1980 Montana Administrative Register, issue number 19.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

4. The authority for the rule is based on section 81-2-102 MCA and the same section is being implemented.

ROBERT G. BARTHELMESS
Chairman, Board of Livestock

JAMES W. GLOSSER, D.V.M.
Administrator & State Veterinarian

Certified to the Secretary of State December 2, 1980.

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

In the matter of the amendment of Rule 46.12.1201 (46-2.10(18)-S11451A), Rule 46.12.1202 (46-2.10 (18)-S11451B), Rule 46.12.1204 (46-2.10(18)-S11451D), Rule 46.12. 1205 (46-2.10(18)-S11451E), and Rule 46.12.1206 (46-2.10(18)-S11451F) pertaining to the reimbursement for skilled nursing and intermediate care services, reimbursement method and procedures.	))))))))	NOTICE OF THE AMENDMENT OF RULE 46.12.1201, RULE 46.12.1202, RULE 46.12.1204, RULE 46.12.1205 AND RULE 46.12.1206 FOR REIMBURSEMENT FOR SKILLED AND INTERMEDIATE CARE SERVICES, REIMBURSEMENT METHOD AND PROCEDURE

TO: All Interested Persons

1. On October 16, 1980, the Department of Social and Rehabilitation Services published notice of a proposed amendment to Rules 46.12.1201, 46.12.1202, 46.12.1204, 46.12.1205, and 46.12.1206 pertaining to reimbursement for skilled and intermediate care services, reimbursement method and procedure at page 2738 of the 1980 Montana Administrative Register, issue number 19.

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

46.12.1201 ~~CLOSEOUT OF PRIOR RULES SINCE APRIL 1, 1978 AND TRANSITION~~ TRANSITION FROM RULES IN EFFECT SINCE APRIL 1, 1979 ~~(1) The rules in effect between April 1, 1978 and March 31, 1979, provide for determining prospective rates based on costs presented in cost reports ending March 31, 1978. The department will process and settle the March 31, 1978, cost reports and provide the appropriate reimburse- ment for the period April 1, 1978 through March 31, 1979.~~

~~(2) The prospective rates determined under rules in effect between April 1, 1978 and March 31, 1979, are hereby modified to allow for inflationary adjustment not anticipated when the April 1, 1978 rules were established. The prospective rates established for April 1, 1978, will be adjusted October 1, 1978 and January 1, 1979, to reflect the changes in the CPI and MPI during the months following April 1, 1978, that were not anticipated in the 7.5 percent adjustment percentage determined in rule 46-2.10(18)-S11450D(2)(a)(i)(ab) of the April 1, 1978 rules. The annualized adjustment percentage to be effective October 1, 1978, has been determined to be 9.2 percent, and the annualized adjustment percentage to be effective January 1, 1979, has been determined to be 9.3 percent. These percentages will be multiplied by the average of per diem adjusted operating costs as determined in rule 46-2.10 (18)-S11450D(2)(a)(i)(aa) of the governing rules in effect between April 1, 1978 and March 31, 1979 which, in turn, is~~

~~added to per diem property costs as determined in rule 46-2.10(18)-S11450B(2)(b)(i) of the governing rules in effect between April 1, 1978 and March 31, 1979 to yield the prospective rate effective October 1, 1978 and January 1, 1979.~~

~~(3) Beginning April 1, 1979 rules 46-2.10(18)-S11451A through 46-2.10(18)-S11451F are hereby promulgated and implemented. Rules 46-2.10(18)-S11450A through 46-2.10(18)-S11450K as set forth in the administrative register of Montana at pages 46-94.7H through 96-947Q are hereby specifically repealed as of April 1, 1979.~~

(1) The rules in effect between April 1, 1979 and December 31, 1980 provide for determining a prospective rate based on prior fiscal year's costs. Those rules further provide for determining rates under an alternative rate review process.

(2) A facility which has entered into an agreement for rate review prior to December 31, 1980, will continue under that agreement for the period covered by the agreement. A facility which has not requested a rate review by December 31, 1980, shall receive a rate determined under the rules that follow.

(3) These rules shall be effective January 1, 1981.

46.12.1202 PURPOSE AND DEFINITIONS (1) Reasonable cost related reimbursement for skilled nursing and intermediate care facility services is mandated by section 249 of Public Law 92-603, the 1972 amendment to the Social Security Act.

(a) The purpose of the following rules is to meet the requirements of Title XIX including section 249 of Public Law 92-603 and 42 CFR 447 et seq, while treating the eligible recipient, the provider of services, and the department fairly and equitably.

(b) The rates determined under the following rules exclude costs estimated to be in excess of those necessary in the efficient delivery of needed health services, but shall not be set lower than the level which the department reasonably finds to be adequate to reimburse in full actual allowable costs of a provider operating economically and efficiently and having no deficiencies~~.~~ which would result in decertification. A provider will be defined to be operating efficiently if he is a prudent and cost conscious buyer. A prudent and cost conscious buyer not only refuses to pay more than the going price for a service or item, he also seeks to minimize costs. The department defines a provider to be operating economically if the actual allowable costs for a rate year have increased from the applicable prior fiscal year at a rate which is no more than the rate of change in the trend factor (see ARM 46.12.1204(3)(d)) for the same period.

The department defines a provider to have no deficiencies if that provider holds a current certification for participation in the medicaid program issued by the Montana department of health and environmental sciences.

(c) The rules for determining rates and the rate setting methodology may be amended or revised from time to time, but such amendments or revisions will become effective only after members of the public have had adequate opportunity to review and comment according to procedures established under Montana state law.

(d) The department will pay providers the amounts determined under these rules on a monthly basis upon receipt of an appropriate billing representing the determined rates applied to eligible recipients.

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

~~(a) "CPI" means the all items figure from the consumer price index for all urban consumers published monthly by the bureau of labor statistics, U.S. department of labor.~~

(a) "CPI" means the consumer price index for all urban consumers published monthly by the bureau of labor statistics, U.S. department of labor. CPI-all means the all items figure. CPI-food means the food at home item. CPI-other means the CPI all items figure excluding the food item and the shelter item.

(b) "Labor index" means the average hourly earnings, of production or nonsupervisory workers of nursing and personal care facilities published by the bureau of labor statistics, U.S. department of labor. Such earnings amount shall be utilized as an index.

(c) "Department" means the Montana department of social and rehabilitation services.

(d) "Facility" means a long-term care facility which provides skilled nursing or intermediate care, or both to two or more persons and which is licensed as such by the Montana department of health and environmental sciences.

(e) "Patient day" means an individual present and receiving services in a nursing home facility for a whole 24-hour period. Even though an individual may not be present for a whole 24-hour period on day of admission, such day will be considered a patient day. When department rules provide for the reservation of a bed for a patient who takes a temporary leave from a facility to be hospitalized or make a home visit, such whole 24-hour periods of absence will be considered patient days.

~~(f) "HIM 15" means provider reimbursement manual, health insurance manual 15, part I, 1967.~~

~~(g) "HIM 16" means the audit manual for extended care facilities under the Health Insurance for the Aged Act, Title XVIII.~~

~~(h)~~ (f) "Routine nursing care services" means skilled or intermediate nursing care as defined in rules for nursing home care in ARM 46.12.555 and 46.12.556.

~~(i)~~ (g) "ICF/MR" means a facility certified by the Montana department of health and environmental sciences to provide intermediate care for patients who are mentally retarded. ~~according to federal regulations under 42 CFR 442.400.~~

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

~~(k)~~ (i) "Provider" means any person, agency, corporation, partnership or other entity which has entered into an agreement with the department for the providing of nursing care services.

~~(l)~~ (j) "Administrator" means the person, including an owner, salaried employee, or other provider, with day-to-day responsibility for the operation of the facility. In the case of a facility with a central management group, the administrator, for the purpose of these rules, may be some person (other than the titled administrator of the facility), with day-to-day responsibility for the nursing home portion of the facility. In such cases, this other person must also be a licensed nursing home administrator.

~~(m)~~ (k) "Related parties" for purposes of interpretation hereunder, shall include the following:

(i) An individual or entity shall be deemed a related party to his spouse, ancestors, descendants, brothers and sisters, or the spouses of any of the above, and also to any corporation, partnership, estate, trust, or other entity in which he or a related party has a substantial interest or in which there is common ownership.

(ii) A substantial interest shall be deemed an interest directly or indirectly, in excess of ten percent (10%) of the control, voting power, equity, or other beneficial interest of the entity concerned.

(iii) Interests owned by a corporation, partnership, estate, trust, or other entity shall be deemed as owned by the stockholders, partners, or beneficiaries.

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

(v) Common ownership exists when an individual has substantial interests in two or more providers or entities serving providers.

~~(n)~~ (l) "Fiscal year" and "fiscal reporting period" both mean the facility's internal revenue tax year.

~~(o)~~ (m) "Property Costs" are amounts allowable for facility or equipment depreciation, interest on loans for a facility or equipment, and leases or rental of a facility or equipment.

~~(p)~~ (n) "Operating costs" are the difference between total allowable cost and property costs.

