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RESERVE

STATE LAW DEBRARY

NOV 1 3 1981

OF MONTANA

MONTANA ADMINISTRATIVE REGISTER

1981 ISSUE NO. 21 PAGES 1303-1532



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 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, 59620.



21-11/12/81

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statute and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

Known Subject Matter

Consult General Index, Montana Code Annotated to determine department or board associated with subject matter or statute number.

Department

- Refer to Chapter Table of Contents, Title 1 through 46, page i, Volume 1, ARM, to determine title number of department's or 2. board's rules.
- Locate volume and title.

Subject Matter and Title

Refer to topical index, end of title, to 4. locate rule number and catchphrase.

and Department

Title Number 5. Refer to table of contents, page 1 of title. Locate page number of chapter.

Title Number and Chapter

Go to table of contents of chapter, locate 6. rule number by reading catchphrase (short phrase describing rule.)

Statute Number and Department

7. Go to cross reference table at end of each title which lists each MCA section number and corresponding rules.

Rule in ARM

Go to rule. Update by checking the accumulative table and the table of contents for the last register issued.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies which have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 1981. This table includes those rules adopted during the period October 1, 1981 through December 31, 1981, and any proposed rule action that is pending during the past 6 month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 1981, this table and the table of contents of this issue of the MAR.

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- 4. The proposed amendment of ARM 8.32.905 (40.30.905) will read as follows: (new matter underlined, deleted matter interlined)
 - "8.32.905 (40.30.905) LENGTH AND AREAS OF CONTENT

 (1) The length of the program will be determined by the philosophy and objectives of the school. The major area of concentration shall be in nursing. Fotal-program-to-be-2040-hours-minimum.
 - (2) The allocation of content is an arbitrary selection and will be organized by the school. The areas and identified content do not designate specific courses to be included in the curriculum. The recommended areas of content are as follows;
 - (a) scientific understanding: chemistry, anatomy, and physiology, microbiology and nutrition. Instruction focused on understanding and use of scientific principles and should extend throughout the course.
 - (b) human and cultural understanding: positive health concepts, preventative medicine, human growth and development in all age groups, rehabilitation, communications, group dynamics, socio-economic and psychological principles, social organization of family and community, ethical, cultural and spiritual values.
 - (c) nursing: nursing courses shall be based on theoretical concepts and their clinical application. This should be focused on the fundamental core of professional nursing care needed by all patients, and on developing
 - a reasonable degree of competency in medical, surgical, maternal, child and psychiatric nursing with integration of pharmacology and diet therapy. The curriculum should provide for understanding and application of public health, mental health and rehabilitation concepts and skills in teaching patients. The learning experiences should include the giving of safe nursing care to patients of all age groups with a variety of health problems.
 - (i) nursing and current trends in health and disease, principles of leadership and citizenship, legal aspects of nursing, team concepts and contributions to allied disciplines, current nursing problems, historical development as it shows the origin of our present professional problems.
 - (ii) practice in assuming professional responsibilities may be achieved through participation in student organization and by working with allied disciplines.
 - (iii) development of the team concept broadens understanding of the nurse's place and responsibility as a citizen, practitioner, and member of the profession of nursing.
 - (iv) laboratory shall provide at least 2 hours of

- clinical experience for each theory hour.
- (v) The research process and it's contribution to nursing practice shall be an integral part of the curriculum."
- 5. The authority of the board to make the proposed amendment is based on section 37-8-202 (2), MCA and implements sections 37-8-202 (2), 301, and 302, MCA.
- 6. The proposed amendment of ΛRM 8.32.906 (40.30.906) will read as follows: (new matter underlined, deleted matter interlined)
 - "8.32.906 (40.30.906) EVALUATION (1) Provisions shall be made for periodic evaluation of curriculum and student progress. Adequacy of performance should be evaluated, through-tests-(teacher-made-and-standard), quality-of-performance, and results-of-licensing-examinations. Provisions should be made for student participation in evaluation and for student-instructor conference.

 (2) There should be provision for continuous or
 - (2) There should be provision for continuous or periodic review, evaluation, and planning in relation to:
 - (a) the philosophy, objectives and curriculum of the ${\rm school}_7-{\rm and}$;
 - (b) policies governing recruitment, admission, promotion, graduation, and other matters effecting education, health and welfare of the students;
 - (c) adequate and sufficient clinical facilities available for student practice in the cooperating agencies; and (d) factors contributing to faculty growth, welfare and effectiveness.
 - (3) Instruction. The school shall be expected to show that it utilizes a variety of instructional procedures which contribute to the effectiveness of the preparation of the student."
- 7. The authority of the board to make the proposed amendment is based on section 37-8-202 (2), MCA and implements sections 37-8-202 (2), 301, and 302, MCA.
- 8. The proposed amendment of ARM 8.32.907 (40.30.907) will read as follows: (new matter underlined, deleted matter interlined)
 - "8.32.907 (40.30.907) ORGANIZATION AND ADMINISTRATION OF THE SCHOOLS OF NURSING (1) A clearly defined statement of the philosophy and objectives of the school shall be included in the school's catalogue. This statement identifies the beliefs which the faculty accepts about nursing and education. The philosophy shall be in agreement with that of the controlling institution and recognizes that the primary purpose of the school is the development of the student as a nurse, a person, and a citizen.
 - (2) The curriculum of the school will be a reflection

on the philosophy and objectives and provide for the accomplishment of the stated objectives. The philosophy and objectives shall be accepted by the governing board, the officers, faculty, and students.

- (3) The school of nursing or the institution of which it is a part shall be incorporated.
- (4) The institution of which the school of nursing is a part and all agencies with which the school maintains cooperative agreements must be approved by appropriate accrediting authorities. The colleges must be accredited by the Northwest Association of Secondary and Higher Schools; the hospitals must be licensed by the Montana state board of health and accredited by the joint Commission on Accreditation of Hospitals.
- (5) Any type of cooperative relationship between the school and another education, health or welfare institution or agency shall be stated in writing and signed by the responsible officers of each. The agreement may provide for instruction, practice, supervision, or other student experience.
- (6) Instruction, practice, and/or other opportunities for learning which are provided by participating agencies shall meet the stated purposes of the educational program and the standards required by the board.
- (7) When the school is in a college or university, the organizational pattern of the school shall be comparable to other like units in the college or university.

 (a) Such department or school shall be administered
- (a) Such department or school shall be administered by a nurse director with appropriate rank, position rank and authority.
- (b) Charts showing the structure of the school, its relationship to administration and other units, shall be developed.
- (c) The budget of the school shall be a part of the budget of the college or university. The nurse director shall be responsible for the preparation, presentation, and administration of the budget for the school of nursing.
- (d) Policies governing schools of nursing shall be the same as policies governing other educational departments of the controlling institution, including the establishment of committees to carry out tasks of administration and shall be constructed along the same lines as those of the controlling institution.
- (0)-The-hospital-which-conducts-a-school-of-nursing shall-be-general-in-type-and-shall-have-been-in-operation at-least-one-year;
- (a) -- Charts-showing-the-structure-of-the-school;-its relationship-to-administration-and-other-units;-shall be-developed:
- (b) -- The-managing-beard-of-a-heepital-which-conducts

a-school-of-nursing-shall-be-responsible-through-its chief-administrative-officer-for:

(i)--providing-a-nursing-program-which-is-educationalin-purpose-and-achievement;

(ii)--appointment-of-a-director-of-the-school-who-meets
the-educational-and-professional-qualifications-specified
in-these-standards;-

(iii)-delegation-of-authority-to-the-director-to-administer-the-educational-program-in-nursing;-

(iv)--provision-of-adequate-living-quarters-when-students
are-required-to-live-in-residence;-and

(v)--provision-of-adequate-and-appropriate-facilitiesfor-the-implementation-of-the-educational-program--

(9)--A-budget-for-the-school-shall-be-prepared-each-year by-the-director-and-the-faculty-

fa)--The-director-shall-have-the-responsibility-of-presenting-and-interpreting-the-budget-to-the-governing board.--

(b)--The-director-shall-be-responsible-for-administeringthe-budget-

(c) -- Punds-shall-be-sufficient-to-assure-recruitment
and-retention-of-qualified-faculty; -an-adequate-library;
adequate-equipment-and-supplies; and-student-welfare-and
activities-program-and-other-necessities;

(10)--In-addition;-the-school-shall-be-of-such-size-as-to-be-economically-justified;"

9. The authority of the board to make the proposed amendment is based on section 37-8-202 (2), MCA and implements sections 37-8-202 (2), 301, and 302, MCA.

10. The proposed amendment of 8.32.909 (40.30.909) will read as follows: (new matter underlined, deleted matter interlined)

"8.32.909 (40.30.909) FACULTY (1) The best single index of ability to prepare adequate practitioners of professional nursing is the competency of the faculty in providing a program of recognized quality. Each faculty member shall devote full time to instructional responsibilities and be qualified by academic preparation and experience in the teaching area to which assigned. Teachers of nursing practice shall be responsible for all instruction in the area assigned including laboratory practice in the clinical field.

(2) The director of the school shall have a minimum of a masters degree in nursing and at least 2 years experience teaching in a nursing education program.

(3) Nursing faculty members shall be graduates of approved schools of professional nursing, shall hold a baccalaureate master's degree, have advanced preparation for teaching and shall be licensed as registered

nurses in Montana. Personal, academic and professional qualifications shall be appropriate to the area of assignment.

- (4) The titles of faculty members shall be consistent with their functions.
- (5) There shall be secretarial and clerical staff sufficient to meet routine requirements for administration of the school and assistance to the instructional staff.
- (6) Policies governing faculty employment, promotion, and tenure shall be in written form.
- (7) The faculty work load includes all activities related to instruction, curriculum development, student advisement, extra-curricular activities, committee-and-organizational-work, research and other scholarly endeavors. The-teaching-load-for-faculty-members-should be-recognized-as-involving-one-hour-of-preparation-for each-hour-of-instruction:-In-order-that-instructors-may participate-in-other-activities-of-the-program-the-teaching-load-is-adjusted-accordingly:
- (8) The faculty shall be organized so that each member participates in the development and systematic evaluation of the educational policies and curriculum of the school."
- 11. The authority of the board to make the proposed amendment is based on section 37-8-202 (2), MCA and implements sections 37-8-202 (2), 301, and 302, MCA.
- 12. The proposed amendment of ARM 8.32.910 (40.30.910) will read as follows: (new matter underlined, deleted matter interlined)
 - "8.32.910 (40.30.910) EDUCATIONAL FACILITIES (1) The controlling body shall provide a physical plant or facility designed to serve effectively the accomplishment of the defined purposes of the education program. The physical facilities should promote safety, health, and recreation of the student. The physical facilities of the institution shall be adequate to meet the needs of the program.
 - (2) Classrooms, laboratories, conference rooms shall be adequate in size, number and type according to the number of students and the educational purposes for which these rooms are to be used.
 - (a) All rooms must be suitably located, lighted, ventilated and equipped.
 - (b) Provision shall be made for class or conference rooms in the clinical area.
 - (c) Adequate chalk board space shall be provided as well as bulletin boards or other facilities for exhibits, posters and other visual display.
 - (d) Equipment and supplies must be adequate. Provision

should be made for inventory and for ease in procurement and replacement.

(3) A library is essential to a program in nursing education. Library holdings shall be commensurate with the needs of the program. Sufficient titles, periodicals, and other materials such as audio-visual aids, catalogues, and pamphlets must be included in the library holdings.

(a) The administration of the library should provide

- for:
 (i) a system of sound accessioning, classification,
- and cataloguing;
 (ii) a periodic review of holdings leading to deletion
 and accessions; and
 - (iii) the maintenance of a reserve section;
- (b) Continuing financial support should be such as to insure books, materials, and services adequate to meet the needs of the school's announced program. The budget shall provide for audio-visual equipment and collection.
- (c) Office space shall be provided for administrative and instructional personnel that is adequate in size, equipped to permit effective functioning, accessible to the area of activity, and conducive to uninterrupted work and conference.
- (4) Clinical resources shall be selected which will provide the learning experience implied in the stated purposes of the school.
- (a) Learning experiences in the actual clinical situation shall be planned and controlled by the faculty of the school. The adequacy of the facilities for student experience in each area is dependent on nursing needs of patients, the daily average number of patients, the variety of conditions, the quality of care, and the physical set-up and equipment.
- (b) The nursing service department must be under competent directors and there must be a qualified nursing staff on all shifts with a standard of nursing care of such caliber that students may observe as well as give quality nursing care.
- (c) The duties and responsibilities for the various positions in the nursing department shall be defined and a good inservice education program maintained.
- (5) If residence facilities are provided they shall be comfortably and attractively furnished and under the supervision of a residence director."
- 13. The authority of the board to make the proposed amendment is based on section 37-8-202 (2), MCA and implements sections 37-8-202 (2), 301, and 302, MCA.
- 14. The proposed amendment of ARM 8.32.911 (40.30.911) will read as follows: (new matter underlined, deleted matter interlined)

- "8.32.911 (40.30.911) SELECTION AND ADMISSION OF STUDENTS (1) The selection and admission of students shall be based on established criteria.
- (2) The number of students shall be determined by clinical and teaching facilities available and the number and preparation of the faculty.
- (3) Students must be graduates of an accredited senior high school or its equivalent; for example, General Education Development Score as determined by the office of the superintendent of public instruction. A transcript must be on file in the school records.
- (4) Admission tests for each applicant which are useful as an evaluation tool, should be utlized.
- (5) Students requiring readmission or admission by transfer from another school shall meet the standards for regularly enrolled students. Advanced placement in nursing may be given only when the school of previous enrollment is state approved. A school shall establish policies for transfer of credit. Such credits are based on evaluation of the details of previous education and granted only for comparable instruction and educational practice within its own education program.
- (6) Qualified applicants are admitted without discrimination in regard to age, creed, ethnic origin, marital status, race, sex or life style."