~~(q)~~ (o) "Certificate of Need" is the authorization to proceed with the making of capital expenditures under Section 1122, Title XI of the Social Security Act, and sections 50-5-101 through 50-5-307 MCA.

~~(r)~~ (p) "New facility" means an entirely newly-constructed facility which has not provided nursing care services long enough to have a cost report with a complete audit as provided under ARM 46.12.1205(6) covering a twelve-month fiscal reporting period.

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

~~(t) "Date of interest" is the date to be used in determining changes in the prospective rate. When computing changes in the CPI the dates of interest are the beginning date of a prospective rate period and the ending date of a prospective rate period. The date of interest related to adding a trend factor to cost per day is the beginning date of a prospective rate period.~~

~~(u) References to laws and regulations refer to citations current as of March 20, 1979.~~

(r) "Rate year" means the provider's fiscal year for which an interim rate is being issued.

(s) Nominal charge means a charge by a government facility to a private patient which amounts to less than half of the actual allowable costs per day for the rate year.

(t) "Estimated economic life" means the estimated remaining period during which the property is expected to be economically usable by one or more users, with normal repairs and maintenance, for the purpose for which it was intended when built.

(u) The laws and regulations and federal policies cited in this sub-chapter shall mean those laws and regulations which are in effect as of October 22, 1980.

46.12.1204 REIMBURSEMENT METHOD AND PROCEDURES (1) Reimbursable Cost. Reimbursable cost is the amount the department pays for routine nursing home services provided to a medicaid patient. Reimbursable cost for the applicable period is determined by multiplying the prospective rate times medicaid patient days and deducting therefrom the amount a patient participates in the cost of care.

(2) Prospective Rates. Prospective rates are the rates on record with the department's fiscal intermediary as of March 31, 1979, or the rates determined as follows, whichever are higher. Prospective rates shall be announced no later than the beginning date of the period for which the prospective rate is to be effective, unless a prospective rate is determined through the alternative rate review process according to rule ARM 46.12.1204.

(a) The prospective rate for each facility is the sum of its cost per day (see ARM 46.12.1204(2)(c)), a trend factor (see ARM 46.12.1204(2)(d)), adjustments for property cost increases (see ARM 46.12.1204(2)(i)), a performance incentive factor (see ARM 46.12.1204(2)(f)), and an occupancy adjustment factor (see ARM 46.12.1204(2)(e)). The prospective rates are subject to a maximum prospective rate (see ARM 46.12.1204 (2)(g)) and to private pay limitations (see ARM 46.12.1204 (2)(h)). Prospective rates are effective for periods beginning on or after April 1, 1979, and will be updated by the trend factor at the beginning of each six-month period thereafter, or until rebasing under ARM 46.12.1204(2)(b) establishes a new initial date.

(b) Prospective rates are based on cost reports that represent nursing home costs for facilities participating in the program during a base period. The initial base period will include the most recent fiscal year cost report ending on or before November 30, 1977 for each facility participating in the program during that period. Rates beginning on April 1, 1979 will be based on cost reports from this initial base period. Subsequent base periods will be established when the

end date of the oldest cost report used to establish rates is more than three years old. (For example, the oldest cost reports used for the initial base period will be three years old on December 31, 1979. A more current base period will be established upon which to determine rates effective January 1, 1980.)

(c) Cost per day is the allowable cost for a facility divided by related total patient days.

(i) A facility's cost per day for the initial base period shall be computed utilizing the most recent cost report of the facility ending on or before November 30, 1977. Those facilities not having submitted cost reports from which the department can obtain the requisite cost information will be assigned an estimated cost per day as determined by the department. This estimate will be revised based on a cost report containing the requisite information to be filed no later than October 1, 1979. If such a cost report is not made available by that date, the provider's total reimbursement shall be withheld. Any amounts withheld under these circumstances will be payable to the provider upon submission of cost report containing the requisite information and applicable to the base period then in effect.

(ii) Each facility's cost per day for subsequent base periods shall be based on cost reports applicable to that particular base period.

(iii) If the total patient days represented in the cost report used to determine cost per day represents an occupancy rate of less than 50 percent, property cost per day for that cost report will be computed on the basis of 50 percent occupancy.

(d) The trend factor is an amount that is added to cost per day at a date of interest to reflect changes in the CPI and labor index. This factor is determined by deriving the mean operating cost per day from the costs per day determined in ARM 46.12.1204(2)(c) after such costs per day have been adjusted by the CPI and labor index to the end date of the base period. The mean operating cost per day is multiplied by a percentage based 30% on the CPI percentage change between two dates of interest and 70% on the labor index percentage change between the same two dates of interest to yield the trend factor percentage. The change in the CPI and labor index is determined by using the index established for the fourth month previous to the date of interest. For example, to determine the trend factor percentage to be applied to prospective rates beginning on October 1, 1979, the index for the months ending July 31, 1977 (four months before the cost report date of November 30, 1977) and May 31, 1979 (four months before the date of interest, October 1, 1979), would be used.

(e) The occupancy adjustment factor is an amount that

will be added to or deducted from a facility's next prospective rate should the occupancy rate during any six-month period after April 1, 1979 vary more than three percentage points from the occupancy rate used to determine a facility's base period cost per day. Any computations under this section shall be subject to the 50 percent occupancy factor as described in ARM 46.12.1204(2)(e)(iii). This factor will be determined as follows:

(i) The percentage of variance in total patient days for each period shall be determined. Such percentage shall be reduced by 56 percent, which is deemed to be the portion related to costs that vary with occupancy.

(ii) When the prospective rate is being updated as called for in ARM 46.12.1204(2)(d) the prospective rate will be increased or decreased by the adjusting percentage determined in (2)(e)(i) of this rule.

(iii) All providers shall submit monthly occupancy reports on forms provided by the department. These reports shall be filed within 15 days of the close of each month. If the report is late and not received by the next date of reimbursement, the provider's total reimbursement shall be withheld. All amounts so withheld will be payable to the provider upon submission of a complete and accurate occupancy report.

(f) The performance incentive factor is determined by a facility's relation to the 90th percentile of costs per day. If the facility's cost per day is at or above the 90th percentile, its performance incentive factor is zero. If the facility's cost per day is less than the 90th percentile, the performance incentive factor is 50 percent of the difference between the 90th percentile of all costs per day and its cost per day up to $1.50 per patient day.

(g) The maximum prospective rate that will be allowed any facility is the cost per day as adjusted by ARM 46.12.1204(2)(d) that is applicable to the facility that is at the 90th percentile.

(h) The prospective rate for any facility shall not exceed private pay limitations, except that a state or county facility charging nominally is not subject to the private pay limitation. The weighted average charges for similar nursing care services to private paying patients in effect any time during the period for which the prospective rate applies shall be used in determining whether the prospective rate is limited or not. The provider shall be responsible for notifying the department immediately if or when the prospective rate exceeds the private pay rate.

(i) Prospective rates shall be adjusted for property cost increases needed for routine nursing care services implemented after the period covered by the cost report used to

determine cost per day in ARM 46.12.1204(2)(c) provided these increases have been approved through the certificate of need process. Cost per day in ARM 46.12.1204(2)(c) shall be adjusted accordingly. However, the cost per day so adjusted shall be subject to the same performance incentive factor determined in ARM 46.12.1204(2)(f) and the maximum prospective rate in ARM 46.12.1204(2)(g) during the interim between rebasing dates.

(j) New facilities participating for the first time in the program will be given an initial prospective rate based on an evaluation of a budget and a staffing pattern report submitted on forms provided by the department. The budget will be evaluated in terms of rates currently in effect for similar size facilities participating in the program. The staffing pattern will be evaluated in terms of the staffing requirements of the department of health and environmental sciences. However, the provider may request that the department perform a patient assessment and facility evaluation to determine actual staff needs. Unless justification for a variance is explicitly demonstrated and accepted by the department, the new facility will receive the same rate for similar size facilities. Once the facility has provided the department with a twelve-month cost report acceptable for use in determining prospective rates, submission of budgets for rate determination will no longer be required.

(k) An individual who is a new provider by reason of his purchase or lease of a facility which is currently participating in the program will be given an initial prospective rate based on an evaluation of a budget and a staffing pattern report submitted on a form provided by the department. The budget will be evaluated in terms of rates in effect for the prior provider. The staffing pattern will be evaluated in terms of the staffing requirements of the department of health and environmental sciences. However, the provider may request that the department perform a patient assessment and facility evaluation to determine actual staff needs. Unless justification for a variance is explicitly demonstrated in the budget and accepted by the department, the new provider will receive the same rate as the prior provider. Once the new provider has provided the department with a twelve-month cost report acceptable for use in determining prospective rates, submission of budgets for rate determination will no longer be required.

(3) Intermediate Care Facilities for the Mentally Retarded. If a facility is certified to provide care for patients under federal and state ICF/MR regulations, then the reimbursable cost for the facility shall be allowable costs

covering the period of reimbursement, subject to the limits provided below:

(a) An ICF/MR shall receive interim rates based on estimated costs. The rates shall be determined for an ICF/MR's fiscal year and shall be developed in two parts:

(i) Part one shall identify routine nursing care services and determine a rate for this part that shall not exceed the prospective rate for such services during the same period that would be allowed under ARM 46.12.1204(2);

(ii) Part two shall identify services applicable to the mentally retarded patients over and above the costs of routine nursing care services, and determine a rate for these incremental ICF/MR services, provided the estimated costs for such services are deemed reasonable and necessary.

(iii) Cost of providing services to patients will be reimbursed according to the appropriate interim rates depending on what level of care has been established for each patient by the Montana foundation for medical care.

(b) Interim rates may be updated from time to time:

(i) Part one rates will be updated for rebasing or other adjustments as provided in ARM 46.12.1204(2);

(ii) Part two rates will be updated upon request from a facility provided sufficient documentation is submitted to support the necessity of an increase.

(c) Final reimbursement will be determined when cost reports for the period have been audited according to ARM 46.12.1205(6). Reimbursement attributable to routine nursing care services shall be limited to the reimbursement that would be allowed for the same period according to ARM 46.12.1204(2). Reimbursement attributable to ICF/MR services over and above those allowed as routine nursing care services shall be paid as allowable costs determined under ARM 46.12.1204(4), however, these payments will not exceed the amount that would be paid under the medicare principles of provider reimbursement.

(4) Allowable Cost. Allowable costs for cost reports with ending dates before April 1, 1979 shall be determined according to rules for allowable cost then in effect. Allowable costs for cost reports with ending dates after April 1, 1979 will be determined in accordance with HIM 15 subject to the exceptions and clarifications herein provided, including the following:

(a) Return on equity will not be an allowable cost.

(b) Costs incurred in the provision of routine nursing care services to the extent such costs are reasonable and necessary are allowable. Routine services include regular room, dietary services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Examples of routine nursing care services are:

(1) Reimbursement is the amount the department pays for routine nursing home services provided to a medicaid patient. Reimbursement for the rate year is determined by multiplying the retrospective rate times medicaid patient days and deducting therefrom the amount each patient participates in the cost of care. During the rate year, an interim rate shall be the basis for determining the estimated payment for each month. At the close of the rate year, the department shall reconcile the amount paid on the interim basis with the reimbursement due according to ARM 46.12.1204(3). Overpayments will be recovered in accordance with ARM 46.12.1205(8).

(2) The interim rate shall be determined as follows unless a provider enters into an agreement for rate review according to rule ARM 46.12.1204(7). The interim rate shall be announced no later than the beginning of the rate year and shall be in effect for the provider's fiscal year. Interim rates are subject to private pay limitations (see ARM 46.12.1204(3)(f)), a maximum reimbursable operating cost (see ARM 46.12.1204 (3)(c)), and property cost limitations (see ARM 46.12.1204(5)(c)).

(a) The interim rate for each facility is the sum of its cost per day (see ARM 46.12.1204(3)(e)), a trend factor (see ARM 46.12.1204(3)(d)), an adjustment for property cost increases (see ARM 46.12.1204(2)(b)), and an estimation of the performance incentive factor, if applicable (see ARM 46.12.1204(3)(b)(i)).

(b) An adjustment for property cost increases shall be made for property cost increases incurred after the fiscal year covered in the cost report used to determine cost per day in ARM 46.12.1204(3)(e). However, such property cost increases shall be subject to limits on allowable costs as set forth in ARM 46.12.1204(5). Those increases must have been approved through the certificate of need process and must be related to routine nursing care services. Cost per day in ARM 46.12.1204(3)(e) shall be adjusted accordingly.

(c) In calculating the interim rate the department will include an estimate of the performance incentive factor as derived in ARM 46.12.1204(3)(b)(i). For the purpose of making this estimate, the allowable costs from the applicable prior fiscal year as adjusted by a trend factor (see ARM 46.12.1204 (3)(d) shall be used in determining the amount of the performance incentive factor. The department will reconcile this estimated performance incentive factor with the actual allowable performance incentive factor upon audit of the cost report for the rate year.

(d) New facilities participating for the first time in the program will be given an initial interim rate based on an

evaluation of a budget and a staffing pattern report submitted on forms provided by the department. The budget will be evaluated in terms of rates currently in effect for similar size facilities participating in the program. The staffing pattern will be evaluated in terms of the staffing requirements of the department of health and environmental sciences. Unless justification for a variance is explicitly demonstrated in the budget and accepted by the department, the new provider will receive the same rate for similar size facilities. Once the provider has provided the department with a twelve month cost report acceptable for use in determining interim rates, submission of budgets for rate determination will no longer be required.

(e) ~~(f)~~ A new provider, who by reason of his purchasing or leasing of a facility which is currently participating in the program, will be given an initial interim rate based on an evaluation of a budget and a staffing pattern report submitted on a form provided by the department. The budget will be evaluated in terms of rates in effect for the prior provider. The staffing pattern will be evaluated in terms of the staffing requirements of the department of health and environmental sciences. Unless justification for a variance is explicitly demonstrated in the budget and accepted by the department, the new provider will receive the same rate as the prior provider. Once the new provider has provided the department with a twelve month cost report acceptable for use in determining interim rates, submission of budgets for the rate determination will no longer be required.

(3) Retrospective Rate. The retrospective rate shall be issued upon audit of a cost report for the rate year and shall be determined as follows:

(a) The retrospective rate for not-for-profit facilities shall be the lesser of the actual allowable cost per day experienced during a provider's rate year or the actual allowable cost from the applicable prior fiscal year plus a trend factor (see ARM 46.12.1204(3)(d)).

~~(i) To the extent that an interim rate is based on a cost report which did not include return on net invested equity as an allowable cost, the interim rate shall be adjusted to allow for the inclusion of this cost when necessary in calculating the retrospective rate.~~

(b) The retrospective rate for for-profit facilities shall be the lesser of the actual allowable costs per day experienced during the provider's rate year plus a performance incentive factor (see ARM 46.12.1204(b)(i)) or the actual allowable cost from the applicable prior fiscal year plus a trend factor (see ARM 46.12.1204(3)(d) plus a performance incentive factor (see ARM 46.12.1204(3)(b)(i)).

(i) TO THE EXTENT THAT AN INTERIM RATE IS BASED ON A COST REPORT WHICH DID NOT INCLUDE RETURN ON NET INVESTED

EQUITY AS AN ALLOWABLE COST, THE INTERIM RATE SHALL BE ADJUSTED TO ALLOW FOR THE INCLUSION OF THIS COST WHEN NECESSARY IN CALCULATING THE RETROSPECTIVE RATE.

(ii) ~~(i)~~ The performance incentive factor is the amount which is added to a for-profit facility's retrospectively determined rate if the facility meets the department's definition of cost containment. A facility shall have met the definition of cost containment if its operating cost per day is less than the maximum reimbursable operating cost per day as defined in ARM 46.12.1204(3)(c).

(iii) ~~(ii)~~ The performance incentive factor for a facility is determined by the relationship of its allowable operating cost per day in the rate year to the allowable operating costs per day of all participating Montana facilities from the applicable prior fiscal year plus a trend factor (see ARM 46.12.1204 (d)). A facility with operating costs per day which are equal to or less than the 66th percentile of all reported costs plus the applicable trend factor shall receive a performance incentive factor of $1.50 per patient day. A facility with operating costs per day which fall between the 66th percentile and the 76th percentile of all reported operating costs per day plus the applicable trend factor shall receive a performance incentive factor of $1.00 per patient day. A facility with operating costs per day which are equal to or greater than the 76th percentile of all reported costs per day plus the applicable trend factor, but which are less than the maximum reimbursable cost per day, shall receive a performance incentive factor of $0.50 per patient day.

(c) The maximum reimbursable operating cost per day is the operating cost which is the 90th percentile operating cost of all Montana facilities participating in the program in the applicable prior fiscal year plus the applicable trend factor (see ARM 46.12.1204(d)). For rates effective January 1, 1981, the 90th percentile cost shall be derived from all audited cost reports submitted for fiscal years ending in 1979. Subsequent 90th percentile costs shall be derived from cost reports with ending dates no more than two years prior to the beginning of the rate year.

(d) The trend factor is the amount which is added to the cost per day from the applicable prior fiscal year to account for the effects of inflation on operating costs in the rate year. The trend factor is determined by multiplying the indicator of inflation times the operating cost per day for the applicable prior fiscal year. The indicator of inflation is the sum of ~~15~~ 10 percent of the change in CPI-food, ~~15~~ 19 percent of the change in CPI-other, and ~~70~~ 71 percent of the change in the labor index. These indexes are further defined in ARM 46.12.1202. The change in these indexes is the percentage change between the midpoint of the applicable prior fiscal year and the midpoint of the rate year.

(i) Interim Rate. For the purpose of determining the trend factor to be included in the interim rate, the percentage change in the indexes between the midpoint of the applicable prior period and the midpoint of the rate year will be extrapolated from the most currently available data on each index.