 15. The authority of the board to make the proposed amend-
- 15. The authority of the board to make the proposed amendment is based on section 37-8-202 (2), MCA and implements sections 37-8-202 (2), 301, and 302, MCA.
- 16. The proposed amendment of ARM 8.32.912 (40.30.912) will read as follows: (new matter underlined, deleted matter interlined)
 - "8.32.912 (40.30.912) GENERAL WELFARE OF STUDENTS
 (1)--The-obligation-of-the-school-of-nursing-extends
 beyond-the-scholastic-development-of-the-individual:--A
 program-shall-be-based-on-meeting-the-needs-of-theindividual-students-
 - (2)--Students-shall-be-guided-in-matters-relating-to
 personal-or-professional-adjustment-by-a-regular-faculty
 member-or-counselor-or-both-
 - (3)--The-school-of-nursing-shall-be-responsible-for-a-continuous-health-program-for-its-students;-stressing-prevention-and-remedial-services.
 - (4) (1) The total hours of planned instruction and experience shall not exceed 40 hours per week.
 - (5) (2) Policies relating to holidays and vacation shall be announced in the school's catalogue.
 - (6) Student-achievement-in-course-assignments-shall be-the-criteria-for-determining-the-grade.
 - (7)--Students-shall-not-practice-professional-or practical-nursing-outside-of-an-approved-educational program:

- (3) Student absence: The school shall have a clearly stated policy on absenteeism.
- (4) The faculty of the school of nursing should be cognizant of students physical and emotional health status. When indicated, students shall be referred to appropriate health care provider(s).
- 17. The authority of the board to make the proposed amendment is based on section 37-8-202 (2), MCA and implements sections 37-8-202 (2), 301, and 302, MCA.
- 18. The proposed amendment of ARM 8.32.913 (40.30.913) will read as follows: (new matter underlined, deleted matter interlined)
 - "8.32.913 (40.30.913) PROMOTION AND GRADUATION
 - (1) Policies shall be established governing promotion of students in relation to achievement of the objectives of the program.
 - (2) -- A-prerequisite-for-graduation-is-growth-in-professional-understanding-and-responsibility;-reasonablecompetence-for-beginning-practice;-and-understanding that-learning-will-continue-throughout-the-period-ofnursing-practice-
 - (3) (2) Graduation is completion of the school's program. To qualify for graduation a student must meet the academic requirements for graduation established by the school.
 - (4) -- Resident-requirements-policies-shall-be-established.
 - (5) (3) Policies governing dismissal of students shall be established. These policies must provide the student right of appeal. These policies should be written and available to students."
- 19. The authority of the board to make the proposed amendment is based on section 37-8-202 (2), MCA and implements sections 37-8-202 (2), 301, and 302, MCA.
- 20. The proposed repeal of ARM 8.32.908 (40.30.908) deletes the rules in its entirety.
 - "6-32-908-(40:30:908)-THE-INDEPENDENT-SCHOOL--(1)--A school-of-nursing-incorporated-independently-from any-other-institution-or-agency-shall-be-responsible-for maintaining-all-provisions-as-outlined-above-under-8-32-907-(8)7-(9)7-and-(10)-
- 21. The authority of the board to make the proposed repeal is based on section 37-8-202 (2), MCA and implemented sections 37-8-202 (2), 301, and 302, MCA.
 - 22. The proposed new rule will read as follows:
 - "I. REPORTS (1) Annual reports shall be submitted to the board of nursing in the designated form,
 - (2) Quarterly reports shall be submitted to the board on the designated form at the designated time."
 - 23. The authority of the board to make the proposed

adoption is based on section 37-8-202 (2), MCA and implements sections 37-8-202 (2), 301 and 302, MCA.

24. The board is proposing the rule amendments, repeal and adoption to update the standards for professional nursing schools, to assure graduates of these programs they will be prepared to meet society's needs for quality nursing care and provide for changes that continue to occur in nursing education.

Amendments have also been made to delete obsolete statements, extend and clarify other statements and to provide for some standards that were formerly referenced only as board

statements.

25. Interested parties may submit their data, views or arguments concerning the proposed amendments, repeal and adoption in writing to the Board of Nursing, 1424 9th Avenue, Helena, Montana 59620 - 0407, no later than December 10, 1981.

- 26. If a person who is directly affected by the proposed amendments, repeal 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 Nursing, 1424 9th Avenue, Helena, Montana 59620 - 0407, no later than December 10, 1981.
- 27. If the board receives requests for a public hearing on the proposed amendments, repeal and adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments, repeal and adoption; 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.
- 28. The authority and implementing sections are cited after each proposed change.

BOARD OF NURSING JANIE CROMWELL, R.N., PRESIDENT

BY:

GARY BUCHANAN, DIRECTOR DEPÁRTMENT OF COMMERCE

Certified to the Secretary of State, November 2, 1981.

BEFORE THE BOARD OF HOUSING OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF PROPOSED of a rule to permit the Board to) ADOPTION OF A RULE, designate areas of chronic economic distress within the State) ECONOMIC DISTRESS

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

- 1. On December 12, 1981, the Board of Housing proposes to adopt a rule to permit the Board to designate areas of chronic economic distress within the State pursuant to Chapter 54, Laws of Montana 1981, and the Mortgage Subsidy Bond Tax Act of 1980.
- 2. The proposed rule does not replace or modify any section currently found in the Montana Administrative Code.
 - 3. The proposed rule provides as follows:

RULE I. AREAS OF CHRONIC ECONOMIC DISTRESS. (1) The board may from time to time designate areas of chronic economic distress within the state which it will consider in establishing its programs to finance housing developments.

"Areas of chronic economic distress" means an area of the state (town, city, county, or other defined geographical area) which has, within its designated limits, persons and families of lower income who require assistance under the Housing Act of 1975, as determined by the board and taking into consideration:

(a) The condition of the housing stock, including the age of the housing and the number of abandoned and substandard residential units.

- (b) The need of area residents for owner financing under a mortgage revenue bond issue as indicated by low per capita income, a high percentage of families in poverty, a high number of welfare recipients, and high unemployment rates.
- (c) The potential for use of owner financing under a mortgage revenue bond issue to improve housing conditions in the area.
- (d) The existence of a housing assistance plan which provides a displacement program and a public improvements and services program (similar to the Housing Assistance Plan (HAP) required by the Department of Housing and Urban Development under the Community Development Block Grant program (42 U.S.C. \$5301, et seq.)).
- (e) The need of area residents in areas which have experienced a sudden increase in population growth which results in social problems, especially for persons and families of lower income.

- (f) The need of area residents in areas which have experienced a lack of capital in the local lending institutions which provide long term financing for housing;
- (g) The need of area residents in undeveloped areas of the state which have experienced a shortage of decent, safe and sanitary housing which is within the financial capabilities of lower income persons and families.
- 4. The Board is proposing this rule to implement Chapter 54, Laws of Montana 1981, and to adopt rules consistent with section 103A of the Internal Revenue Code of 1954. Under the Mortgage Subsidy Bond Tax Act of 1980, an issuer of mortgage revenue bonds must make a specified portion of the lendable proceeds of the issue available for owner financing of targeted area residences for a period of at least 1 year. Further, the issuer must attempt with reasonable diligence to place such portion in qualifying mortgages.

A targeted area residence is defined as a residence located in either a qualified census tract or an area of chronic economic distress. A "qualified census tract" is an area defined by the Bureau of the Census. An "area of chronic economic distress" is an area designated by the State and approved by the Secretary of the Treasury and the Secretary of Housing and Urban Development as meeting certain criteria in accordance with certain standards established by that State. This rule establishes the standards for the designation of areas of economic distress within the State of Montana.

- 5. Interested parties may submit their data, views, or arguments concerning the proposed rule in writing to Lyle E. Olson, Administrator, Montana Board of Housing, Capitol Station, Helena, Montana, 59620, no later than December 10, 1981.
- 6. If a person who is directly affected by the proposed rule wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Lyle E. Olson, Administrator, Montana Board of Housing, Capitol Station, Helena, Montana, 59620, no later than December 10, 1981.
- 7. If the agency receives requests for a public hearing on the proposed rule from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rule; 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 at least 25 persons.

8. The authority of the agency to make the proposed rule is based on sections 90-6-104 and 90-6-106, MCA, and the rule implements sections 90-6-108, 90-6-109 and 90-6-111, MCA.

William A. Groff, Chairman Montana Board of Housing

By: July Love J. Olson, Administrato

Certified to the Secretary of State, October 30, 1981.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION OF THE STATE OF MONTANA

In the matter of the repeal of Chapter 12, Adult and Community Education, Sub-Chapter 1, rules 10.12.101 and 10.12.102 concerning high school equivalency testing certificates.	MUNITY EDUCATION, SUB- CHAPTER 1, RULES 10.12.101 AND 10.12.102 CON- CERNING HIGH SCHOOL EQUIVA- LENCY TESTING CERTIFICATES. NO PUBLIC HEARING
	CONTEMPLATED.

TO: All Interested Persons

On December 18, 1981 the superintendent of public instruction proposes to repeal the following rules:

10.12.101 REQUIREMENTS FOR RECEIVING HIGH SCHOOL EQUIVA-LENCY TESTING CERTIFICATES

10.12.102 METHODS OF APPLYING, FEES, WAITING PERIOD FOR RETESTING AND ISSUANCE OF EQUIVALENCY CERTIFICATES

2. The rules proposed to be repealed are on page 10-161 through page 10-162 of the Administrative Rules of Montana.

3. The superintendent proposes to repeal these rules because they are in fact rules of the Board of Public Education found in Chapter 66, POLICY FOR ACCREDITING HIGH SCHOOL LEVEL TESTS OF GENERAL EDUCATION DEVELOPMENT (pages 10-1035 through 10-1037 of the Administrative Rules of Montana).

- 4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Superintendent of Public Instruction Ed Argenbright, Room 106, State Capitol, Helena, Montana 59620, no later than December 11, 1981.
- 5. If a person who is directly affected by the proposed repeal of rules 10.12.101 and 10.12.102 wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit that request along with any written comments he has to Superintendent of Public Instruction Ed Argenbright, Room 106, State Capitol, Helena, Montana 59620, no later than December 11, 1981.
- If the agency receives requests for a public hearing on the proposed repeal from at least 25 persons who are directly affected by the proposed repeal, from the Administrative Code Committee of the legislature, from a governmental sub-division or agency, or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The agency was unable to

Ed Argenbright

Superintendent of Public Instruction

Certified to the Secretary of State, November 2, 1981.

BEFORE THE BOARD OF PUBLIC EDUCATION OF THE STATE OF MONTANA

In the matter of the repeal) of rule 10.57.105 concerning) certification requirements) for non-citizens	NOTICE OF PROPOSED REPEAL OF A RULE ARM 10.57.105, CERTIFICATION OF NON-CITIZEN
for non-cicizens ,	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

1. On December 13, 1981, the board of public education will repeal rule 10.57.105, certification of non-citizen.

2. The rule to be repealed is on page 10-829 of the

Administrative Rules of Montana.

3. The board is repealing this rule as directed by HB 404 of the 47th Legislature, the text of which sets forth the reasons for repealing this rule.

- Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Mr. Allen D. Gunderson, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 10, 1981.
- If a person who is directly affected by the proposed 5. repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Mr. Allen D. Gunderson, 33 South Last Chance
- Gulch, Helena, Montana 59620, no later than December 10, 1981.

 6. If the agency receives requests for a public hearing on the proposed repeal from either 10% or 15, whichever is less, of the persons who are directly affected by the proposed 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 2,000 persons based on 20,000 certified teachers in the state of Montana.
 - The authority and implementing sections are Sec. 20-4-102 MCA; IMP, Sec. 20-4-203 MCA.

BOARD OF PUBLIC EDUCATION

Certified to the Secretary of State November 2, 1981

21-11/12/81

MAR Notice No. 10-3-45

BEFORE THE BOARD OF PUBLIC EDUCATION OF THE STATE OF MONTANA

In the matter of the amend-NOTICE OF PROPOSED AMENDMENT ment of rule 10.57.501 con-OF ARM RULE 10.57.501 SCHOOL) cerning certification re-) quirements for non-citizens)

PSYCHOLOGISTS, SOCIAL WORKERS, NURSES AND SPEECH AND HEARING THERAPISTS

NO PUBLIC HEARING COMTEMPLATED

TO: All Interested Persons.

1. On December 13, 1981the board of public education proposes to amend rule 10.57.501, school psychologists, social workers, nurses and speech and hearing therapists.

The rule as proposed to be amended provides as fol-

10ws .

- 10.57.501 SCHOOL PSYCHOLOGISTS, SOCIAL WORKERS, NURSES AND SPEECH AND HEARING THERAPISTS (1) Professionals such as school psychologists, social workers, nurses and speech and hearing therapists who are teaching in a classroom must have a teaching certificate appropriate for the level(s) and area(s) taught.
- Speech and hearing therapists engaged in school services in the public schools of Montana who issued grades or credits in the pupil's school program must be certified under the regularly established teacher certification requirements in Speech and Hearing Association. For related school services which do not involve credits or promotion, the superintendent of public instruction will recognize speech and hearing thera-pists licensed by the American Speech and Hearing Association on the basis of professional association standards on file in the office of the superintendent of public instruction.

(3) School psychologists. A professional serving as a school psychologist in the public schools must be certified with

a specialist certificate.

(4) Class 6 (specialist) certificate. School psychologists.

(a) 5 years, renewable. Term:

- Basic education. Master's degree or fifth year pro-(b) gram in school psychology or equivalent related areas to include the following minimums.
 - must have 20 quarter credits in general education/ (i)

psychology (graduate or undergraduate) training to include:

(A) guidance

- human growth and development general psychology (B)
- (C)
- (D) educational psychology

(E) learning theory

(ii) educational program. The following specific courses are required as undergraduate or graduate:

exceptional children (must include special education) (A)

(B) curriculum development

(C) diagnosis and remediation of reading

(D) educational evaluation

(iii) psychological methods and techniques. The following are specific minimum requirements:

(A) individual intelligence testing - graduate

(B) group intelligence and achievement testing - graduate

(C) personality assessment - graduate

interviewing and counseling - graduate (D)

(E) behavior modification - graduate

- (F) school psychology practicum/internship (a minimum of 6 quarter hours of graduate credit or appropriate waiver)
 - administration, role and function of school psychology. (G)
- Renewal. Verification of one year of successful specialist experience or the equivalent, plus presentation of acceptable evidence of 6 additional graduate quarter credits of academic or equivalent inservice coursework.
- (d) Reinstatement and recent training. For reinstatement of lapsed certificates or initial certification for applicants with training more than 5 but less than 15 years old, a class 6 certificate cannot be issued until the required number of graduate credits are presented. Credits presented must have been earned within the five-year period preceding the date of application on the basis of 12 quarter credits for the first 5 years plus 6 quarter credits for each additional 5-year period since certification or original training. (Specific courses may be required for initial certification.) The applicant may, however, practice under a class 5 provisional (specialist) certificate, for one (1) year while completing the credit deficiency. For provisional certification a plan of intent outlining the specific courses required must be submitted to teacher certification in the office of public instruction. The plan of intent a part of the application form which may be obtained from the office of public instruction, must be signed by the applicant, the college certification official where the coursework will be completed (if applicable) and a representative of the employing school district. A class 5 is issued for one (1) year and is not renewable, except-for-eitizenship---(Non-eitizen-applicantsshould-contact-the-office-of-public-instruction-for-policies-andshould-contact-the-office-of-public-instruction-for-policies-and-procedures. The individual who has allowed a certificate to lapse for more than 15 years or has not completed any recent academic training on the basis of 6 quarter credits for every five years, must contact the office of public instruction for evaluation of his/her certification position and procedures to obtain a certificate. Individuals in this category, lacking the recent training requirements, are not eligible to receive any class of certification until a minimum of 12 quarter credits of formal training or the equivalent is met training or the equivalent is met.

 (e) Renewal and reinstatement credits must supplement,

strengthen and update the specialist preparation and must be

graduate credit.