(ii) Retrospective Rate. For the purpose of determining the trend factor to be included in the retrospective rate, the actual percentage change in the indexes from the midpoint of the applicable prior fiscal year to the midpoint of the rate year will be used unless the percentage change determined according to ARM 46.12.1204(3)(d)(i) is higher. If the trend factor determined in ARM 46.12.1204(3)(d)(i) is higher, then the trend factor for the retrospective rate will be the trend factor used in determining the interim rate.

(e) Cost per day is the allowable cost for a facility as determined by ARM 46.12.1205 divided by related total patient days.

(i) A facility's cost per day for the initial interim rate shall be computed utilizing the most recent audited cost report of the facility for a fiscal year ending on or before December 31, 1979. Costs shall not be taken from cost reports which are submitted more than two years prior to the rate year for the purpose of computing an interim rate.

(ii) Each facility's cost per day for the retrospectively determined allowable costs will be taken from the cost report for the rate year for which the applicable interim rate was issued.

(iii) If a facility has increased its bed capacity with newly licensed beds on or after January 1, 1981 and if the facility has an occupancy rate which is less than 90 percent of capacity, then an adjusted occupancy rate shall be used in determining cost per day. The adjusted occupancy rate will be calculated as the actual occupancy plus 50 percent of the difference between 90 percent occupancy and the actual occupancy.

(iv) Facilities which have not increased bed capacity on or after January 1, 1981 shall have an occupancy adjustment if the occupancy rate for the facility is less than 50 percent of capacity. The property cost of these facilities will be computed based on 50 percent of capacity. Operating costs will be determined based on actual occupancy.

(f) The rate for any facility shall not exceed private pay limitations, except that a state or county facility charging nominally is not subject to private pay limitations. The weighted average charges for similar nursing care services to private pay patients in effect during a rate year shall be used in determining whether the rate is limited or not. The provider shall be responsible for informing the department's fiscal intermediary immediately if the rate exceeds the private pay rate.

(4) Intermediate Care Facilities for the Mentally Retarded. If a facility is certified to provide care for patients under federal and state ICF/MR regulations, then the retrospective rate for the facility shall be determined according to ARM 46.12.1204(3) with the following exception.

(a) Actual allowable costs shall be determined in two parts.

(i) Part one costs will be those costs associated with routine nursing care for intermediate care patients.

(ii) Part two costs will be those costs associated with services required by and provided to mentally retarded patients incremental to routine nursing care of intermediate care patients. Such incremental services are defined in 42 CFR, Part 442, Subpart G, Sections 411, 456-464 472, 475, 477 and 489 which are federal regulations setting forth standards for intermediate care facilities for the mentally retarded, and which regulations the department hereby adopts and incorporates herein by reference. A copy of the above-cited regulations may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59601. Providers must be able to document in a manner acceptable to the department the method of determining those incremental costs for the purpose of cost reporting.

(iii) The allowable operating costs determined in ARM 46.12.1204(4)(a)(i) shall be the only costs limited to the maximum allowable operating cost per day (see ARM 46.12.1204 (3)(c)). In addition, those costs shall be the only allowable operating costs used in determining the performance incentive factor (see ARM 46.12.1204(3)(b)(i)).

(b) The interim rate will be issued according to ARM 46.12.1204(2) except that there will be one interim rate issued for skilled and intermediate care patients served by the provider and another interim rate issued for ICF/MR patients. The basis for these interim rates will be allowable costs from the applicable prior fiscal year as determined in ARM 46.12.1204(3)(d).

(5) Allowable Cost. Allowable costs for cost reports with ending dates before January 1, 1981 shall be determined according to the rules for allowable costs then in effect. The department hereby adopts and incorporates herein by reference the health insurance manual HIM-15, which is a manual published by the United States department of health and human services, social security administration, which provides guidelines and policies to implement medicare regulations which set forth principles for determining the reasonable cost of provider services furnished under the health insurance for Aged Act of 1965, as amended. A copy of the HIM-15 may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59601. Allowable costs for cost reports with ending dates subsequent

to January 1, 1981, will be determined in accordance with HIM 15 subject to the exceptions and clarifications herein provided, including the following:

(a) Return on net invested equity will be an allowable cost for the profit facilities.

(b) Cost incurred in the provision of routine nursing care services to the extent such costs are reasonable and necessary are allowable. Routine services include a regular medically necessary room, dietary services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Examples of routine nursing care services are:

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

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

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

(iv) items which are used by individual patients which are reusable and expected to be available, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment;

(v) special dietary supplements used for tube feeding or oral feeding such as elemental high nitrogen diet; and

(vi) laundry services whether provided by the facility or by a hired firm, except for patients' personal clothing which is dry cleaned outside of the facility.

~~(c) Allowable property cost shall be limited to the property cost per day for the 90th percentile facility identified in cost reports for Montana facilities participating in the medicaid program during a base period. The initial base period shall utilize those cost reports filed with the department that demonstrate the requisite data and are the most recent twelve-month cost reports available through November 30, 1977. Subsequent base periods will use the same cost reports used for rebasing in ARM 46.12.1204(2)(b). In order to apply the property cost limit test, the 90th percentile property cost per day from the most recently available base period shall be indexed using the CPI to the end date of the cost report being reviewed, which amount shall then limit the property cost per day in the cost report being reviewed. That portion of property costs related to a certificate of need under ARM 46.12.1204(2)(i) shall not be subject to this property cost limit until the next rebasing date.~~

(c) Allowable property costs shall be limited in the following manner:

(i) The capitalized cost of a facility including the building, leasehold improvements, and fixed equipment shall not exceed the indexed cost per bed of the most recently newly constructed ENTIRE facility participating in the Medicaid program which was licensed due to new construction and approved according to the certificate of need process. The basis for indexing the cost per bed of this newly constructed facility shall be the index for construction costs as prepared by marshall valuation service. The indexing period shall be from the year of construction to the rate year.

(ii) The capitalized cost of movable equipment shall not exceed the fair market value of the asset at the time of acquisition.

(iii) Property related interest, whether actual interest or imputed interest for capitalized leases, shall not exceed the interest rates available to commercial borrowers from established lending institutions at the date of asset acquisition or at the inception of a lease.

(iv) Leases shall be capitalized according to generally accepted accounting principles. Noncapitalized lease costs shall not exceed the sum of the cost per bed as determined according to ARM 46.12.1204(5)(c)(i) plus the applicable interest as determined according to ARM 46.12.1204(5)(c)(iii).

(v) Depreciation of real property, but not movable equipment, reported in cost report periods with beginning dates on or after January 1, 1981, shall be based on estimated economic useful lives which have been established by an acceptable appraisal prepared by an appraisal expert as defined in HIM 15 which has been incorporated by reference into this rule (see ARM 46.12.1204(5)). A copy of the appraisal must accompany the cost report. The cost of the original appraisal to determine economic useful life shall be an allowable cost, but the cost of an appraisal to determine the value of assets shall not be an allowable cost.

(d) Administrators' compensation:

(i) Administrators' compensation is limited to the amounts allowed according to HIM 15, which has been incorporated by reference into this rule (see ARM 46.12.1204(5)).

(ii) Administrators' compensation and the reporting of administrators' compensation shall include:

(A) salary amounts paid to the administrator for managerial, administrative, professional and other services;

(B) employee benefits excluding employer contributions required by state or federal law--FICA, WCI, FUI, SUI. For a self-employed administrator, an amount equal to what would have been the employer's contribution for FICA and WCI may be excluded from such employee benefits;

(C) deferred compensation either accrued or paid;

(D) supplies, services, special merchandise, and the cost of assets paid or provided for the personal use or benefit of the administrator;

(E) wages of a domestic or other employee who works in the home of the administrator;

(F) personal use of a car owned by business;

(G) personal life, health, or disability insurance premium paid;

(H) a portion of the physical plant occupied as a personal residence;

(I) other types of remuneration, compensation fringe benefits or other benefits whether paid, accrued, or contingent.

(e) Employee benefits:

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

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

(iii) Costs of activities or facilities which are available to employees as a group, such as condominiums, swimming pools or other recreational activities, are not allowable.

(iv) For purposes of this subsection, an employee is one from whose salary or wages the employer is required to withhold FICA. Stockholders who are related parties to the corporate providers, officers of a corporate provider, and partners owning or operating a facility are not employees even if FICA is withheld for them.

(v) Paid vacation and sick leave shall be considered employee benefits to the extent that the facility has in effect a written policy which is uniformly applicable to all employees within a given class of employees, and paid vacation and sick leave are reasonable in amount.

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

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

(h) Dues, membership fees or subscriptions to organizations unrelated to the provider's provision of nursing care services are not allowable costs.

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

(j) Fees for management or professional services (e.g., management, legal, accounting or consulting services) are allowable to the extent they are identified to specific services, and the hourly rate charged is reasonable in amount. In lieu of compensation on the basis of an hourly rate, the provider may compensate for professional services on the basis of a reasonable retainer agreement which specifies in detail the services to be performed. Documentation that such services were in fact performed shall be provided by the provider. No cost in excess of the agreed upon retainer fee shall be allowed for services specified under the fee.

(k) ~~Transportation costs for travel related to patient care are allowable in accordance with internal revenue guide lines for items of expense.~~ Travel costs related to patient care are allowable to the extent that such costs are allowable under Sections 162 and 274 of the internal revenue codes and section 1.162-2 of the income tax regulations, which are federal statutes and regulations dealing with allowable travel expenses and transportation costs. The above-cited sections of the internal revenue code and income tax regulations are hereby adopted and incorporated herein by reference. A copy of the statutes and regulations may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59601. Vehicle operating costs will be pro-rated between business and personal use based on mileage logs or a prior approved percentage derived from a sample mileage log or other method acceptable to the department. For vehicles used primarily by the administrator, any portion of vehicle costs disallowed on pro-ration shall be included as compensation subject to the limits specified in ARM 46.12.1204 (4)(d). Depreciation shall be allowed on a straight-line basis (subject to salvage value) with a minimum of 3 years. Depreciation and interest or comparable lease costs may not exceed $2,400 per year. Other reasonable vehicle operating expenses will be allowed. Public transportation costs will be allowable at tourist or other available commercial rate (not first class).

(l) Purchases from related parties. Costs applicable to services, facilities and supplies furnished to a provider by parties related to that provider shall not exceed the lower of costs to the related party or the price of comparable services, facilities or supplies purchased elsewhere. Providers shall identify such related parties and costs in the annual cost report. The department hereby adopts and incorporates herein by reference ~~(42 CFR 447.284(a) and (b))~~, which is a federal regulation setting forth limits on costs of purchases from related organizations. A copy of the regulation may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59601.

~~(5)~~ (6) Ancillaries. Ancillary medical supplies and services are not allowable costs. The provider shall be paid for ancillary medical supplies and services in addition to the reimbursement rate determined by this rule provided that the ancillary medical supplies and services have been previously authorized by the Montana foundation for medical care to signify that the item is medically necessary and the bills for these items have the authorization on the face of the claim form. Payment for ancillary medical supplies and services are limited to the medical supplies and services needed to provide nursing care to patients who are required by doctor's orders to receive extraordinary care, and shall be the actual cost the provider incurred. The provider must maintain a separate cost center or centers for ancillary medical supplies and services. Revenues received from the department and/or patients for ancillary medical supplies or services are recoveries of cost and shall be deducted from the related cost when determining allowable cost. Any cost remaining after offsetting the related revenues must be eliminated from the cost report before determining allowable costs.

Ancillary medical supplies and services shall be billed by the provider licensed to provide such supplies or services and shall be designated on bills using codes established by the department and are limited to the following: oxygen (code 932-3308-00), wheelchairs customized with special design for a unique condition (code 932-3242-00), wheelchairs that are standard but motorized (code 932-3237-00), wheelchairs for children and are motorized (code 932-3241-00), helmets (code 932-3315-00), disposable colostomy appliances (code 932-4210-00), colostomy shield appliances (code 932-4213-00), disposable lelostomy appliances (code 932-4219-00), catheters (urethral, rubber or silicone) (code 932-4233-00), catheters (indwelling Foley balloon retention) (code 932-4234-00), miscellaneous catheters (code 932-4235-00), scrotal truss (code 932-6101-00), umbilical truss (code 932-6102-00), shoulder braces (code 932-6103-00), sacroiliac supports (code 932-6104-00), lumbosacral supports (code 932-6105-00), post hernia truss (code 932-6106-00), hinged joint steel knee cap (code 932-6707-00), wrist support leather (code 932-6108-00), corsets (code 932-6109-00), abdominal supports (code 932-6110-00), dorso lumbar supports (code 932-6111-00), orthopedic braces (code 932-6113-00), elastic stockings (sheer type, Jobst or comparable) (code 932-6201-00), elastic stockings (surgical type, Jobst or comparable) (code 932-6201-00), prescription drugs; occupational, speech, physical and other therapy; x-rays; supplies that are not required as a part of routine nursing care services for a particular patient and not otherwise compensated under ARM 46.12.1204.

~~(6)~~ (7) Reviews and Adjustments of Rates. The department will review a rate determined under ARM 46.12.1204 for a

possible increase if it is found that the established rate is set below the minimum level defined in ARM 46.12.1202.

(a) A rate may be reviewed according to this rule if a provider submits to the department a rate review application and supportive documents which:

(i) references a letter of warning from the state department of health and environmental sciences that the facility is in jeopardy of being decertified as a provider of nursing home care to medicaid patients due to certain specified deficiencies, and/or

(ii) provides documentation which clearly indicates that the established rate affects facility revenues to such an extent that reductions in essential services will be necessary and will very likely, in the provider's opinion, cause deficiencies that could lead to decertification by the department of health and environmental sciences;

(iii) details total revenue estimates for the period using private and established medicaid and non-medicaid rates and patient occupancy projections;

(iv) provides detailed expenditure projections according to line items mutually acceptable to the provider and the department along with supporting documentation justifying each item;

(v) provides other normally available information that the department may request in support of its review efforts.

(b) Within 14 days of receipt of a rate review application according to ARM 46.12.1204~~(6)~~(7)(a), the department will determine, based on the rate review application, the documentation provided and other information available to the department, whether the circumstances warrant rate review.

(i) The department will reject an application for rate review if substantial evidence shows that the established rate is not set below the minimum level defined in ARM 46.12.1202 (1). ~~The department will use measurable indices of central tendency for facility cost centers and staff volumes to make this determination.~~ THE PROVIDER SHALL SUPPLY EVIDENCE TO JUSTIFY THAT COST INCREASES IN EXCESS OF THE ISSUED RATE ARE DUE TO EXTRAORDINARY CIRCUMSTANCES.

(ii) If the provider is not satisfied with the departmental decision to reject a request for rate review, such provider may seek a fair hearing in accordance with ARM 46.12.1206.

(c) If the department determines that a rate should be reviewed, the department will negotiate an interim prospective rate with the provider, which rate will be in effect from the first day of the quarter in which the review application is received by the department until such time as it takes to review the adequacy of the established rate and effect a rate revision should such be the result of the review. In no case, will the negotiated interim rate exceed 120% of the rate on

record with the department's fiscal intermediary on the day previous to the beginning of the state's fiscal quarter in which the request for rate review is initiated according to ARM 46.12.1204~~(6)~~ (7) (a).

(d) The budget period to be used for the review and rate setting will include at least one fiscal year for any provider who is determined to be eligible for rate review. If extraordinary or unanticipated circumstances dictate, a request for a budget amendment can be submitted and a revised prospective rate determined. A longer budget period may be included if it is mutually agreeable to the department and the provider. All of the items submitted for the purposes of review shall be evaluated for reasonableness and cost relatedness, the conclusions of which are subject to administrative and judicial review.

(e) After determining the necessary costs that will contribute to economic and efficient operation during the budget period, the department will add the performance incentive factor calculated according to ARM 46.12.1204~~(2)(f)~~ (3)(b)(i) and recommend to the provider a rate that will reasonably compensate those necessary costs. Should the provider disagree with the recommended rate, the provider may seek a fair hearing according to ARM 46.12.1206.

(f) The rate determined according to ARM 46.12.1204~~(6)~~ (7)(e) will be made effective for the budget period used to conduct the review. Three months prior to the end of the budget period used to conduct the review, the provider may apply for a new review according to ARM 46.12.1204~~(6)~~(7)(a) to become effective the following fiscal year, or continue with the rate established under ARM 46.12.1204~~(6)~~(7)(e) until the rates established under ARM 46.12.1204~~(2)~~(1) may be found to be adequate.

(g) If the interim prospective rate determined in ARM 46.12.1204(6)(c) is found to produce an overpayment or underpayment with respect to the rate determined through review for the period the interim rate was in effect, then the overpayment or underpayment will be administered according to ARM 46.12.1205(8)(b) through (g). As thorough examinations of and limits on staffing patterns will be accomplished prior to full facility evaluation, no recovery of directly patient care related staffing salary amounts shall be undertaken following the review process. In addition, recovery of nondirectly patient care related staffing salary sums shall be effected only upon completion of administrative and judicial review of such contested amounts.

~~(7)~~ (8) Reimbursement for Authorized Absence.

(a) No payment or subsidy will be made to a nursing home for holding a bed while the recipient is receiving medical services elsewhere, such as in a hospital except in a situation where a nursing home is full and has a waiting list of

potential residents. A nursing home will be considered full if ~~its~~ all beds are occupied or being held for a patient temporarily in a hospital. In this exceptional instance, a payment may be made for holding a bed while the resident is temporarily receiving care in a hospital, is expected to return to the nursing home, and the cost of holding the nursing home bed will evidently be less costly than the possible cost of extending the hospital stay until an appropriate nursing home bed would otherwise become available. Furthermore, payment in this exceptional instance, may be made only upon approval from the director of the department or his designee.