- (5) Psychologists who have been approved for funding by the special education unit of the office of public instruction by December 31, 1980, and have had at least half-time employment during the school year between September 1, 1975, and May 31, 1981 can continue to serve as a school psychologist until 1984, when they must be certified with a class 6 certificate.
- (6) Psychologists who have been approved for funding by the special education unit of the office of public instruction by December 31, 1980, and have practiced continuously in Montana since September 1, 1975, under the Montana special education rules and regulations may receive class 6 certification without additional training, upon application, commencing January 1, 1981. Those people who have received their certification under this provision must obtain credits for certificate renewal in their areas of deviciency. (Auth. Sec. 20-4-102 MCA; IMP, Sec. 20-4-102 MCA.)
- 3. The rule is proposed to be amended to agree with HB 404 of the 47th Legislature, the text of which sets forth the reasons for amending this rule.
- 4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Mr. Allen D. Gunderson, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 10, 1981.
- 5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Mr. Allen D. Gunderson, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 10, 1981.
- Gulch, Helena, Montana 59620, no later than December 10, 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 who are directly affected by the proposed amendment; from the Administrative Code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2,000 persons based on 20,000 certified teachers in the state of Montana.

ALLEN D. GUNDERSON, CHAIRMAN BOARD OF PUBLIC EDUCATION

BEFORE THE BOARD OF PUBLIC EDUCATION OF THE STATE OF MONTANA

NO PUBLIC HEARING CONTEMPLATED

All Interested Persons. TO:

- 1.~ On December 13, 1981 the board of public education proposes to amend rule 10.57.405, class 5 provisional certificate. The rule as proposed to be amended provides as fol-
- lows:
- 10.57.405 CLASS 5 PROVISIONAL CERTIFICATE (1) Term: 5 years not renewable. Exception: The specialist certificate will be a one-year, non-renewable certificate except for citizenship requirement provision which will be granted on the five-year, non-renewable basis.

Basic education: Bachelor's degree,

- A class 5 provisional certificate may be issued to applicants who have major preparation toward regular certification, but have minor discrepancies such as program deficiencies, lack-of-recent-eredits, or lack of recent credits. It also may be approved for individuals in programs
- authorized by the superintendent of public instruction.

 (4) Issuance of the class 5 certificate usually depends on the written recommendation of the appropriate official(s) of an approved institution with whom the applicant has outlined a plan of professional intent which commits the applicant to a program leading to regular certification.

(5) The recipient of a class 5 provisional certificate must be working on a planned program leading to the class 1, 2 or 3 certificate. On completion of the necessary credits, or the equivalent, the holder may apply for regular certification.

- (6) Provisional elementary endorsement: Elementary endorsement is granted to applicants who submit acceptable evidence of a partially completed elementary education program, or a completed non-approved program, provided the following minimum requirements have been met:
- (a) Bachelor's degree; and, (b) A minimum of 90 quarter (60 semester) credits of academic preparation in acceptable balance, in language arts and literature, history, government and related social science, languages, speech dramatics, library science, or health; and,
 - (c) Professional preparation to include: human growth

and development, the teaching of reading and/or language arts, social studies and arithmetic, and student teaching or appropri-

ate intern experiences.

(7) Provisional secondary endorsement: Secondary endorsement is granted to applicants who submit acceptable evidence of a partially completed secondary education program, or a completed non-approved secondary education program, provided the following minimum requirements have been met:

(a) Bachelor's degree; and, (b) Major preparation (at least 45 quarter or 30 semester credits) in an area commonly offered in the high school programs in Montana and approved by the board of public education for endorsement; and,

(c) 8 quarter (6 semester) credits in a planned program of professional teacher education, and admission—to the secondary teacher education program of an accredited college or

university.

- (8) Administrative endorsement: Class 5 certification with a plan of professional intent leading to class 3 (administrative) certification may be issued to applicants who within the last five years have been fully eligible for administrative certification endorsed in one of the general areas (elementary principal, secondary principal, superintendent or supervisor) but who may not meet course requirements for other general areas. In addition, the class 5 certificate may be approved for individuals in programs that have been authorized by the superintendent of public instruction. All administrators' certificates are based on a minimum of a master's degree in administration or related instructional field with state specified course work. (Auth. Sec. 20-4-102 MCA.)
- $3.\,$ The rule is proposed to be amended to agree with $\rm HB$ 404 of the 47th Legislature, the text of which sets forth the reasons for amending this rule.
- 4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Mr. Allen D. Gunderson, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 10, 1981.
- 5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Mr. Allen D. Gunderson, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 10, 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 who are directly affected by the proposed amendment: from the Administrative Code committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2,000 persons based on 20,000 certified teachers in the state of Montana.

 $^{\mbox{\scriptsize 7.}}$. The authority and implementing sections are listed at the end of the rule.

ALLEN D. GUNDERSON, CHAIRMAN BOARD OF PUBLIC EDUCATION

Certified to the Secretary of State November 2, 1981

BEFORE THE BOARD OF PUBLIC EDUCATION OF THE STATE OF MONTANA

In the matter of the amendment of rule 10.57.102 concerning certification)	NOTICE OF PROPOSED AMENDMENT OF ARM 10.57.102 DEFINITIONS
definitions	Ś	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

- On December 13,1981, the board of public education proposes to amend rule 10.57.102, definitions.
- The rule as proposed to be amended provides as follows:
- 10.57.102 DEFINITIONS (1) "Acceptable evidence" means official and up-to-date transcripts, written statements of appropriate officials and such other data as may be deemed necessary by the board of public education and/or the superin-
- tendent of public instruction.
 (2) "Accredited" refers to approval (accreditation) by a national or regional accreditation association that is acceptable to the board of public education. State approval of programs leading to certification may also be required.
- "Approved colleges" are those listed in the Education (3) Directory, Part 3, Higher Education, published by the U. S. Office of Education and/or the Report of Credit Given by Educational Institutions published by the American Association of
- Collegiate Registrars and Admissions Officers.

 (4) "Appropriate area(s)" are those subject field(s) --s.2h as English, mathematics, science, social studies, etc.--identified by the board of public education.

 (5) "Appropriate level(s)" means elementary, secondary or other levels as defined by the board of public education.

 (6) "Appropriate official" means the superintendent of
- "Appropriate official" means the superintendent of (6) public instruction, the dean of the school of education or another official designated by them.
- "Approved teacher education program" means a program for teacher preparation accredited by a national or regional accrediting association and/or recognized by the board of public education.
- "Endorsement" means official indication of the level (8) and/or the appropriate area in which the certificate holder is authorized to teach.
- "Elementary endorsement" of class 1, class 2 and class 5 certificate means the holder is authorized to teach in grades kindergarten through nine, except that ninth-grade teachers shall have a minimum of 30 quarter (20 semester) credits in all areas in which they teach.

(10) Issuance of the class 2 certificate at secondary level requires a teaching major of at least 45 quarter (30 semester) credits and a teaching minor of at least 30 quarter (20 semester) credits; or at least 60 quarter (40 semester) credits in a single field of specialization, provided these fields are subjects commonly offered for credit in the high school curriculum and provided that the pattern of preparation constitutes the approved secondary teacher education program of an accredited college or university. A least 24 quarter (16 semester) credits of professional preparation for teaching, to include student teaching, are also required. Within the total preparation, emphasis must be placed on student growth and development, behavior, reading and writing skills. The student teaching experience, if taken at grade levels 7-12, must also have an observation period at grade 5 or 6. If the student teaching experience is at grade 5 or 6, an observation period must be taken at grades 7-12.

(a) Secondary endorsement of the class 1, 2 or 5 certificate means the holder is authorized to teach in grades 7-12 until 1983. After that time, secondary programs will cover 5-12. Secondary endorsement is accompanied by endorsement as to the appropriate area(s) in which the holder is authorized to

teach.

(11) "Teacher education" means a curriculum recognizing a desirable proportion of academic and professional courses and should not be construed only as a degree in education.

should not be construed only as a degree in education.
(12) "Year of study" means an academic year, or the equivalent, comparable to at least 45 quarter (30 semester)

hours of graduate or undergraduate credit.

(13) "Year of validity" means the full year of a teaching certificate. All certificates are validated July 1 through June 30.

(14) On semester credit is equivalent to one and one-half quarter credits; one quarter credit is equivalent to two-thirds

semester credit.

- (15) "Teacher" means any persons, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of section 20-1-101 MCA, and the policies of the board of public education, and who is employable by a district as a member of its instructional, supervisory or adminstrative staff.
- (16) "Year of teaching experience" means employment during a school year by an educational institution as a member of the instructional staff. Experience will be considered on an individual basis by the appropriate official.

 (17) "Year of administrative experience" means employment

(17) "Year of administrative experience" means employment during a school year by an educational institution as a member

of the supervisory or administrative staff,

(18) "Equivalency" means an experience that strengthens the ability of a person to teach or to administer, which may be substituted for traditional academic work or teaching experience.

(19) A certificate is considered lapsed if:

(a) The holder has not earned the required number of renewal credits or the equivalent during the term of the certificate (credits earned during summer school immediately following the expiration date of a certificate also will be considered for renewal);

(b) The experience requirement has not been met; or applied-for-renewal-by-June-30-following-the-year-of-expiration-

(c) having completed (a) and (b), the holder has not renewed the certificate by June 30 following the year of ex-

piration.

- (20) Approved Specialist Program: "Approved specialist program" means a program for the preparation of specialists accredited by a national or regional accrediting association or recognized by the board of public education. In addition, state approval of programs leading to this certificate may also be required. (Persons authorized to apply for the specialist certificate: school psychologists.) (Auth. Sec. 20-4-102 MCA; IMP, Sec. 20-4-106 MCA.)
- The rule is proposed to be amended to better clarify a lapsed certificate.

Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Mr. Allen D. Gunderson, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 13, 1981.

If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Mr. Allen D. Gunderson, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 13, 1981.

If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 2,000 persons based on 20,000 certified teachers in the state of Montana.

BOARD OF PUBLIC EDUCATION

Certified to the Secretary of State November 2, 1981

BEFORE THE BOARD OF PUBLIC EDUCATION OF THE STATE OF MONTANA

In the matter of the proposed amendment of 10.66.101 concerning GED requirements)	NOTICE OF PROPOSED AMENDMENT OF ARM 10.66.101 REQUIREMENTS WHICH MUST BE MET IN ORDER TO RECEIVE HICH SCHOOL EQUIVALENCY CERTIFICATES NO PUBLIC HEARING CONTEMPLATED
		NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

- 1. On December 13, 1981 the Board of Public Education proposes to amend the rules in 10.66.101, Requirements which must be met in order to receive high school equivalency certificates.
 - The rules proposed to be amended are as follows:
- 10.66.101 REQUIREMENTS WHICH MUST BE MET IN ORDER TO RECEIVE HIGH SCHOOL EQUIVALENCY CERTIFICATES (1) The high school equivalency certificate is issued to civilians, service personnel and veterans if the applicant meets the following requirements:
- (a) Applicants must have a standard score of 35 or above on each of the five tests or and average a standard score of 45 on all five GED tests.
- (b) Results of GED tests taken in the service are accepted if reported officially by the Educational Testing Service, by official centers of the GED Testing Service of the American Council on Education, or by the manager of a Veterans Administration hospital with an authorized Educational Therapy program.
- (c) Applicants must be 18 years of age before they may take the GED tests. An 18-year-old applying to take the GED tests must provide the official GED testing center with a letter of approval from the principal of the high school in which the applicant is presently enrolled, or an 18-year-old wishing to take the tests must have been out of high school at least one full semester before applying. Unless one of the above stipulations is met, 18-year-olds cannot take the GED tests. The applicant must furnish the official GED testing center with documentation regarding either of the two stipulations.
- (d) An applicant must be a legal resident of Montana, employed regularly in the state, or have been stationed with the military in Montana for at least 30 days before taking the examination.
- (e) Previous high school enrollment is not required. (Auth. Sec. 20-2-114, MCA: IMP, Sec. 20-2-121, MCA.)
- $3\,,$ $\,$ The board is proposing this amendment to raise Montana's minimum passing standards.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Mr. Allen D. Gunderson, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 13, 1981.

5. If a person who is directly affected by the proposed rules wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Mr. Allen D. Gunderson, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 13, 1981.

6. If the agency receives requests for a public hearing on the proposed new rule from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed new rule; 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 approximately 25 persons based on the number of people taking the equivalency tests in one quarter of the year.

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ALLEN D. GUNDERSON, CHAIRMAN BOARD OF PUBLIC EDUCATION

Assistant to the Board

Certified to the Secretary of State November 2, 1981

BEFORE THE BOARD OF PUBLIC EDUCATION OF THE STATE OF MONTANA

In the matter of the adoption of ARM 10.64.601 thereafter concerning LP gas conversion))	NOTICE OF PROPOSED ADOPTION OF ARM 10 64.601 AND FOLLOWING, SUB-CHAPTER 6 LP GAS MOTOR FUEL INSTALLATION
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NO HEARING ANTICIPATED

TO: All Interested Persons,

- 1. On December 13, 1981 the board of public education proposes to adopt rules concerning the vehicle standards for $\rm LP$ gas motor fuel installation.
- 2. The rules as proposed to be adopted provides as follows:

Sub-Chapter 6

Minimum Standards for LP Gas Motor Fuel Installation

- RULE I GENERAL (1) The board of public education hereby adopts and incorporates by reference Pamphlet #58, National Fire Protection Association, Inc. which sets forth the safety specifications for transfer of LP gas fuel tanks. A copy of the Pamphlet #58 may be obtained from the National Fire Protection Association, Inc., 470 Atlantic Avenue, Boston, Massachusetts 02210.
- (2) LP gas motor fuel conversion equipment installed on public school buses is permitted by the board of public education. School districts converting school buses to LP gas carburetion are requested to register with the office of public instruction in order to be kept up-to-date on new developments.
- (3) All installations of LP gas conversion equipment (carburetion, lines, tanks, fittings, etc.) shall meet or exceed all of the safety specifications set forth by the National Fire Protection Association, Inc.
- (4) The LP gas conversion and completed installation of equipment will be inspected by the highway patrol during the annual school bus inspections (Auth. Sec. 20-10-111, MCA; IMP, 20-10-111, MCA)
- RULE II INSTALLATION OF EQUIPMENT (1) The board of public education hereby adopts and incorporates by reference Pamphlet #58, National Fire Protection Association, Inc. which sets forth the safety specifications for transfer of LP gas fuel tanks. A copy of the Pamphlet #58 may be obtained from the National Fire Protection Association, Inc. 470 Atlantic Avenue, Boston, Massachusetts 02210.

(2) It is recommended that the gasoline tank be removed

from the bus when converting to straight propane.

(3) LP gas tanks shall be designed for installation on

school buses.

(4) Each tank shall be fitted with an eighty percent automatic filler shut-off valve.

(5) A heat deflector must be installed between the LP tank and the exhaust pipe. The heat deflector must protect the LP tank from exhaust pipe heat and shall be enlarged if necessary.

(6) The LP tank shall be mounted to the main frame rail. The tank may be mounted on either side or both sides of the

vehicle

- (7) Each mounting bracket which is used to mount the LP tank shall be attached to the frame with not less than grade five (5) bolts. Under no circumstances shall the tank be able to rotate or slip.
- (8) The tank shall be installed with as much road clearance as practicable, but not less than the minimum road clearance of the vehicle under maximum spring deflection. (NOT LOWER THAN THE FRONT AXLE.)

(9) Tanks shall be ASME certified.

(10) All tank valves, appurtenances and connections shall be adequately protected to prevent damage due to accidental contacts with stationary objects or from stones, mud or ice, thrown up from the ground, and from damage due to overturn or similar vehicular accident. Such protective devices shall be provided and affixed to the tank.

(11) Tanks shall be equipped with a minimum of 250 lb.

relief valve, with a maximum of 312 lbs.
(12) Venting of the relief valve on a school bus shall be only as described in the following if it is to comply.

(a) The vent opening shall exit out the left side of the

bus body below the floor line and shall be flush mounted with the body.

- (b) The flex line used shall be metallic (other than aluminum) and/or other tubing used for the relief valve on the tank to the discharge port shall be of the same diameter as the relief valve.
- (c) The discharge port shall be mounted in a recess in the lower part of the body skirt so that any discharge through the vent opening is directed at a 45 degree angle upward and perpen-

dicular to the ground.

The discharge port shall be fitted with a spring loaded (d) rain cap to prevent moisture from entering the discharge port, and in its full open position minimize fuel and vapors from infringing upon the body, or other adjacent traffic, and installed at least three (3) feet horizontally away from any opening to the passenger area.

(e) The recess discharge port box shall be covered with a

protective mesh to discourage vandalism.

(13) The liquid level gage (spitter valve) shall be fitted with a tamper-proof head. EXCEPTION: See remote fill system.

(14) There shall be a hydrostatic relief valve installed between tank manual shut-off valve and the fuel lock-off unit. It must be installed in a bulkhead, pointed down with a rubber

(15) An opening in the skirt shall be made to provide ad-

quate access to direct filling of the tank.

(16) OPTIONAL: The remote fill box with fill valve and liquid level gage (spitter valve) in a closed compartment with a locking door is permitted. Mounting must be in a bus body skirt. Check valve shall not be removed from filler valve at remote fill to eliminate any fuel trapped from tank fill valve and remote fill valve.

(a) On remote fill systems, the remote liquid level gage (spitter valve) must be equipped with a manual shut-off at the point where the hose connects with the container.

(b) Also, the container must be protected at this point

with one of the following:

(i) the container must be constructed with a maximum

opening of not larger than a No. 54 drill size.

(Ĭi) an approved device restricting the flow with a maximum opening of not larger than a No. 54 drill size must be installed at the tank opening.

(iii) a properly sized excess flow valve must be installed at the tank opening with a manual shut-off valve.

(17) The opening in the skirt to the direct tank fill valve shall be fitted with a spring loaded, forward or top mounted, hinged door. The door may be of the locking type. (Auth. Sec. 20-10-111, MCA; IMP, Sec. 20-10-111, MCA.)

CARBURETION (1) The board of public education hereby adopts and incorporates by reference Pamphlet #58, National Fire Protection Association, Inc. which sets forth the safety specifications for transfer of LP gas fuel tanks. A copy of the Pamphlet #58 may be obtained from the National Fire Protection Association, Inc., 470 Atlantic Avenue, Boston, Massachusetts 02210.

- The fuel system shall be equipped with at least three positive shut-off devices between the fuel supply and the engine. There shall be a manual shut-off at the tank.
- (b) An automatic fuel lock-off between the fuel tank and the converter may be one of the following:

(i)

- a vacuum fuel lock-off (UL approved). an electrical fuel lock-off used in conjunction with (ii) a low pressure switch or a vacuum switch (both must be UL approved).
- (3) All fuel lines shall be of reinforced stainless steel wire braid and comply with 235 of NFPA 58. All fuel lines shall be UL approved, 1750 pound burst pressure. (EXCEPTION: the fue lines between the converter and the carburetor). (EXCEPTION: the fuel
- (4) Hose ends and connections shall be of the same make (brand name) as the hoses for compatability. Where a fuel line or a vent line passes through a bulkhead, a bulkhead fitting shall be used (UL approved).

(5) All components such as hoses, hose ends, fittings,

etc., shall bear the UL symbol.

(6) Mounting of the carburetion system shall be done in a manner which will provide a solid vibration free system. The converter shall not be mounted on the fender inner panels, radiator supports, firewall or engine compartment partitions.

(7) Sealant to be used shall be UL approved sealant for LP gas. (Auth. Sec. 20-10-111, MCA; IMP: Sec. 20-10-111, MCA)

RULE IV FILLING PROCEDURES (1) The board of public education hereby adopts and incorporates by reference Pamphlet #58, National Fire Protection Association. Inc. which sets forth the safety specifications for transfer of LP gas fuel tanks. A copy of the Pamphlet #58 may be obtained from the National Fire Protection Association, Inc., 470 Atlantic Avenue. Boxton, Massachusetts 02210.

(2) No passengers may be aboard the school bus while it

is being filled.

(3) The engine must be shut off while the bus is being filled.

(4) There shall be no source of ignition within fifty (50)

feet of the bus while filling.

(5) There shall be a decal listing filling instructions affixed to the school bus body within two (2) inches of the fill door.

(6) Protective gloves shall be provided and shall be worn by the person performing the filling of the fuel tank.

- (7) Filling attendants shall be instructed in proper filling procedures. (Auth. Sec. 20-10-111, MCA: IMP: Sec. 20-10-111, MCA.)
- 3. The rules are proposed to aid school districts in their struggle for use of alternative fuels and in subsequent cost savings. The board of public education wishes to have the conversions as safe as possible for the school children in the state of Montana.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Mr. Allen D. Gunderson, 33 South Last Chance Gulch, Helena, Montana

59620, no later than December 10, 1981.

5. If a person who is directly affected by the proposed rules wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Mr. Allen D. Gunderson, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 10, 1981

6. If the agency receives requests for a public hearing on the proposed new rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed new rules; 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 approximately 100 persons based on the number of busing contracts and school districts owning their own buses within the state of Montana.

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ALLEN D. GUNDERSON, CHATRMAN BOARD OF PUBLIC EDUCATION

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Certified to the Secretary of State November 2, 1981.

BEFORE THE BOARD OF PUBLIC EDUCATION OF THE STATE OF MONTANA

In the matter of the amend-)	NOTICE OF PROPOSED AMENDMENTS
ment of rules 10,58.208, 10.)	OF ARM 10.58.208, 10.58.302,
58.302, 10.58.303, and 10.58.	10.58.303, and 10.58.523
523 concerning multicultural)	
teacher education)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons,

On December 13, 1981 the board of public education proposes to amend rules concerning multicultural education.
 The rules as proposed to be amended provides as follows:

10.58.208 FACILITIES AND INSTRUCTIONAL MATERIALS (1) An institution shall have a physical plant designed to serve its defined purposes for teacher education. The physical facilities shall also provide for the safety, health, cultural, social and recreational needs of students and faculty.

(2) The library, as the principal materials resource center of the institution, shall be utilized for instructional research and other services supporting the teacher education program, including books and other materials of a multicultural nature. Administrative procedures and equipment shall conform to accepted modern practices including methods of cataloging, arrangement of print and nonprint materials, availability of student and faculty stations, and accessibility of materials and facilities. The library shall be administered by a professionally trained librarian.

fessionally trained librarian.

(3) The institution shall provide laboratories and laboratory supplies and equipment needed for instructional purposes for each teacher education program offered, such as shops and shop equipment, resource materials for multicultural education, specialized equipment for the biological, earth, and physical sciences; specialized equipment for psychological, sociological and child development sciences; specialized furniture, equipment and supplies for music and art; gymnasiums and outdoor areas for physical education; equipment for business education; facilities, equipment and supplies for home economics; and demonstration farms and farm buildings for agriculture. Space and equipment shall be made available for conducting and recording experiences such as micro-teaching, role-playing, and other simulated activities.

(4) Institutions shall make teaching-learning materials and equipment available to students and faculty. They shall provide technical instruction in the use of the equipment, in

language skills (see ARM 10.58.521) as es-

sential tools in communication:

(ii) world literature with emphasis on, but not limited to, the writings of English and American authors;

aesthetic values in human experience expressed (iii) as through the fine arts;

(iv) scientific and mathematical concepts upon which

contemporary civilization depends;

(v) contemporary world culture;

(vi) social, geographic, political and economic conditions and their impacts on current problems in the nation and the world:

growth and development of the United States as (vii)

a nation and its place in world affairs.

principles of physical and mental health as (viii)

they apply to the individual and to the community:

All teaching areas shall include content and experiences that will contribute to an understanding of the variety of developments made by different cultural groups,

lnside and outside the United States, to knowledge and behavior in the specific teaching areas.

(Auth. Sec. 20-2-114, MCA; IMP, Sec. 20-2-121, MCA)

10.58.303 PROFESSIONAL EDUCATION (1) Professional education refers to those studies which include foundations of education, and methods and materials of teaching, with supervised laboratory experiences designed to provide competencies required in the education professions.

(a) Each institution shall have a clearly stated set of objectives for the professional education component of its

teacher education program.

(b) The component of professional education shall encourage individualization of the student's program while providing for a range of studies and experiences which will help the student develop:

(i) knowledge of the process of human growth, develop-ment, and learning, and the ability to apply this knowledge to the teaching of all students, including atypical children;

(ii) knowledge of current research, methods, materials standardized tests, curriculum development, procedures, and media appropriate to teaching. Emphasis shall be in the student's field(s) of specialization;

ability to teach effectively and to work ethically (iii) and constructively with pupils, teachers, administrators,

parents, and other concerned persons and organizations:

understanding of the foundations underlying the (iv) development and organization of education in the United States:

understanding of the purposes, administrative organizations, finance aspects, board functions, and operations of the total education programs of the school;

(vi) ability and willingness to analyze teaching as a

means of continually improving teaching skills;

ability to teach reading and writing skills appropriate to the level of the student and to the content of the the production of teaching-learning materials and their uses

- and in the classification and preservation of such materials.

 (5) The institution shall demonstrate its commitment to the improvement of instruction by developing and following a plan for the institutional use of educational media and technology.
- The institution shall maintain a materials labora-(6) tory or center either as a part of the library or as one or more separate units. It shall be open to students as a lab oratory of instructional materials and shall be directed by a faculty member well informed in the various instructional materials and media used at different grade levels. laboratory shall include a wide array of books commonly used in elementary and secondary schools; various types of teaching aids such as maps, charts, pictures, filmstrips and recordings; various types of materials used in evaluating learning; and curriculum patterns, courses of study, and teaching units; including books, teaching aids, materials and teaching units of multicultural nature. There shall be workshop facilities for preparing new curriculum materials including access to electronic, photographic and other equipment. (Auth. Sec. 20-2-114, MCA; IMP, Sec. 20-2-121, MCA.)
- 10.58.302 GENERAL EDUCATION (1) General education refers to studies known as the liberal arts, those embracing the broad areas of the humanities, mathematics, the biological and physical sciences, and the social and behavioral sciences.
- The elements of the general education program shall: (a) (i) stimulate scholarship that will promote understaning of concepts not now extant and will help prepare people for rapid adjustment to change;

foster individual fulfillment and nurture the

development of free, rational, and responsible adults;
(iii) cultivate appreciation for the values associated with life in a free society and with responsible citizenship; develop intellectually competent, imaginative (iv)

and vigorous leaders;

contribute to and provide direction for the use (v)

of professional knowledge;

encourage discernment in the examination of the values inherent in the variety of American ethnic cultures and in foreign cultures to the end that a clearer understanding of other peoples will reduce world local, national and international tensions.

General education shall be emphasized in the first two years of higher education, extended throughout the baccalaureate program, and continued in diminishing proportions

into graduate study.

A sequential general education program will be constructed which will help the student attain an understanding and appreciation of:

subject;

(viii) knowledge of the legal aspects of teaching in the Montana schools, professional ethics, conduct, rights and responsibilities and the structure and financial basis of the Montana school system.

(c) The program shall provide experiences which will lead the teacher candidate to develop those human qualities that will enhance pupil learnings, to include but not be

restricted to:

personal self-esteem and confidence;

(ii) open attitudes of evaluating practices which af-

fect social groups; and

(iii) knowledge, humaneness, and sensitivity which reduce conflict and tension and which promote constructive interactions among people of differing economic, social, racial, ethnic, and religious backgrounds.

(d) The component of professional education shall include a comprehensive program of carefully designed basic experiences in a variety of relevant settings. In addition, the institution shall make available a wide range of laboratory, clinical, and practicum experiences with school-age youth in

order to meet the pre-teacher's needs.

(e) Student teaching, or other major practicums, shall be designed both as growth experiences and as opportunities for evaluation of a student's potential for teaching. Student teaching shall provide an opportunity for assessing a student's commitment to teaching, skill in guiding learning in interpersonal relations, and growth as a professional in teaching. In considering the approval of teacher education programs, the following statements shall be used for evaluating student teaching components. These statements are not allinclusive; they represent minimums. Teacher education institutions are encouraged to develop student teaching components of a quality superior to that implied:

(i) student teaching shall be permitted only after a professional review of the student's record indicates that scholarship, performance in an area of specialization, competence in the professional education component, performance in previous professional experiences, and personal characteristics directly related to the student's ability to function in a classroom setting, qualify that student for the responsibilities

of student teaching.

(ii) student teaching shall be a comprehensive experience with expanding responsibilities; ineluding and the full range of teacher activities in a school situation.

(iii) student teaching shall provide for intensive and continuous involvement. The length of student teaching shall depend upon the performance of the student teacher. It shall continue until objectives of the program have been achieved or until the student has been screened from the program.

(iv) the cooperating school or school system shall be chosen by the institution on the basis of the commitment of the administrators and staff members to participation in the

preparation of new teachers.

- (v) cooperating teachers shall be selected jointly by school and institutional personnel. In addition to being certified and experienced in the area of assignment, the cooperating teacher shall have a good performance record, show continued professional growth and have the temperament, desire and ability to work with student teachers. The number of student teachers assigned to any qualified cooperating teacher shall be determined by applying two professional criteria:
- (A) the level of support for pupil learning shall remain as high or higher than if the student teachers were not so assigned, and

(B) the teacher can feel comfortable and confident in

providing an effective, supportive learning climate.