(b) Reimbursement will be made to a nursing home for reserving a bed while the recipient is temporarily absent if the recipient's plan of care provides for therapeutic home visits. A total of 24 days annually will be allowed for therapeutic home visits. The facility is responsible for notifying the department on a form provided by the department when a resident leaves the facility for a therapeutic home visit. Reimbursement for therapeutic home visits will not be allowed unless the form is filed with the department. Absences are restricted to no more than 72 consecutive hours per absence. Additional days and longer hours per absence may be allowed if determined medically appropriate and prior authorized by the director of the department or his designee.

46.12.1205 COST REPORTING The procedures and forms for maintaining cost information and reporting are as follows:

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

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

(3) Cost Finding. Cost finding means the process of allocating and prorating the data derived from the accounts ordinarily kept by a provider to ascertain its costs of the various services provided. In preparing cost reports, all providers shall utilize the step down method of cost finding described at 42 CFR 405.453(d)(1) which ~~is hereby incorporated and made a part of this rule by reference.~~ the department hereby adopts and incorporates herein by reference. 42 CFR 405.453(d)(1) is a federal regulation setting forth a method for allocating the cost of nonrevenue-producing centers which they serve. A copy of the regulation may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59601. Notwithstanding the

above, distinctions between skilled nursing and intermediate care need not be made in cost finding.

(4) Uniform Financial and Statistical Report. Provider costs are to be reported based upon the provider's fiscal year using the financial and statistical report form provided by the department. The use of the department's financial and statistical report form is mandatory for participating facilities. These reports shall be complete and accurate; incomplete reports or reports containing inconsistent data will be returned to the provider for correction.

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

(b) Late filing -- In the event a provider does not file within 90 days of the closing date of its fiscal year, or files an incomplete cost report, an amount equal to 10 percent of the provider's total reimbursement for the following month shall be withheld by the department. If the report is overdue or incomplete a second month, 20 percent shall be withheld. For each succeeding month the report is overdue or incomplete, the provider's total reimbursement shall be withheld. All amounts so withheld will be payable to the provider upon submission of a complete and accurate cost report. Unavoidable delays may be reported with a full explanation and a request made for an extension of time limits prior to the filing deadline. However, there is a maximum limitation of a 30-day extension.

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

(d) Cost reports shall be signed by the preparer stating that the report has been prepared based on all information of which he has knowledge. The preparer shall be deemed to be any individual who prepares for compensation any cost reports or a portion thereof. If more than one individual participates in preparation of the report, each participating individual shall sign as preparer. Clerical assistants who furnish typing, reproducing, or other routine assistance shall not be deemed preparers.

(5) Maintenance of Records. Records of financial and statistical information supporting cost reports shall be maintained by the provider and the department for three years after the date a cost report is filed, or the date the cost report is due, whichever is later.

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

(b) To support allowable costs, all business records of any related party, including any parent or subsidiary firm, which relate to a provider under audit, shall be available at the facility for audit. To support allowable costs, the owner's or related party's personal financial records relating to the facility shall be made available for audit.

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

(d) All of the above records and documents shall be available at the facility at all reasonable times after reasonable notice and subject to inspection, review or audit by the department, the federal department of health, education and welfare, the Montana legislative auditor, and other appropriate governmental agencies. Upon refusal of the provider to make available and allow access to the above records and documents, the costs which are based upon the withheld data will be deemed unsupported and not allowable for reimbursement purposes. If payments have been made based upon interim information the applicable amounts shall be recovered by the department. In addition, the department may at its option terminate any such contracts between the department and provider if any such records and documents are withheld.

~~(e) The data contained in the cost reports is financial information particular to the facility and therefore is confidential and exempts such information from disclosure under the Freedom of Information Act.~~

(6) Audits. Department audit staff will perform a desk review of cost statements prior to rate setting and may conduct on-site audits of provider records. ~~Where appropriate, audit procedures defined in the HIM 16 shall be adopted by the department but the department shall not be confined to these guidelines and may utilize other methods.~~ Such audits shall be conducted in accordance with audit procedures developed by the department.

(a) Desk review of cost reports will determine the adjustments to be applied to reported costs for rate determination. Incomplete reports, or inconsistency in reported costs will cause the return of the cost report to the facility for correction and may result in withholding payment as set forth in the (4)(b) of this rule. Department audit staff will conduct a desk review of each cost report within six months of its receipt to verify, to the extent possible, that the provider has provided a complete and accurate report that complies with federal requirements cited under 42 CFR 447.274 which the department hereby adopts and incorporates by reference. 42 CFR 447.274 is a federal regulation which sets forth provider cost report requirements. A copy of the above-cited regulation may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59601.

(b) On-site audits of provider detailed records shall be made to assure validity of reports, costs and statistical information in conformity with federal laws and regulations. The department hereby adopts and incorporates herein by reference ~~(42 CFR 447.292 and 42 CFR 447.293)~~, which are federal regulations setting forth criteria for audits of providers' cost reports. A copy of the above-cited regulations may be obtained from the Department of Social and Rehabilita-tion Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59601. Audits will meet generally accepted auditing standards. Audits of providers' cost reports, financial records and other pertinent data will be adequate to verify that the provider has included only those expense items that are specified as allowable costs under ARM 46.12.1204(4) in compiling the costs of services, that the provider has accurately determined allowable costs in compliance with federal requirements cited under 42 CFR 447.274(b) (1), which has been incorporated by reference into this rule (see ARM 46.12.1205(6)(a)), that the provider has accurately attributed allowable costs to costs of services according to federal requirements cited under 42 CFR 447.274(b)(2), and that the provider's allowable costs are reasonable. Section 42 CFR 447.274(b)(2) has been incorporated by reference into this rule (see ARM 46.12.1205(6)(a)). On-site audits of the financial and statistical records will be conducted at a minimum of one-third of the facilities each year until all providers are audited by December 31, 1980. After that time, on-site audits will be conducted yearly in at least 15 percent of the facilities. Ten percent of these facilities will be selected using factors established by the department. The remaining five percent will be chosen at random.

~~(c) On conclusion of a review of a cost report, an exit conference may be held in which evidential facts can be submitted and reviewed, following which a summary of findings and recommendations shall be mailed to the provider.~~

(c) On conclusion of a review of a cost report, AND NOT LATER THAN SIX MONTHS AFTER ITS RECEIPT, the department shall send the provider the results of the review. Upon request by the provider within fifteen days of the receipt of these results, the department will hold an exit conference for the purpose of reviewing these results, following which a summary of the department's findings and recommendations will be mailed to the provider.

(d) Upon conclusion of each on site audit the department audit staff will submit an audit report to the medical assistance bureau. The report will meet generally accepted auditing standards and will state the auditor's opinion as to whether, in all material respects, the cost report submitted by the provider has included only those expense items that are specified as allowable costs under ARM 46.12.1204(4) in compiling the costs of services, and have been accurately determined allowable costs in compliance with federal requirements cited under 42 CFR 447.274(b)(1), which has been incorporated by reference into this rule (see ARM 46.12.1205(6)(a)). The department will keep audit reports on file for at least 3 years after receipt.

~~(7) Administrative Review. Within 10 days of receipt of the written findings or recommendations the provider may detail in writing any objections or justifications concerning the findings, and may also request a conference. The conference shall be held no later than 30 days after the department receives the provider's written objections and justifications, and the request for a conference. The department's medical assistance bureau shall conduct the conference based on audit findings and recommendations and the provider's written objections and justifications. No later than 60 days following receipt of the written objections and justifications, or the conference, whichever is later, the department's medical assistance bureau, after consultation with the audit bureau and the office of legal affairs, shall mail a written final determination concerning the provider's objections and justifications, and the position the department takes concerning the audit findings.~~

(7) A provider may object to audit findings through the administrative review process according to ARM 46.12.1206.

(8) Overpayment and Underpayment.

(a) Where the department finds that the prospective rate was based on an erroneous cost report resulting in overpayment, the department will correct the rate and notify the provider of overpayment.

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

(c) If an arrangement for repayment cannot be worked out within 30 days after notification of the provider, the department will make deductions from rate payments with full recovery to be completed within 120 days from date of the initial request for payment. Recovery will be undertaken even though the provider disputes in whole or in part the department's determination of the overpayment. In the discretion of the department such recovery may be delayed in whole or in part if a request for fair hearing under ARM 46.12.1206 has been made.

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

(e) In the event an underpayment has occurred, the department will reimburse the provider promptly following the department's determination of error.

(f) Court or administrative proceeding for collection of overpayment or underpayment shall be commenced within five years following the due date of the original cost report or the date of receipt of a complete cost report whichever is later. In the case of a reimbursement or payment based on fraudulent information, recovery of overpayment may be undertaken at any time. Court costs, including attorneys' fees, in connection with court or administrative proceedings shall be deemed allowable only when approved by the court or hearings officer.

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

(h) The department will account for overpayments found in audits and confirmed by administrative review under ARM 46.12.1205(7) or fair hearing under ARM 46.12.1206. Such overpayments will be accounted for in the department's quarterly statement of expenditures no later than the second quarter following the quarter in which the overpayment was found and/or confirmed.