- institutions shall study and develop effective (vi) arrangements for administering and supervising student teaching programs that best utilize the resources of the institutional supervisor, cooperating teacher and student. Where the institutional supervisor functions as a generalist, the institution and school system shall assure that expertise in content and methodology in the subject area is available to the student. All institutions shall study possible alternative arrangements for administering and supervising student teaching including the use of clinical professors. Institutions and schools shall make cooperative detailed studies of roles and responsibilites; such studies shall be utilized in determining the strengths and weaknesses of supervision and in developing means to upgrade continually the skills of all personnel involved. Institutional staff who have responsibility for supervision shall have equal status with other faculty. The college shall assure adequate supervision for student teachers and this policy shall be in writing. (Auth. Sec. 20-2-114. MCA; IMP, Sec. 20-2-121, MCA.) writing.
- 10.58.523 SOCIAL SCIENCE (1) The social science programs may follow the subject-major pattern, or the comprehensive-major pattern embracing a broad base social studies program including history, sociology, government, economics, psychology and geography with an emphasis of at least 20 quarter credits in one field. In Montana, this concentration must be coupled with the equivalent of 15 quarter credits in at least three other social studies areas. Curricula leading to a certificate in a discrete subject (history, political science, at al) must meet subsection (2) of section 10.58.523 and the appropriate subsections (3) through (8) of that section
- (2) Common Standards. For the prospective teacher the program shall:
- (a) Provide for the development of the ability to organize learning experiences which facilitate growth in group processes and human relations skills including:
- (i) the ability to feel for others (ii) the ability to examine one's own feelings in the process of developing a positive self-concept

(iii) organize teaching/learning strategies in a manner that students may proceed from factual information to the

development of theories;

(d) Provide for the study of the scientific processes in teaching social studies and for the development of the ability to organize instructional material which provides maximum opportunity for students to make:

(i) observations that utilize all of the senses for purposes such as data collection or problem areas awareness

for classroom study:

(ii) classifications which emerge from the observations of objects and events with schemes based on observable similarities and differences;

(iii) inferences about what is not directly or immediate-

ly observable and involving evaluation and judgment of data:

(iv) hypotheses from inferences and predictions that

can be tested by a proof process;

(v) reliable predictions about the consequences of a solution to a particular problem or issue based on past observations and the nature of the event being predicted:

(vi) hypotheses tests by designing and using data

gathering procedures;

(e) Provide knowledge of a variety of processes used in examining controversial and value-related issues including: examination of affective as well as the cognitive input;

(f) Provide for the development and demonstration of the ability to think critically and to formulate a rational basis for decision making through:

(i) application of social studies data by constructing

charts, maps, tables, graphs, and other pictorial models,

(ii) knowledge of the necessary skills in library research which utilize the latest information from national depositories and clearinghouses;

(iii) utilization of appropriate levels of questioning which will elicit student response from recall through evaluation:

(g) Provide understanding of the use of simulation and

gaming techniques resulting in ability to:

(i) organize materials for instruction using simulation games as a means of providing students direct experience with selected concepts;

(ii) develop a simulation game or role playing

situation for selected content;

- (iii) employ aspects of gaming in teaching social studies.
- (3) Economics. For the prospective teacher the program shall :
- (a) Provide knowledge of the impact of economic principles and processes as related to problems and practices in diverse economic systems;
- (b) Provide knowledge of how basic economic decisions are made with regard to production, consumption and distribution:
- (c) Provide knowledge that all economic systems are confronted by the problem of unlimited wants and limited resources;

Provide knowledge of how the pattern of economic arrangements within a society reflect the values and objectives of that society;

(e) Provide study of the concept of comparative advantage and its relationship to the exchange of goods and services among developed and developing nations of the world;

Provide for knowledge of the comparison of the

economic performance of different cultural groups:

Provide for knowledge of the comparison of the (g) effect of production on the industrial power of different nations:

Provide for analysis of the potential standards of (h)

living among nations by examining factors of production;

(i) Provide for the examination of the concept of specialization and the resultant interdependency within and among nations;

(j) Provide for the analysis of economic fluctuations that have resulted from periods of inflation, deflation or depression:

(k) Provide for the study of the feelings and perceptions of people during periods of economic fluctuations;

(1) Provide for the development of the ability to assess the major value difference and resulting conflict situations that occur during periods of inflation, deflation or depression;

(m) Provide for the analysis of the causes of economic fluctuations and the development of policies to cope with these problems.

(4) Geography. For the prospective teacher the program shall

(a) Provide knowledge of the effects that spatial relationships, physical environments, and regionalization have on the development of the human experience;
(b) Provide knowledge of the changes affecting the

nature of the locale through time;

(c) Provide for the analysis of the effects of site and situation on developing cultures and life patterns;

(d) Provide for study of reasons why different human activities occur in regions of similar natural factors;

(e) Provide for study of reasons why similar human activities occur in regions of different environmental conditions;

Provide for the development of the ability to assess the impact of the uneven distribution of human numbers and the resultant pressure of those numbers on the physical resources of selected areas of the world;

Provide for the study of adverse conditions associated with the use of human space: crime, slums, pollution, value systems, degeneration and deterioration, and deterioration of other physical, mental and moral qualities;
(h) Provide a knowledge of the earth's physical environ-

ment and its influences on the development of culture;

Provide for the study of the factors of the natural

environment and man's ability to alter them in a positive or negative way;

Provide for the development of the ability to (j) analyze the physical and cultural component parts of a portion of the world;

(k) Provide for the analysis of current environmental problems and examine the roles of individuals, societal agents, and technology on developing and effecting solutīons;

(1)Provide for the analysis of the use of formal and functional regions in the organization of space;

- (m) Provide for the development of the ability to evaluate the region as a planning device for making rational use of the earth's resources by evolving strategies and establishing priorities;
- (n) Provide for the analysis of the region as a method of organizing space and employ regional systems as a useful framework for handling large amounts of diverse information;
- Provide for the assessment of the disorganization (o) of space and those factors that account for discontinuity.

(5) Government. For the prospective teacher the

program shall:

(a) Provide knowledge of the fact that every society has some authority structure which can be recognized as a government and has been created by the interdependence of individuals and groups within the society;

(b) Provide for the study of decisions, policies and laws of a given society as a reflection of the society's

values, beliefs, and traditions;

- (c) Provide for the study of the inter-relatedness of the political aspects of a culture with the economic, social, geographic and environmental factors and problems within a culture;
- (d) Provide for the analysis of the current political actions and attitudes of a society in relation to its prior history;
- (e) Provide for the development of the ability to examine critically governmental systems, not only as forms of government, but also as methods, processes and reflections of societal convictions;

(f) Provide for the study of sources of political

power and authority;

- (g) Provide for the development of the ability to examine political ethics as a reflection of the moral conduct of the society as a whole;
- Provide a knowledge of the processes involved in conflict resolution and public policy adjudication in a society:
- (i) Provide knowledge of how public policy evolves from the bargaining and compromising among competing demands on influential groups;
- Provide for the analysis of the governmental structures and institutions established to protect public policy decisions and to enforce them on the society at large:

(k) Provide for the development of the ability to examine the agencies created to protect the rights, liberties, and obligations of each member or group within the society;

(1) Provide for the study of methods of interest

articulation and communication as practiced by interest groups, pressure groups, and lobbies in various systems.

(6) History. For the prospective teacher the program

- Provide a knowledge of the human past as a means in understanding the present and the possibilities for the
- (b) Provide for the study of the relationship of history to the social sciences in explaining the human experience;
- (c) Provide for the study of history as a response to the eternal desire of humans to know about themselves and others:
- (d) Provide an understanding that history is concerned with societies as well as individuals;
- (e) Provide for the study of history as it emphasizes the uniqueness of individual and collective human experience;
- (f) Provide an understanding that continuous and un-relenting change has been a universal condition of human society throughout remembered and recorded time;

(g) Provide an understanding that each generation tends to create and rewrite history in terms of its own

needs, aspirations and points of view;

(h) Provide for a recognition that the record of the past is irremediably fragmentary, selective and biased;
 (i) Provide knowledge that the past should be examined

in light of contemporary standards, values, attitudes and beliefs rather than exclusively by modern standards;

(j) Provide an understanding that history has the obligation to reassess and reinterpret the past, bringing it to bear on the present and translating it into a form each new generation can use;

(k) Provide an understanding that a knowledge of the possibilities of history can help people in influencing a

more favorable course for the human race;

- Provide for the development of an awareness of the value dilemmas of modern times and the prospects for resolving the dilemmas;
- (m) Provide for the development of an understanding of the inter-related factors --economic, social, cultural, political, georgraphical and intellectual--that have shaped historical development;
- (n) Provide an understanding that multiple causation is the dominant pattern in explaining the human past and that historical events can seldom be explained in terms of a simple one-to-one cause and effect relationship;

(o) Provide for knowledge from areas of study that are important to the modern student and relevant to his needs as

an intelligent being:

Montana and the Rocky Mountain region including attention to knowledge of minority groups.

the United States, including attention to knowledge of minority groups.

(iii) European and non-Western civilization including

attention to knowledge of minority groups
(7) Psychology. For the prospective For the prospective teacher the program shall:

(a) Provide for the development of an understanding of behavior in man and other animals;

(b) Provide knowledge of investigative and scientific

methods used in the study of behavior; (c) Provide for the development of an understanding of

the effects of stimuli on behavior; Provide for the study of the cultural influences

on behavior and the modification of them;

(e) Provide for the recognition and explanation of behavior classified as deviant.

(8) Sociology. For the prospective teacher the program shall:

- Provide for the development of an awareness of the (a) various aspects of human behavior which are related to the fact that man lives in groups;
- (b) Provide for the study of the diverse and similar patterns of human grouping in relation to specific cultural values:
- Provide for the recognition that every society (c) develops a system of roles, norms, values-and sanctions to guide behavior of individuals and groups;
- (d) Provide for the analysis of the general structure of society in terms of the following concepts: values, institutions, organizations, groups, status positions, and social roles.
- (e) Provide for the study of diversity and variations existing within a given and comparative social structure;
- (f) Provide knowledge of how culture is adapted to serve man's needs as well as how man adapts to cultural conditions. (Auth. Sec. 20-2-114, MCA; IMP, Sec. 20-2-121, MCA.)
- The rules are proposed to aid teachers in dealing with Native American, Laotian, Hutterite and other multicultural children.
- Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Mr. Allen D. Gunderson, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 13, 1981.

If a person who is directly affected by the proposed rules wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written comments he has to Mr. Allen D. Gunderson, 33 South Last Chance Gulch,

59620, no later than December 13, 1981 Helena, Montana

If the agency receives requests for a public hearing on the proposed new rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendments; 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 nearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be approximately 100 persons based on the number of teachers within the state of Montana.

7. The authority and implementing sections are listed at the end of each rule.

Allen D Gunderson

ALLEN D. GUNDERSON, CHAIRMAN BOARD OF PUBLIC EDUCATION

Assistant to the Board

Certified to the Secretary of State November 2, 1981.

BEFORE THE BOARD OF PUBLIC EDUCATION OF THE STATE OF MONTANA

NO HEARING ANTICIPATED

All Interested Persons, TO:

On December 13, 1981 the board of public education proposes to adopt rules concerning the standards for school use of four wheel drive vehicles.

The rules as proposed to be adopted provides as follows:

Sub-Chapter 7

Minimum Standards for School Use of Four Wheel Drive Vehicles

- GENERAL (1) The board of public education, with advice of the Montana division of motor vehicles and the superintendent of public instruction shall adopt and enforce policies, not inconsistent with motor vehicle laws, to provide uniform standards and regulations for the operation of four-wheel drive vehicles that do not meet school bus standards.

 (2) The board of public education will approve or disapprove on an individual basis.
- (3)
- The alternative vehicle will be used when adverse road and/or weather conditions dictate; use of such a vehicle will be approved on an annual basis.
- (4) The vehicle will transport eight (8) passengers or less.
- (5) The four-wheel drive alternative vehicle will not be identified as a school bus by color, lighting, or other visual designation.
- The four-wheel drive alternative vehicle will be (6) inspected by the Montana highway patrol for safe operating conditions before it is used to transport children to or from school.
- (7) State reimbursement to the local school district will be based on the on-schedule rate of twenty cents (\$.20) per mile.
- AUTH: Sec. 20-2-121, MCA IMP: Sec. 20-10-111, MCA II. APPLICATION (1) School districts will use Form T-12 to request permission to use a four-wheel drive alternative vehicle.
- (2) Reimbursement will be based on an on-schedule rate of

21-11/12/81

MAR Notice No. 10-3-52

twenty cents (\$.20) per mile for the number of days that this alternative vehicle is used.

Λυ^ωΗ: Sec. 20-2-121, MCA IMP: Sec. 20-10-111, MCA

- SPECIAL EQUIPMENT (1) The special equipment re-III. quired will be:
 - Roll bar, (a)
 - Seat belts for the drive and all passengers, (b)
 - (c) First aid kit.
 - (d) Fire extinguisher,
 - Flags and/or flares, and (e)
- (f) Body of alternative vehicle shall be made to include sign or signage that will designate the vehicle as a school vehicle.
- AUTI: Fec. 20-2-121, MCA IMP: Sec. 20-10-111, MCA

 IV. INSPECTIONS (1) The Montana highway patrol will inspect four-wheel drive alternative vehicles used by school districts for adverse road and/or weather conditions.
- The highway patrol will record their inspections on the regular For T-10 (with the addition of roll bar and seat belt requirements)
- The alternative vehicles will be inspected for (3) inclusion and condition of the following equipment listed on the T-10 school bus inspection form:
 - Head lamp. (a)
 - (b) Turn signal lamps - front
 - (c) Windshield
 - (d) Windshield wipers
 - (e) Exterior mirrors
 - (f) Battery
 - Generator or alternator (g)
 - Head lamp indicator (h)
 - (i) Horn
 - (j) Interior mirror
 - (k) Speedometer
 - (1)Brakes
 - (m) Driver seat belt
 - :n) Steering gear
 - (o) Fire extinguisher (5 lbs) First aid kit (24 unit) (p)
 - Defroster (q)
 - (r. Heater
 - Interior lamp (s)
 - (t) Ceiling
 - (u) Seating.
 - Tool: and storage (v)
 - Windows (w)
 - Flags and/or flares (x)
 - (y) Shovel (security fastened)
 - Axe (security fastened) (z)
 - Turn signal lamps rear (aa)
 - (bb) Stop lamps
 - (cc) Exhaust system
 - Fuel tank (dd)
 - Tires (2/32" minimum) (ee)

- (ff) Cleanliness (Auth. Sec. 20-2-121, MCA; IMP, Sec. 20-10-111, MCA.)
- 3. The rule is proposed to be adopted to agree with HB 662 of the 47th Legislature, the test of which sets forth the reasons for adopting this rule.
- 4. Interested parties may submit their data, views or arguments concerning the proposed new rules in writing to Mr. Allen D. Gunderson, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 10, 1981.
- 5. If a person who is directly affected by the proposed new rules wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Mr. Allen D. Gunderson, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 10, 1981.
- 6. If the agency receives requests for a public hearing on the proposed new rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed new rules; 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 2,000 persons based on 20,000 certified teachers in the state of Montana.
 - 7. The authority and implementing sections are listed at the end of each rule.

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ALLEN D. GUNDERSON, CHAIRMAN BOARD OF PUBLIC EDUCATION

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Assistant to the Board

Certified to the Secretary of State November 2, 1981

BEFORE THE BOARD OF PUBLIC EDUCATION OF THE STATE OF MONTANA

In the matter of the repeal) of 10.55.201, 10.55.301, 10.) 55.401, and 10.55.501 concerning introductions to) various accreditation standards	NOTICE OF PROPOSED REPEAL OF RULES 10.55.201, INTRODUCTION; 10.55.301, INTRODUCTION; 10.55. 401, INTRODUCTION; and 10.55 501, INTRODUCTION
dards)	NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons.

- 1. On December 13, 1981 the board of public education proposes to repeal rules 10.55.201, 10.55.301, 10.55.401 and 10.55.501 all introductions to various accreditation standards.
- The rules proposed to be repealed are on the following pages of the Administrative Rules of Montana:
 - 10.55.201, INTRODUCTION page 10-769 (Auth. Sec. 20-7-101, MCA; IMP, Sec. 20-7-101 MCA.)
 - 10.55.301, INTRODUCTION page 10-774 (Auth. Sec. 20-7-101, MCA; IMP, Sec. 20-7-101 MCA.)
 - 10.55.401, INTRODUCTION page 10-777 (Auth. Sec. 20-7-101, MCA; IMP, Sec. 20-7-101 MCA.)
 - 10.55.501, INTRODUCTION page 10-784 (Auth. Sec. 20-7-101, MCA; IMP, Sec. 20-7-101 MCA.)
- 3. The agency proposes to repeal these rules because they are extraneous to the information in and the purpose of the accreditation standards as found in the Administrative Rules of Montana.
- 4. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to Mr. Allen D. Gunderson, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 13, 1981.
- 5. If a person who is directly affected by the proposed repeal wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Mr. Allen D. Gunderson, 33 South Last Chance Gulch, Helena, Montana 59620, no later than December 13, 1981.

- 6. If the agency receives requests for a public hearing on the proposed repeals from either 10% or 15, whichever is less, of the persons who are directly affected by the proposed repeals; 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 2,000 persons based on 20,000 certified teachers in the state of Montana.
 - 7. The authority and implementing sections are listed at the end of each rule.

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ALLEN D. GUNDERSON, CHAIRMAN BOARD OF PUBLIC EDUCATION

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Certified to the Secretary of State November 2, 1981.

MAR Notice No. 10-3-53

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

In the matter of the repeal of rule 16.10.610, ventilation, and rule 16.10.619, fire safety requirements

NOTICE OF PROPOSED
REPEAL OF RULES
ARM 16.10.610,
AND ARM 16.10.619
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

- 1. On December 16, 1981, the department proposes to repeal rules 16.10.610, ventilation, and 16.10.619, fire safety requirements.
- The rules proposed to be repealed can be found on pages 16-414 and 16-419 through 16-421 of the Administrative Rules of Montana.
- 3. Rules 16.10.610 and 16.10.619 are proposed to be repealed because the subject matter is adequately covered by the rules adopted by the Building Codes Division, Department of Administration (ARM 2.32.101, \underline{et} \underline{seq} .).
- 4. Interested persons may submit their data, views, or arguments concerning the proposed repeal in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than December 14, 1981.
- 5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than December 4. 1981.
- December 4, 1981.

 6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed action, 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 95 based on the number of licensed establishments in Montana.
- 7. The authority of the department to repeal the rules is based on section 50-51-103, MCA, and the rules implement section 50-51-103, MCA.

John J DRYNAN M.D., Director

Certified to the Secretary of State November 2, 198/

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

In the matter of the adoption)
of a rule concerning food)
service requirements)

NOTICE OF PROPOSED ADOPTION OF RULE ARM 16.10.626 (Food Service Requirements) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

- 1. On December 16, 1981, the department proposes to adopt rule 16.10.626 concerning food service requirements.
 - 2. The proposed rule provides as follows:
- 16.10.626 FOOD SERVICE REQUIREMENTS (1) Where a food service is operated as an integral part of an establishment, compliance with ARM Title 16, Chapter 10, subchapter 2, rules for food service establishments is required.
- (a) If the food service is available only to residents of the establishment, licensure as a food service establishment is not required.
- 3. This rule is proposed to clarify what establishments must comply with ARM Title 16, Chapter 10, subchapter 2, rules for food service establishments.
- 4. Interested persons may submit their data, views, or arguments concerning the proposed amendments in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than December 14, 1981.
- 5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Bldg., Capitol Station, Helena, Montana, 59620, no later than December 4, 1981.
- 6. If the agency receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions, 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. The percent of those persons directly affected has been determined to be 95 based on the number of licensed establishments in Montana.
- 7. The authority of the department to adopt the rule is based on section 50-51-103, MCA, and the rule implements section 50-51-103, MCA.

JOHN J. DRYNAN, M.D., Birector

Certified to the Secretary of State $\underline{\lambda}_{Cermber}$ 2.198/21-11/12/81 MAR Notice No. 16-2-201

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

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In the matter of the
                                                  NOTICE OF PROPOSED
amendment of rules 16.10.601, )
                                                  AMENDMENT OF RULES
16.10.602, 16.10.603, 16.10.604, 16.10.605, 16.10.607, 16.10.608,
                                                  16.10.601, 16.10.602,
                                                16.10.603, 16.10.604, 16.10.605, 16.10.605, 16.10.607, 16.10.608, 16.10.609, 16.10.611, 16.10.612, 16.10.615, 16.10.616, 16.10.617, 16.10.620, and 16.10.625
16.10.609, 16.10.611,
16.10.612, 16.10.615,
16.10.616, 16.10.617,
16.10.620, and 16.10.625,
pertaining to policy,
definitions, preconstruction
review, license application,
                                                   (Establishments)
guest registration, structural)
and operational requirements, )
doors and windows, lighting ) and wiring, toilet facilities,)
water supply, beds and bed
linens, cleaning of premises,
employee requirements, and
refuse-storage and disposal
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NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

- 1. On December 16, 1981, the department proposes to amend rules 16.10.601, 16.10.602, 16.10.603, 16.10.604, 16.10.605, 16.10.607, 16.10.608, 16.10.609, 16.10.611, 16.10.612, 16.10.615, 16.10.616, 16.10.617, 16.10.620, and 16.10.625 regarding establishments.
 - 2. The rules as proposed to be amended provide as follows:
- 16.10.601 POLICY (1) It is hereby found and declared that the public welfare requires control and regulation of the operation of establishments providing transient lodging space and/or accommodations, as defined in ARM 16.10.602, and the control, inspection and regulation of persons engaged therein, in order to prevent or eliminate insanitary and unhealthful conditions and practices, which conditions and practices may endanger public health. It is further found and declared that the regulation of establishments providing transient lodging space and/or accommodations as above outlined is in the interest of social well-being and the health and safety of the state and all of its people.
- (2) Under authority of sections 50-51-301 and 50-51-302, MCA, the state and local fire marshal, the health authority, Industrial Accident Board inspectors and state and/or local building, plumbing and electrical inspections are hereby authorized to make inspections of hetels,-metels,-and-teurist hemes establishments for the purpose of controlling or eliminating insanitary, dangerous and unhealthful conditions and practices which may jeopardize public health.

- (3) When hetels,-metels-and-teurist-homes establishments are located in a building shared with other businesses, those areas occupied by other businesses shall not adversely affect the health and safety of the occupants. All safeguards prescribed in the codes for new construction shall apply to the entire building.
- 3. The proposed amendments include rooming houses or retirement homes as establishments providing lodging space and/or accommodations requiring control and regulation, and deletes the term transient.
- 4. The authority of the department to amend the rule is based on section 50-51-103, MCA, and the rule implements section 50-51-103, MCA.

16.10.602 DEFINITIONS

- (1) "Bedding" means and includes mattresses, box springs, mattress covers, mattress pads, sheets, pillow slips, pillows,
- sciences.
- (3) "Building authority" means the Building Codes
 Division, Montana State Department of Administration, or the local authorized authority.
 (3) (4) "Department" means the department of health and

environmental sciences.

- (4) (5) "Employee" means and includes owner, management, operator, custodian, maid, porter, steward, and any other employed by the management.
- (6) "Establishment" means hotels, motels, tourist homes, rooming houses or retirement homes.

 (5) (7) "Executive officer" means the executive officer of

the department of health and environmental sciences.

(6) (8) "Fixtures" means showers, bathtubs, toilet, toilet seats, urinals, lavatories, kitchen sinks, janitor and custodial sinks, utensil wash sinks, and all exposed plumbing integral to them.

(7) (9) "Floors" includes sub-flooring and floor coverings of all rooms including stairways, hallways, and lobbies.

- (9) (10) "Furnishings" means cups, glasses, pitchers, utensils, draperies, curtains, blinds, light fixtures, lamps and lamp shades, chairs, tables, desks, shelves, books, magazines, bookcases, dressers, bedsteads, mattress springs other than box springs, towels, wash cloths, soap, toilet tissue, radios, television, coffee makers, water heaters, pictures, mirrors, cabinets, closets and refrigerators, but not limited thereto.
- (9) (11) "Guest" means each occupant of any unit or any hotel, motel, tourist home or related establishment included in the definition of a hotel, motel or tourist home contained herein.

(10) "Guest room" or "unit" means any room for occupancy, meetings, display, conference or dining and shall include all other rooms integral to the hotel, motel or tourist home unit. In the case of a central toilet and/or shower room,

the term "guest room" or "unit" shall also apply.

(11) (13) "Health authority" means the department of health and environmental sciences, local health officer, local

sanitarian or other authorized representative.

(12) (14) "Hotel" or "motel" means and includes any building or structure kept, used, or maintained as, or advertised as, or held out to the public as a hotel, motel, inn, motor court, tourist court, public lodging house or place where sleeping accommodations are furnished for a fee to transient guests with or without meals.

(13) (15) "License" means a written instrument issued by the department authorizing the oppration of a hotel, motel or tourist home as stipulated under section 50-51-201, MCA.

(14) (16) "Person" includes any individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaged in the business of operating, owning or offering the services of a hotel, motel, or tourist home.

(15) (17) "Plain unit" means a unit wh with a toilet, bathing facility or lavatory. "Plain unit" means a unit which is not equipped

(18) "Rooming house" or "retirement home" means buildings in which separate sleeping rooms are rented providing sleeping accommodations for 3 or more persons on a weekly, semi-monthly, or permanent basis, whether or not meals or central kitchens are provided, but without separated cooking facilities or kitchens within each room and whose occupants do not need professional

nursing services on a full-time basis.

(16) (19) "Sanitarian' means the person who is qualified under Title 37, Chapter 40, Part 3, MCA, and represents the

health officer.

(20) "Sleeping accommodations" means sleeping quarters, the provision of linen service, and housekeeping service, except that the term does not include linen and housekeeping services if such services are provided by residents under the supervision of the operator in association with a resi-

dential care program.

(17) (21) "Tourist home" means any establishment or premises where sleeping accommodations are furnished to transient quests for hire or rent on a daily or weekly rental basis in a private home when such accommodations are furnished for a fee

to transient guests with or without meals.

- The proposed amendments provide definitions, one which is repeated from the Montana Code Annotated for the convenience of the reader, and the other defines a term within "rooming house" or "retirement home."
- The authority of the department to amend the rule is based on section 50-51-103, MCA, and the rule implements section 50-51-103, MCA.

- 16.10.603 PRECONSTRUCTION REVIEW (1) Plans for new construction or for addition or alterations to existing hetels; metels-er-teurist-hemes establishments shall be submitted before construction is begun to the department or local health authority and Building Authority for review and approval. Plans shall consist of working drawings and construction specifications.
- (a)--compliance-with-the-following-codes-and-regulations is-required-for-new-and-extensively-reodeled-hotels,-motels--and-tourist-homes-unless-equivalent-codes-are-in-effect-at-the local-level-
 - (i)-----Montana-Electrical-Code-
 - (ii)-----Montana-Plumbing-Code--
 - (iii)----Regulations-for-Food-Service-Establishments-(iv)-----Uniform-Building-Code-or-the-National-Building
- Gede-
- (v)-----Code-of-the-American-Concrete-Institute(vi)-----Code-of-the-American-Institute-for-Steel

Constructors.

(vii)----American-Safety-Codes-for-Elevators-Dumbwaitersand-Escalators-

- (a) The department hereby adopts and incorporates by reference the State Building Code, as adopted at ARM 2.32.101, which sets forth rules relating to the construction of, installation of equipment in, and standards for materials to be used in buildings. A copy of the State Building Code may be obtained from the Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Cogswell Building, Room B101, Helena, Montana, 59620.
- (b) The department hereby adopts and incorporates by reference the Uniform Fire Code, as adopted at ARM 23.7.111, which sets forth rules relating to the protection of public safety from fire. A copy of the Uniform Fire Code may be obtained from the Food and Consumer Safety Bureau, Department of Health and Environmental Sciences, Cogswell Building, Room B201. Helena, Montana 59620.
- B201, Helena, Montana 59620.

 (2) In addition to the requirements of this sub-chapter, compliance with the State Building Code and Uniform Fire Code
- is required.

 (i) (3) Working drawings and specifications shall be well prepared so that clear, distinct prints may be presented. Accurate dimensions including all necessary explanatory notes, schedules and legends shall be included.
- (ii)------Working-drawings-and-specifications-shall-be complete-and-adequate-for-contract-purpose-----Separate-drawings-shall-be-prepared-for-each-of-the-following-branches-of work--architectural-mechanical-and-electrical-

- -(iii)----In-areas-that-are-not-subject-to-local-or-state
 Zoning--housing-and-building-codes-shall-be-used-as-guidesinsofar-as-such-recommendations-are-not-in-conflict-with-the
 standards-set-forth-hereiny-
- (e)--Approval-or-disapproval-of-the-plans-and-specifications-shall-be-made-based-on-the-codes-and-regulations-listedunder-subsection-(1)(a)-of-this-rule-
- (d) (4) Construction shall not commence until all plans have been approved by those-agencies-listed-under-subsection (1)(b)-ef-this-rule- the department or local health authority and the Building Authority.
- (e) (5) Construction shall be in accordance with the plans as approved unless permission is granted by the department or local health authority and Building Authority to make changes.
- 7. The proposed amendments incorporate by reference the Montana Building Code and delete obsolete references to other codes. The amendments further require plans for new construction or for additions or alterations to existing establishments to be submitted to the department and the Building Codes Division, Montana Department of Administration.
- 8. The authority of the department to amend the rule is based on section 50-51-103, MCA, and the rule implements section 50-51-103, MCA.
- 16.10.604 LICENSE APPLICATION (1) Each year beginning on January 1, each person engaged in the business of conducting or operating a-hetel,-metel,-er-teurist-heme an establishment shall procure a license issued by the department.
- ment shall procure a license issued by the department.

 (2) Applicants for license shall indicate on the application the type or types of business to be conducted. Only one license shall-be is required for a-hetel-metel-er-teurist-hemeran establishment provided that each is located on the same premises and under the same management.
- premises and under the same management.

 (3) Licenses shall be issued upon receipt of a \$20 fee as a matter of right unless conditions exist which, according to the health authority, are grounds for cancellation or denial under section 50-51-209, MCA. Cancellation or denial of license shall be subject to the right of each applicant to a hearing and judicial review as set forth.
- $(\bar{4})$ License fees shall be deposited to the credit of the general fund. Each license shall expire on December 31 of the year in which issued unless cancelled under section 50-51-209, MCA.
- 9. The proposed amendments extend the application of the rule to include rooming houses or retirement homes by deleting reference to specific structures and substituting the term establishment.
- 10. The authority of the department to amend the rule is based on section 50-51-103, MCA, and the rule implements section 50-51-103, MCA.