46.12.1206 ~~FAIR HEARING--PROCEDURES~~ ADMINISTRATIVE REVEIW AND FAIR HEARING PROCEDURES ~~(1) Fair hearing. In the event the provider does not agree with the rates determined following review by the department, the following fair hearing procedures will apply.~~

(1) Administrative Review. Within 15 days of receipt of the department's written findings, recommendations, or rate, the provider may detail in writing any objections or justifications concerning the findings and may also request an administrative conference. Within the 15 days a provider may

request an extension of up to 30 days for submission of objections and justifications. The department may grant further extensions for good cause shown. The conference shall be held no later than 30 days after the department receives the provider's written objections and justifications and the request for a conference. The department's medical assistance section shall conduct the conference based on it's findings and recommendations and the provider's written objections and justifications. No later than 60 days following receipt of the written objections and justifications, or the conference, whichever is later, the department's medical assistance section, after consultation with the audit bureau and the office of legal affairs, shall mail a written determination concerning the provider's objections and justifications and the position the department takes concerning the findings.

(2) Fair Hearing. In the event the provider does not agree with rates determined following administrative review by the department, the following fair hearing procedures will apply.

(a) The written request for a fair hearing shall be mailed or delivered to the Department of Social and Rehabilitation Services, Hearings Officer, P.O. Box 4210, Helena, Montana, 59601.

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

(c) The fair hearing request must be received not later than the ~~60th calendar day following the date of the rate notification, or within 30 days of a review conference. If it is filed later, justification for the delay must be given to the hearings officer who, for good cause, may waive the time limit.~~ 30th calendar day following the date of the department's written administrative review determination.

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

(e) The hearings officer or board will provide copies of requests, notices and written decisions to the department's director, audit bureau, medical assistance bureau, and office of legal affairs.

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

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

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

(2) Appeal. In the event the provider or department disagrees with the hearings officer's decision, a notice of appeals may be submitted to the hearings office for forwarding to the board of social and rehabilitation appeals within ten days of the hearings officer's decision. The notice of appeals shall set forth the specific grounds for appeal.

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

(b) The board shall reduce its decision to writing and mail copies to the providers within ten days of completion of the hearing. The provider shall be notified of its right to judicial review under the provisions of title 2, chapter 4, part 7, MCA.

3. Comment: We question the need for an appraisal of property as required under section 46.12.1204(5)(v). We urge the Department to eliminate this requirement and to adopt the HIM-15 guidelines as to useful life. If the Department does not delete this requirement, we ask for clarification as to reimbursement for the cost of the appraisal.

Response: The Department is only requiring an appraisal for purpose of determining economic useful life and not its market value. In the process of reviewing the method of reimbursing property costs, the Department has determined that some facilities have excessively high property costs because of the useful life chosen for the purpose of depreciation. Costs claimed in excess of what is reasonable will result in providers owing the Department large sums under the recapture of depreciation provision should they terminate participation in the program. Therefore, we believe an appraisal of economic useful life is essential. If a provider's allowable cost for the 1981 rate year exceeds reimbursement because of the cost of an appraisal, there will be a retroactive payment in the amount necessary to reimburse this cost.

Comment: We ask that section 46.12.1202(1)(b) be amended to include in the definition of an economically operated facility, one whose cost increases at rates higher than the rate of change in the trend factor if the increase cost is attributable to change in state or federal regulations or to a change in patient mix.

Response: Rule 46.12.1204(7) states that the Department will review a rate for a possible increase if it is found that the established rate is set below the minimum level defined in ARM 46.12.1202. Rule 1204(7) further states that a rate will be reviewed if a provider submits a letter of warning from the state Department of Health and Environmental Sciences that the facility is in jeopardy of being decertified due to deficiencies. The above cited rule sections provide sufficient protection to providers whose costs increase because of changes in state or federal participation requirements or because of change in patient care requirements.

Comment: We ask that Rule 46.12.1204(3) be amended to either delete the provision for recovery of overpayments or include a provision for payment of allowable costs in excess of the rate.

Response: This Department has determined that the reimbursement system must encourage facilities to operate within the constraints of the state's efforts to control escalating health care costs while at the same time providing adequate quality care to recipients. We hold that the proposed reimbursement system is the most effective currently available method of meeting this goal. A purely retrospective system does nothing to encourage cost containment. A purely prospective system, to a great extent encourages cost containment, but unfortunately, at the expense of the quality of service delivery to patients in a few instances. As with most laws and regulations, this proposed rule is aimed at protecting patients from the few providers who would reduce quality in order to have more discretionary income available.

Comment: We urge the Department to clarify sections 46.12.1204(2)(d) and (e) by including language to the effect that new providers will be allowed to provide evidence as to the need for additional staffing above what a previous provider had and/or above the minimum standards of the Department of Health and Environmental Sciences. Furthermore, we request these sections be amended to clarify that only operating and not property costs will be compared to a previous provider.

Response: Every provider has the opportunity to request an administrative conference to contest a rate and/or to request a rate review if he feels a rate is inadequate to provide needed services. Providers have the same opportunity to justify property costs.

Comment: The 90th percentile limitation should be based on the previous cost reports rather than cost reports which are two years old. The previous year's cost report should also be the basis for the rate for each facility.

Response: This is impossible, as cost reports are not due until three months after a new rate period has started and providers have a variety of ending dates for fiscal years.

Comment: We question the ability of the Department's Audit Bureau to determine a prudent and cost conscious buyer. We also question the increased cost of this action.

Response: The Department's Audit staff has always had this responsibility as it is mandated under HIM-15. If this responsibility becomes a problem, the Department will take the necessary administrative action to ensure sufficient personnel to continue to carry out this requirement.

Comment: The 90th percentile limitation should be studied in the future to determine if facilities who are operating economically and efficiently are being arbitrarily excluded from the performance incentive factor.

Response: If it becomes apparent that the 90th percentile limitation is not an effective limitation the Department will revise the rules to include a percentage of the mean as a method of setting the upper limit. The Department will also study methods of grouping facilities into classes and to establish limits relevant to each class.

Comment: There must be a better way of arriving at the limitation for reimbursement on the capitalized portion of property cost and we ask that the Department reconsider that limitation method.

Response: The Department has reviewed several methods of setting the upper limit on property costs for the purpose of reimbursement and we feel that the proposed rule on property cost is the fairest method currently available.

Comment: Section 46.12.1204(5)(b) provides that routine nursing services include a regular medically necessary room. There is an obvious increased cost involved in providing a private room to a patient. Facilities should continue to be reimbursed for that increased cost.

Response: This Department has found no evidence to support the contention the increased costs are incurred in providing service to a patient in a private room. Furthermore, the Department uses all allowable costs reported for the provision of routine services to determine the basis of reimbursement rates. If there are increased costs for the patients in private rooms, the rate paid for the patients in semi-private rooms is overstated.

Comment: Section 46.12.1204(5)(k) provides that the maximum depreciation and interest or lease costs may not exceed $2,400 per year. We ask that this maximum be adjusted annually to reflect inflation.

Response: The Department has not received any evidence to support the contention that $2,400 is a too restrictive limitation on vehicle costs. This limitation will not be adjusted until such evidence becomes available either through analysis of cost reports or data presented from other sources.

Comment: On-site audits of provider detailed records shall be made within one year of the receipt of the cost report being audited.

Response: It is the Department's intent to audit the financial records for each facility once every three years. The incremental cost of auditing cost reports for three years over the cost of auditing for one year is quite small and it would not be cost-effective for the Department to audit every facility every year. Even if the Department audited every year, federal participation requirements state that all records must be maintained by providers for three years after the close of a fiscal year.

Comment: Section 46.12.1206(1) states that the Department shall make a determination regarding the findings of administrative conference within 60 days. We request that the determination be made within 30 days.

Response: Because of the complex nature of many issues brought to administrative conferences, the Department's staff could not always complete analysis of the data within 30 days. Therefore, this section will not be amended.

Comment: Combined facilites should be in a separate class for the purpose of setting reimbursement limitations and rates. The cost of operating these facilities have been found to be higher than the cost of operating free standing facilities in studies performed by the federal government.

Response: The Department's staff have reviewed the costs for combined facilities as reported for 1978 and found very little evidence to support the need for a separate class for combined facilities. A frequency distribution shows that the same number of combined facilities (4) are limited to the 90th percentile limitation as the number of free standing facilities. A regression analysis showed that the independent variable "combined" (whether or not a facility was attached to a hospital) explains only 12% of the change in the dependent

variable "cost" (operating cost per day of a facility). This would indicate that whether or not a facility is combined has little relationship to the magnitude of operating costs. As indicated previously, the Department intends to develop classes of facilities for the purpose of reimbursement, however, the basis for the development of these classes will be statistically significant differences between groups of facilities.

Comment: It is our understanding that a new facility will receive all of its property cost as determined by the Certificate of Need Process. Is this correct?

Response: A newly constructed facility will receive all of its property cost applicable to Medicaid patients if the capitalized cost of the building and fixed equipment is approved through the Certificate of Need Process, if the interest rate on any borrowed funds related to the construction or purchased equipment was acceptable to the Department, if the cost of any equipment does not exceed the fair market value, and if the occupancy rate is at least ninety percent of capacity.