- 16.10.605 GUEST REGISTRATION (1) The operator of any hetel, motel, extension an establishment shall maintain a legible register or guest registration cards for all guests, including names, complete home address and unit to which assigned.
- 11. The proposed amendments extend application of the rule to include rooming houses or retirement homes and eliminates reference to specific structures by substituting the term establishments.
- 12. The authority of the department to amend the rule is based on section 50-51-103, MCA, and the rule implements section 50-51-103, MCA.
- 16.10.607 GENERAL STRUCTURAL AND OPERATIONAL REQUIREMENTS (1) All hetels,-metels-and-teurist-hemes establishments shall be maintained in a structurally and operationally safe and sound condition and free of obvious defects which may affect the health and safety of the occupants. This requirement shall apply especially to the floors, walls, ceilings, supporting members, electrical circuitry, fire protection, and heating plants. Such buildings shall be maintained so as to prevent insanitary and unhealthful conditions.
- to prevent insanitary and unhealthful conditions.

 (2) The floors of all guest rooms, halls, and lobbies, closets, and stairways shall be easily cleanable and they shall be kept clean and in good repair.
- (3) The walls, ceilings and equipment such as light fixtures, shelves, or anything attached to them shall be easily cleanable and kept clean and in good repair.
- (4) No beds, cots, bunks or other furniture shall be allowed in any unit which will restrict the flow of traffic through the room.
- (5) Each hallway or corridor serving guests which allows entry to or exit from the units shall allow easy egress in emergency situations. Each-hallway-shall-open-to-at-least-two fire-escapes-located-remote-from-each-other-
- (6)--Stairways-and-fre-escapes-shall-be-of-sufficient-width-to-allow-easy-egress-in-emergency-situations,-but-in-no event-shall-they-be-less-than-22-inches-in-width-
- (7) (6) Each hetely-metely-er-teurist-home establishment shall be provided with a minimum of one linen room sufficient in size for storage of clean linen, blankets other bedding, soap, towels, wash cloths, and other furnishings.
- (8) (7) Each hetel, metel, and tourist home establishment shall provide convenient, adequate custodial or utility facilities.
- (9) (8) Adequate space shall be provided between beds so as to allow proper cleaning.
- 13. The proposed amendment extends application of the rule to include rooming houses or retirement homes by deleting reference to specific structures and substituting the

term establishment and deletes reference to subject matter adequately covered by the fire marshal and Building Codes Division, Department of Administration.

- 14. The authority of the department to amend the rule is based on section 50-51-103, MCA, and the rule implements section 50-51-103, MCA.
- $\underline{16.10.608}$ DOORS AND WINDOWS (1) All doors shall open to at least 90° without obstruction.
- (2) All doors shall be of sufficient width to allow easy egress in emergency situations.
- (3)--all-fire-exit-doors-shall-be-outward-opening-and-be equippped-with-panic-hardware-which-can-always-be-opened-from the-inside-without-special-knowledge-or-equipment--This-shall apply-only-to-areas-with-occupant-loads-of-over-50--All-fire exits-are-to-be-provided-with-an-illuminated-exit-sign--where exits-cannot-be-seen-from-every-point-in-the-hallway--illuminated-signs-pointing-to-the-nearest-exit-shall-be-provided-
- (4) (3) All doors including transparent or translucent types shall be made of safe materials. This requirement shall also apply to shower stalls and bathtub enclosures.
- (5)---All-fire-escape-doors-shall-be-provided-with-a lighted-exit-sign-which-shall-be-lighted-at-all-times--
- (6) (4) All living and sleeping rooms shall be equipped with windows or other mechanical facilities which will provide adequate ventilation.
- (7)--Unit-doors-shall-be-provided-with-locks-to-assure-the privacy-of-the-occupants-
- 15. The proposed amendments delete subject matter which is adequately covered by the fire marshal and Building Codes Division, Department of Administration.
- 16. The authority of the department to amend the rule is based on section 50-51-103, MCA, and the rule implements section 50-51-103, MCA.
- 16.10.609 LIGHTING AND WIRING (1) All rooms, including fire escapes, in hetels,-metels,-and-teurist-hemes- establishments shall be provided with enough non-glare lighting so as to provide a minimum of 10 foot candles on all surfaces except those used for reading, shaving, or application of cosmetics. For these areas, a minimum of 20 foot candles is required.
- (2)--Replacements,-additions-to,-or-alterations-of-the existing-wiring-or-circuitry-shall-be-in-conformity-with-the Montana-Electrical-Code-
- (3) (2) Electrical outlets, receptacles, switches, etc. shall be installed and located so as to be safe. This shall apply especially to their location, out of reach while using a shower or bath.
- $\,$ 17. The proposed amendments extend application of the rule to include rooming houses or retirement homes by deleting

reference to specific structures and substituting the term establishment and deletes subject matter adequately covered by the fire marshal and Building Codes Division, Department of Administration .

18. The authority of the department to amend the rule is based on section 50-51-103, MCA, and the rule implements section 50-51-103, MCA.

16.10.611 TOILET FACILITIES (1) Every hetel,-metel-and tourist home establishment shall provide a safe, adequate central toilet, lavatory and bathing facilities for each sex unless toilets, lavatories and bathing facilities are provided in each unit. These facilities shall include hot water at a maximum of 120° F. unless a mixing faucet is provided and cold running water under pressure, soap, wash cloths, toilet tissue, individual clean towels, or other approved drying facilities.

Toilets, lavatories, and bathing fixtures and rooms (2)

shall be kept clean, sanitary, and in good repair.
(3) Toilet tissue is to be provided and conveniently located in all toilet rooms. Covered waste receptacles shall be provided in all public central toilt rooms for women.

- (4) All bathing facilities are to be provided with antislip devices unless the facilities are so designed and constructed so as to prevent slipping. Shower rooms or other enclosures, if provided with a door, shall be installed so that the door open outward from the shower. Sliding doors shall be acceptable.
- (5) Central toilet, bathing and lavatory facilities shall be provided at the ratio of one each for each ten guests or fraction thereof for each sex.
- (6)--Seap-is-net-te-be-left-fer-use-by-subsequent-guests-(7) (6) Strips or bands using the word "sanitized" or conveying a similar meaning placed on toilet seats may be used only when the toilet seat, stool and water tank have been subjected to a sanitizing process approved by the health authority.
- 19. The proposed amendments extend application of the rule to include rooming houses or retirement homes by deleting reference to specific structures and substituting the term establishment and delete an obsolete reference to the subsequent use of soap.
- 20. The authority of the department to amend the rule is based on section 50-51-103, MCA, and the rule implements section 50-51-103, MCA.
- 16.10.612 WATER SUPPLY AND SEWAGE DISPOSAL (1) The water supply shall be of adequate and safe and sanitary quality approved by the department.
- (2) Water shall be supplied at a fairly constant service pressure of not less than 8 pounds per square inch except for direct flush valves which shall not be less than 15 pounds per square inch.

- (3) Safe and unsafe water supplies shall not be cross connected. Municipal and private supplies shall not be cross connected.
- (4) When municipal water supplies are easily available, connections shall be made thereto.
- (5) No well casing shall terminate in any pit or space extending below ground level. All well casings shall be properly sealed and shall terminate above the ground level by at least one foot and by at least 6 inches above the well house floor. All casings shall be surrounded by a concrete floor or collar extending at least 3 feet in all directions and shall slope away from the casing.

(6) Private water supplies, when used, shall have separate wiring to pumps and shall be protected from fire and other physical hazards so that water will always be available for fire fighting.

(7) Ice shall be made from an approved water supply and shall be manufactured, stored, handled, transported and/or served in a manner approved by the health authority.

- (8) All water waste drain lines, including ice storage bins, shall not be connected directly to nor submerged in any trap, drain, receptacle sink or sewer which discharges waste nor to any other source of contamination.
- (9) All water heaters shall be equipped with safe and effective pressure relief valves.
- (10) All sewage shall be disposed of by a public sewerage system or by a private sewage disposal system constructed and operated according to state and local laws and rules.
- 21. The proposed amendments include requirements concerning the disposal of sewage.
- 22. The authority of the department to amend the rule is based on section 50-51-103, MCA, and the rule implements section 50-51-103, MCA.
- 16.10.615 BEDS AND BED LINENS (1) Guest room articles have been shown to be the cause of spread of infections, especially to the skin and upper respiratory system. It, therefore, is the intent and purpose of this rule that cleaning practices and frequencies be used which will minimize the possibility of contamination and infection.
- (2) All hetels,-metels,-and-teurist-hemes- establishments shall provide a bed, bunk, or cot for the use of guests with a mattress, mattress pad or covering or a water-proof plastic covering, pillow, pillow slip, and bottom and top sheets and blankets or comforter and bedspread.
- (3) Bottom sheets shall be of such dimension so as to be able to be tucked under themattress on both sides and both ends. Top sheets shall be of such size so as to be able to be folded over the blanket by at least 4 inches.
- (4) The use of bedding privately owned by the occupant is not recommended.

- (5) All bedding is to be kept clean and in good repair. Clean bed linens, towles and wash cloths are to be furnished each guest. Clean bed linens for each guest are to be provided not less often than weekly. Clean wash cloths and towels are to be provided each guest daily. Soiled linens, wash cloths and/or towels are not to be left in units for subsequent guests.
- (6) All furnishing such as chair,s mattresses, blankets, pillows, comforters, quilts, pads, blinds, curtains, carpets, rugs, lamps and lamp shades, radios, pictures, television sets, dressers, closets, shelves, drawers, waste baskets and cabinets shall be kept clean and in good repair.
- 23. The proposed amendments extend application of the rule to include rooming houses or retirement homes by deleting reference to specific structures and substituting the term establishment.
- 24. The authority of the department to amend the rule is based on section 50-51-103, MCA, and the rule implements section 50-51-103, MCA.
- 16.10.616 LAUNDRY FACILITIES (1) Improper laundering, handling, storing, and/or transporting of bed linens can cause contamination of the clean laundered materials despite the fact that bleach type germicides are employed. Contaminated washables can cause infections, especially to the skin and upper respiratory system. It is, therefore, the intent and purpose of this rule that all safeguards be employed to minimize contamination.
- (2) Laundries, when operated in conjunction with hotels, motels and tourist homes shall be provided with adequate facilities. Equipment shall be installed in accordance with all local, state and national codes pertaining to the proper installation of such equipment.
- (3) All bed linens shall be subjected to an effective germicidal process by ironing at temperatures not less than 300° F., or chemicals, or any other effective method which is approved by the health authority.
- (4) Facilities for handling and sorting clean and soiled laundry shall be provided so as to minimize cross contamination from the soiled to the clean.
- (5) Handwashing facilities shall be provided in the laundry room clean area.
- (6) Air flow control shall be designed so that air flows from the clean area to the soiled. When physical separation between clean and soiled areas is employed, the clean area should be under greater pressure than the soiled area.
- (7) Clothes or laundry chute doors are to be self-closing. Bagging and tying soiled bedding and other materials and transporting by cart to the laundry is preferred over the use of chutes.

- (8)--The-upper-end-of-the-chute-shall-be-equipped-with-asprinkler-head-in-buildings-with-more-than-one-story---Suchopenings-shall-be-protected-against-entrance-of-animalsinsects,-water,-snew,-and-other-foreign-matter---Chutes-shall be-one-hour-fire-resistive-
- The proposed amendments delete reference to subject
- matter adequately covered by the fire marshal and Building Codes Division, Department of Administration.

 26. The authority of the department to amend the rule is based on section 50-51-103, MCA, and the rule implements section 50-51-103, MCA.
- 16.10.617 CLEANING OF PREMISES (1) Each hetel; -metel er-teurist-home establishment shall provide effective daily custodial services.
- (2) Each custodial or utility room shall be kept clean, ventilated and free from odors.
- (3) Mop heads, when used, are to be changed daily using laundered replacements.
- (4) Toilets, bathtubs, lavatories, and showers are ex-pressly forbidden to be used for washing and rinsing of mops,
- brooms, brushes, or any other cleaning devices.

 (5) The transporting, handling and storage of clean bedding is to be done in such a manner as to preclude contam-
- ination by soiled bedding or from other sources.

 (6) Cleaners used in cleaning bathtubs, showers, lavatories, urinals, toilet bowls and seats, and floors should be of a type which are not only cleaners, but contain effective fungicides and/or germicides designed to do a specific job.
- (7) The use of deodorizers and odor-masking agents is prohibited, unless the room in which used is clean to sight and touch.
- Cleaning devices shall be kept separate and used (8) only for designated purposes. Toilet bowl brushes, mops, sponges, etc. shall be used only for cleaning toilet bowls and urinals. Cleaning devices used for showers and bathtubs shall be used for no other purposes. Lavatory cleaning devices shall be used only for lavatories. The above shall not apply to multi-purpose cleaning aids (detergents, sani-
- tizers, germicides, etc.)
 (9) Dry dust mops and dry dust cloths for cleaning purposes are prohibited. Dusting and cleaning shall be accomplished using treated mops, wet mops, treated cloths, and moist cloths or other means approved by the health authorit which will not serve to spread soil from one place to another.
- (10) All hetels,-metels-and-teurist-hemes-establishments shall be kept free of insects.
- The proposed amendments extend application of the rule to include rooming houses and retirement homes by deleting

reference to specific structures and substituting the term establishment.

- 28. The authority of the department to amend the rule is based on section 50-51-103, MCA, and the rule implements section 50-51-103, MCA.
- 16.10.620 EMPLOYEE REQUIREMENTS (1) No employee with any disease in a communicable form, or who is a carrier of such disease shall work in a-hetel--metel-er-teurist-heme an establishment in any capacity which brings him into contact with the production, handling, storage or transporation of foods, water, beverages, ice, equipment, mattresses, bedding, bathroom furnishings, room furnishings, fixtures, lavatory supplies or any other articles used by the guest in the operation of such an establishment.

(2) No operator shall knowingly employ in any capacity any person suspected of or having any disease in a communicable form or of being a carrier of such disease.

- (3) Any employee who has a discharging or infected wound, sore, or lesion on hands, arms, or any other part of the body shall be excluded from the operations which will bring him or her into contact with any of the above articles used by guests in the operation of a-hetel-er-metel- an establishment.
- (4) Any operator among whose employees there occurs a communicable disease or who suspects any employee of having contacted any disease in a communicable form or has become a carrier of such disease shall notify the health officer immediately.
- (5) When suspicion arises as to the possibility of transmission of infection from any employee, the health authority is authorized to require any or all of the following measures:
 - (a) The immediate exclusion of the employee from all
- hetels, metels, and teurist-hemes. establishments.

 (b) The immediate closing of the hetel, metel, establishment operation concerned until, in the opinion of the health authority, no further danger of disease exists.
- (c) Adequate medical examinations of the employee and of his associates with such laboratory examinations as may be indicated.
- (6) Every room after being occupied by anyone known to be suffering from any communicable disease shall be thoroughly disinfected as prescribed by the department rules governing the control of communicable disease in accordance with instructions of a local health officer.
- 29. The proposed amendments extend the application of the rule to include rooming houses or retirement homes by deleting reference to specific structures and substituting the term establishment.
 - 30. The authority of the department to amend the rule

is based on section 50-51-103, MCA, and the rule implements section 50-51-103, MCA.