Comment: The beginning of the rate year is too late for facilities to receive notification of the rate it will receive. There should be sufficient time to adjust private pay rates and/or ask for an administrative conference if a new rate is not acceptable to a provider.

Response: The Department will make every effort to issue rates at the earliest possible date, however, since private pay rates are set on the provider's estimates of costs and revenues, it seems that private pay rates should be only subject to reduction once the Medicaid rate is known because of underestimation of the Medicaid reimbursement. If a provider were to prevail in an administrative conference concerning the inadequacy of a rate, there would be a retroactive adjustment for any underpayment.

Comment: For clarification we ask that section 46.12.1204 (5)(c)(i) be revised to state that cost per bed of the most recently entirely newly constructed facility be the basis for determining the limitation on property reimbursement.

Response: This section has been revised to indicate that the basis for the limitation will be the cost per bed of the most recently entirely newly constructed facility.

Comment: Section 46.12.1205(6)(c) should be amended to state as follows: "On conclusion of a review of a cost report, and not later than six months after its receipt, the Department shall send the provider the results of the review."

Response: Section 46.12.1205(6)(c) has been amended to state the Department shall notify providers of the findings of a desk review within six months of receipt of the cost report. However, it should be noted that these findings may state that due to inaccurate cost reporting, the findings are inconclusive and/or that an audit has been scheduled. All desk review findings are subject to adjustment subsequent to an audit.

Comment: Section 46.12.1205(6)(b) should be amended as follows: "Within 30 days of the conclusion of each on-site audit the Department's Audit staff will submit an audit report to the Medical Assistance Section."

Response: This section will not be amended to include the above stated language. The audit staff is required to submit the results of an audit immediately upon completion of such audits. Furthermore, simply because the auditors are no longer at a facility does not mean that the audit is completed, as compiling data collected and verifying information actually comprises the bulk of audit work.

Comment: The definition of nursing services should be more definitive than what is currently in the rule.

Response: An attempt to define all routine nursing services more explicitly may lead to an unintended exclusion of some routine service because of an oversight. If this were to happen, then the state plan would preclude payment for that service. The more generalized statement currently in effect is more appropriate. Providers may contact the Department if they have questions concerning routine services.

Comment: The performance incentive factor should be revised upward from the maximum $1.50 per patient day.

Response: The cost of Medicaid reimbursement has been increasing dramatically during the past 3 years. The cost per service increased 22% from 1978 through 1980 in Montana and is expected to increase another 30% during the period 1981 through 1983. Many states are facing financial crises in their Medicaid programs and have been forced to take draconian measures to curb cost escalation. For example one state has recently decreased the performance incentive factor from $1.50 per day to $1.00 per day. This Department has an obligation to taxpayers to curtail the ever increasing cost of the Medicaid program. Therefore, the maximum performance incentive factor will remain at $1.50 per patient day during the 1982-83 biennium. The Department holds that the proposed performance incentive is sufficient to encourage cost containment. Should it become evident during the next biennium that

this amount is not contributing to cost containment objectives, the Department will amend the rule accordingly.

Comment: More analysis should be performed on the trend factor to ensure that the weighting of 70% labor, 15% food, and 15% other cost is accurate.

Response: A detailed analysis of 1977 costs and the data collected through rate review has shown that this weighing did not truly represent cost experience. Therefore, the rule has been amended to state the following distribution: Labor, 71%; Food, 10%; other costs, 19%. If subsequent analysis shows that there has been a shift in cost concentration, these percentages will be revised through a rule amendment.

Comment: Section 46.12.1204(4)(h) should be amended to allow for dues and membership fees which are not related to patient care.

Response: The Department can find no justification for reimbursing any costs unrelated to patient care.

Comment: These rules should be amended to state that the Montana Legislature should be the party to determine the rate and trend factor which it finds to be adequate to reimburse nursing homes for allowable cost of providing routine nursing home care.

Response: This Department is prepared to revise the rule in the manner deemed appropriate by the legislature. The rule will not be amended at this time. However, there will be a subsequent rule amendment once the legislature has provided the Department with direction in this matter.

Comment: We feel that the costs of present union contracts should be recognized and funded without jeopardizing a facility's ability to earn the performance incentive factor.

Response: Since past cost reports are used to set rates, facilities which have unions will have the reasonable costs of wages reflected in future rates. To ignore high costs whether associated with union contracts or other costs for the purpose of calculating the performance incentive factor would circumvent the very purpose of the incentive; providers who make the greatest effort to control cost get the largest incentive. The Department would be negligent in their responsibility to curtail cost escalation if they were to exclude any excessive costs in determining the performance incentive factor.

Comment: The trend factor which is based on parts of the CPI and the Labor Index may not accurately reflect increased costs

experienced by facilities, the Department should use the actual cost increases experienced by providers to set rates.

Response: The Department is willing to examine other indicators of inflation such as the gross national product for purpose of setting rates. The Department will not however use actual increases experienced by providers because there is no means of determining if these increases are due to inflation or to inefficient operation of facilities. The proposed trend factor will be used until a more appropriate indicator of inflation is found.

Comment: The provision for recapture of excess depreciation should be deleted from the rules.

Response: The federal regulations regarding Medicaid reimbursement require a provision for recapture of depreciation. This Department has received no evidence that the method for recapture as set forth in the HIM-15 is unreasonable, therefore, this rule will not be amended.

Comment: It is suggested that the Department not treat beauty shops as a cost center, but treat the income therefrom as an off-set against expense.

Response: In accordance with HIM-15 the income from a non-allowable service is off-set against the expense of providing the service. Part of the expense of providing the service is the depreciation and administrative cost associated with the service.

Comment: When were the limits set forth in the HIM-15 concerning administrator's compensation updated? The rule regarding this compensation should be amended.

Response: The limitations on administrator's compensation are updated annually based on changes in the CPI. The Department has not received any evidence to support the contention that the section of rule dealing with this subject should be amended.

Comment: The reasonableness test for legal and accounting fees should take into consideration the fact that these fees vary from community to community.

Response: The Department's audit staff evaluates such fees for the service performed and for the reasonableness of costs associated with service. As part of this process, the auditor would determine if fees were comparable to these incurred by facilities in the same area for the same type of service.

Comment: We are disappointed that the Department did not provide for a voluntary rate review process for setting rates.

Response: The Department will continue to research the feasibility of this method of rate setting. If and when the Department finds this to be a reasonable cost-effective method, then the rules will be amended to allow for this. The Department feels that further consideration of this type of rate setting method should be delayed until the legislature has taken any action it deems appropriate in the area of Medicaid Reimbursement.

Comment: There is no explanation of what is meant by measurable indices of central tendency or how they will be developed. This should be defined and prescribed in the rule.

Response: Rule 46.12.1204(7)(b)(i), has been revised to delete this unnecessary reference to central tendency and to clarify the basis for acting on an application for rate review.

Comment: A new provider should not have to receive an interim rate based on another providers costs until a cost report is submitted.

Response: As with any rate, a new provider has opportunity to request an administrative conference and/or a rate review if he feels that the rate issued precludes him from providing necessary services.

Comment: Rates for new provider's will be based on the provider's proposed budget, which will be evaluated for reasonableness in terms of similar provider's costs. It is apparently the intent of the Department to recognize an interest rate only as it is fixed at the inception of a lease, ignoring any escalation provisions. To limit interest reimbursement in this way, would deny a lessor the opportunity to receive compensation for the true value of his property. Escalation provisions are a device which allow a lessor to adjust rental payments in order to conform rentals to on-going market conditions. Imposition of this restriction would, furthermore, be unfair to a lessee-provider in that there might be no opportunity to renegotiate existing leases containing escalation clauses.

Response: It is the intent of the Department to limit property reimbursement to that which would be experienced if a facility were built or purchased rather than leased. Rental payments should reflect the market value of property and in

the case of nursing homes the market value is determined by what a prudent leasee will pay for property. The Department has determined that a prudent leasee would not pay a lease cost which is higher than the cost incurred if he had purchased rather than leased the facility.

Comment: Section 46.12.1204(4) does not adequately address the incremental costs incurred in the provision of services required for ICF/MR patients because 42 CFR 442 subpart G is not incorporated in its entirety as the definition of incremental services.

Response: No section of subpart G has been excluded from the reimbursable services for an ICF/MR. The services not specifically identified as incremental services are subsumed by the routine services reimbursable under "part one" costs. Therefore, there will be no revision to this section of the rule.

Comment: Since the Health Care Financing Agency has indicated that a performance incentive factor can be paid to a not-for-profit facility, the rule should be amended to allow for this.

Response: A revision of this nature will require a rule hearing. The earliest possible date for such a hearing will be January 27, 1981. The rule will be published by the Secretary of State on December 27, 1980, but the rule will be effective on January 1, 1981. The only rule amendment to be heard on January 27, 1981, will be that concerning the performance incentive factor.

By: Jon A. Noble
Director, Social and
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Certified to the Secretary of State December 2, 1980.