- 16.10.625 REFUSE -- STORAGE AND DISPOSAL (1) The storage, collection and disposal of refuse at a-hetel,-metel, er-teurist-heme an establishment shall be so conducted as to create no health hazards, rodent harborage, insect breeding areas, accident or fire hazards, air pollution or sanitation problems.
- (2) All refuse shall be stored in washable, rodent-proof tight containers with secured lids. Containers shall be provided in sufficient number and capacity to properly store all refuse between collections.
- (3) Refuse collection racks or storage facilities shall be provided for all refuse containers, designed so as to prevent containers from being tipped.
- 31. The proposed amendments extend application of the rule to include rooming houses or retirement homes by deleting reference to specific structures and substituting the term establishment.
- 32. The authority of the department to amend the rule is based on section 50-51-103, MCA, and the rule implements section 50-51-103, MCA.
- 33. Interested persons may submit their data, views, or arguments concerning the proposed amendments in writing to Robert L. Solomon, Cogswell Building, Capitol Station, Helena, Montana, 59620, no later than December 14, 1981.
- 34. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon, Cogswell Bldg., Capitol Station, Helena, Montana, 59620, no later than December 4, 1981.
- 35. If the agency receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions, 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. The percent of those persons directly affected has been determined to be 95 based on the number of licensed establishments in Montana.

 $\,$ 36. The statutory authority and implementing sections are shown at the end of each rule.

JOHN J. PRYNAN, M.D., Director

Certified to the Secretary of State November 2, 1981

BEFORE THE SECRETARY OF STATE OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF PUBLIC HEARING ON of rules on advisory opinions) PROPOSED ADOPTION OF RULES from the Secretary of State.) RELATING TO ADVISORY OPINIONS.

TO: All Interested Persons:

- 1. On December 14, 1981, at 10:00 a.m., a public hearing will be held in Room 309, Agriculture/Livestock Building, 301 Sanders, Helena, Montana, to consider the adoption of rules relating to advisory opinions.
- 2. The proposed rules do not replace or modify any section currently found in the Administrative Rules of Montana.
 - 3. The proposed rules provide as follows:

RULE I INTRODUCTION (1) Any person taking or wishing to take a particular action, or observing the actions of another, may be unsure whether the Code of Ethics found in Part I, Chapter 2 of Title 2, MCA, or any rule of any agency interpreting that statute, applies to that action. Section 2-2-132(1), MCA, provides that in such event, a person may request an advisory opinion from the secretary of state as to the applicability of that statute or any rule to the questioned activity.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE II ROLE OF THE SECRETARY OF STATE (1) Section 2-2-132(3), MCA, provides that the secretary of state may make rules for the conduct of his affairs under this part.

(2) These are the rules adopted to govern the conduct of the secretary of state under the Code of Ethics and all action shall be taken and affairs conducted according to these rules.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE III ETHICS COMMISSION ESTABLISHED (1) An ethics commission, consisting of six members, appointed by the secretary of state, is hereby created.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE IV PURPOSE (1) The purpose of the Montana ethics commission is to examine requests for advisory opinions which are received by the secretary of state and determine if further consideration of the request is warranted. If so, the commission will examine the facts known to it or found as a result of any investigation it may conduct or of any hearing it may hold, apply the standards established in the Code of Ethics to those facts, and adopt the advisory opinion to be issued by the secretary of state.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE V TERMS OF MEMBERS (1) After the initial terms, the members of the commission shall serve terms of four (4) years each.

- (2) Initially, one member shall be appointed for a term of one year, one member shall be appointed for a term of two years, two members shall be appointed for terms of three years each and two members shall be appointed for terms of four years each.
 - (3) All terms are calculated from January 1, 1982.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE VI VACANCIES (1) Any vacancy in the membership of the commission shall be filled for the unexpired term in the same manner as regular appointments.

(2) A vacancy occurs when a member resigns, is removed, or ceases to possess the qualification required for his or her appointment.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE VII QUALIFICATIONS OF MEMBERS (1) Not more than three members of the commission may be members of the same political party or residents of the same county.

(2) At least three members of the commission must be citizens who are not public officers or employees.

(3) Each member shall be a citizen of the United States and a resident of this state.

(4) At least one member shall be an attorney licensed to practice law in this state.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE <u>VIII REMOVAL OF MEMBERS</u> (1) The secretary of state may remove a member of the commission for cause including but not limited to neglect of duty, misconduct in office, a disability rendering him unable to discharge the powers and duties of the office, or a violation of the ethics code.

(2) Before removing a member from the commission, the secretary of state shall give the member written notice of the reason for the intended action and the member shall have an opportunity to reply.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE IX CHAIRMAN (1) The secretary of state shall annually designate one member of the commission to serve as chairman.

(2) The chairman may make and second motions and vote.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

21-11/12/21

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RULE X OFFICERS (1) At its first meeting of each calendar year, the commission shall elect from among its members any officers, other than chairman, which it deems appropriate and necessary.

AUTH: 2-2-132(3), MCA

IMP: 2-2-132(1)(2), MCA

RULE XI STAFF AND FACILITIES (1) The secretary of state may provide such personnel and obtain such facilities as are necessary to carry out the functions of the commission.

AUTH: 2-2-132(3), MCA

IMP: 2-2-132(1)(2), MCA

RULE XII COMPENSATION (1) Members of the commission are entitled to receive no salary but shall receive travel and per diem as provided in Sections 2-18-501 through 2-18-503, MCA.

AUTH: 2-2-132(3), MCA

IMP: 2-2-132(1)(2), MCA

RULE XIII REPORTS AND RECORDS (1) The commission shall report to the secretary of state at the close of each fiscal year concerning the actions it has taken.

(2) General minutes of all commission meetings, whether held in person or by telephone conference call, shall be kept as a public record.

AUTH: 2-2-132(3), MCA

IMP: 2-2-132(1)(2), MCA

RULE XIV MEETINGS (1) The commission shall meet at least once in each calendar quarter and at other times upon the call of the chairman.

- (2) In determining whether to call meetings in addition to the required quarterly meetings, the chairman must consider the following:
- (a) the impact the contemplated meeting would have on the budget authorized for the work of the commission;
- (b) the number of requests pending for the commission to consider;
- (c) the potential magnitude or special significance of any particular request; and
- (d) any special time considerations which would weigh toward the desirability of a more speedy resolution, such as an upcoming election or pending close of a legislative session.
- (3) The commission shall meet at the time and place to be designated by the chairman.
- (4) If appropriate, the commission may conduct business by telephone conference call.

AUTH: 2-2-132(3), MCA

IMP: 2-2-132(1)(2), MCA

RULE XV QUORUM AND ACTIONS (1) A majority of the membership constitutes a quorum to do business.

- (2) A favorable vote of at least a majority of the entire commission is required to adopt any opinion, resolution, motion, or other decision.
- (3) A vacancy in the membership of the commission shall not impair the right of the remaining members to exercise all the powers of the commission.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XVI DUTIES OF COMMISSION The commission:

(1) Shall inform the attorney general or appropriate county attorney of all cases where, in its opinion an actionable offense has occurred such that it may be appropriate to bring judicial proceedings on behalf of the people.

(2) May recommend to the legislature such further

- (2) May recommend to the legislature such further legislation as the commission considers desirable or necessary to promote and maintain high standards of ethical conduct in government.
- (3) Shall receive requests for advisory opinions under Section 2-2-132, MCA.
- (4) May, however it considers appropriate, provide a continuing program of education and information concerning the provisions of Part I, Chapter 2 of Title 2, MCA, and other provisions of law pertaining to ethics and conflicts of interest.
- (5) Shall prescribe and make available forms for use under these rules.
- (6) Shall accept and file any information related to the purposes of these rules which is voluntarily supplied by any person.
- (7) Shall retain and make available to the public copies of any advisory opinions adopted and issued according to these rules.
- (8) May make a recommendation to any person, body or agency having supervisory responsibility or authority that the person about whom the opinion is written be reprimanded, censured, suspended or removed from office or employ by the supervisory authority.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XVII POWERS OF THE COMMISSION (1) The state ethics commission shall act on behalf of and in the place of the secretary of state and is delegated and may exercise any and all powers which the secretary of state would have the ability to exercise under Section 2-2-132, MCA.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XVIII LIMITATIONS ON ACTIONS (1) The commission may take no action whatsoever on any request which:

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- (a) concerns behavior which occurred more than one year prior to the date of the request; or
- (b) concerns behavior of a person who no longer holds any office or position about which a request could be made.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XIX DEFINITIONS (1) As used in these rules, unless the content otherwise requires:

- (a) The terms "business", "compensation", "employee", "financial interest", "official act", "public officer", "state agency" and "state officer", shall have the meanings stated in Section 2-2-102, MCA.
- (b) "Actionable behavior" means that behavior which, in the judgment of a majority of the members of the commission, may give rise to a cause of action, whether civil or criminal, whether in law or in equity, against an individual, independent of whether or not the behavior is ethical.
- of whether or not the behavior is ethical.

 (c) "Adopt" means that action taken by the commission when a majority of the members concur with a draft opinion of the commission.
- (d) "Advisory opinion" means that statement adopted by the Montana ethics commission and issued by the secretary of state, expressing an opinion concerning a questioned action or behavior.
- (e) "Advisory opinion request" means any request submitted to the secretary of state and qualified as provided in these rules; which requests may be either:
- (i) a "Class I request" which is a request by one person, or an agent for that person, concerning actions he or she is planning to undertake or is currently undertaking and intends to undertake again in the future; or
- (ii) a "Class II request" which is a request concerning actions which have occurred in the past or which have already occurred and are continuing, whether undertaken by the requester or some other person.
- (f) "Commission" means the ethics commission as created and established by these rules.
- (g) "Commission staff" means those persons in the employ of the secretary of state whom he designates to serve the commission as its staff.
- (h) "Commissioner" means a member of the Montana ethics commission.
- (i) "Draft Opinion" means an advisory opinion prepared in draft form by the commission staff prior to its being adopted by the commission.
- adopted by the commission.

 (j) "Hearing Examiner" means a person appointed by the chairman to conduct a hearing on behalf of the commission, or any one commissioner acting as hearing examiner for the commission.
- (k) "Issue" shall mean the process by which the secretary of state shall take advisory opinions which have been adopted

by the commission and make them available to the requesting party and the public.

"Majority" means the next whole number greater than (1)

- "Member of a political party" means any person who has been elected to any office as the nominee of any political party; or has filed for office seeking the nomination of any political party; or who has voluntarily declared himself or herself to be a member of any political party; or who has held any office in an organization which is part of any political party.
- "Requesting Party" means any person who makes a (n) request for an advisory opinion.

(o) "Respondent" means any person about whom an advisory

- opinion has been requested by another.

 (p) "Unethical behavior" means any behavior of an individual which, in the judgment of a majority of the members of the commission, brings into conflict the private interest and the public duty of that individual, regardless of the degree of the conflict and independent of whether the behavior is actionable.
- (2) All other words and phrases should be construed so as to favor the plain meaning of the language used.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XX PRESUMPTIONS (1) Whenever one is acting in his or her official capacity carrying out an official duty, he or she shall be presumed to be acting in the public interest unless it is clearly established otherwise.

- (2) Whenever one is acting in other than an official capacity or outside of his or her official duties, he or she shall be presumed to be acting in his or her private interest, unless it is clearly established otherwise.
- (3) Whenever there is no apparent significant difference between the public interest and any private interest it shall be presumed that the two are not in conflict unless it is clearly established otherwise.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XXI BURDEN OF PROOF (1) Whenever it is alleged that a conflict exists between the public duty and private interest of any person, the burden shall be upon the person alleging such a conflict to prove it by the weight of evidence.

2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XXII COMPUTATION OF TIME (1) In computing any period of time prescribed or allowed by these rules, the day of the act or event after which the designated period of time begins to run is not included. The last day of the

period so computed is to be included unless it is a Saturday, Sunday, or a legal holday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XXIII BASIC PRINCIPAL; PRIORITY (1) It is a basic principal of these rules that requests which present a question about contemplated or potential future activity should be given higher priority in any competition for resources because they are presented when it is still possible for an actor to adjust his or her behavior to conform to the requirements of the law. Requests presenting questions about activity which has already occurred, on the other hand, provide no such opportunity.

- (2) Whenever it may be necessary because of limited time, staff or other resources, to prioritize requests for consideration, the chairman may assign a priority to each request.
- (3) In assigning any priorities, the chairman shall in all cases give requests defined by Rule 44.4.501(e), as "Class I" requests a higher priority than "Class II" requests.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XXIV WHO MAY REQUEST (1) Any person may request an advisory opinion concerning the application of Part 1, Chapter 2 of Title 2, MCA, or any rule prescribed by the secretary of state according to that part, to any action or behavior of themselves or of another.

- (2) One who seeks an opinion concerning his or her own actions and desires to avail themselves of the confidentiality protection afforded by Section 2-2-132, MCA, may make the request through an authorized agent.
- (3) An authorized agent of the requesting person may submit the advisory opinion request in order to protect the identity of the requesting person, but the agent shall disclose the identity of his or her principal in a separate written disclosure addressed to the confidence of the secretary of state. Such separate writing shall specify, in addition to the identity of the principal, the authority by which the agent acts on behalf of the principal and such additional or confidential facts as may be necessary to demonstrate that the principal in fact has a qualified request and that disclosure of such facts in the request itself would reveal the identity of the requesting person.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XXV GROUNDS FOR REQUESTS (1) An advisory opinion request must set forth the specific transaction or activity about which an opinion is being requested.

- (2) The request must specify the class of the request, as defined in (Rule 44.4.501(e)), and set forth sufficient facts to clearly demonstrate that the request falls within that class.
- (3) Requests presenting a general question of interpretation or posing a hypothetical situation may not qualify as advisory opinion requests unless sufficient facts are presented to enable the commission to answer a specific question.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XXVI CONTENTS OF REQUESTS (1) A request for an advisory opinion must be typewritten or printed.

- (2) Advisory opinion requests should be sent or delivered in person to the Secretary of State, Montana State Capitol, Helena, Montana 59620.
 - (3) The advisory opinion request must include:
- (a) the name and address of the requesting person or agent for the requesting person;
 - (b) the name and address of the respondent, if any;
- (c) a detailed statement of the facts upon which the commission is to base its advisory opinion;
- (d) sufficient facts to show that the request falls within either of the classes defined in (Rule 44.4.501(e)), and is not merely a hypothetical question;
- (e) the rule or statute for which the requesting person seeks an advisory opinion;
 - (f) the questions presented;
- (g) any positions of law asserted by the requesting person;
 - (h) the specific relief requested, if any; and
- (i) the name and address of any persons or organizations known to the requesting person as being directly interested in the opinion requested, whether as one who is similarly situated or as one who has a contrary interest, or a statement that the requesting person is aware of no others who are directly interested in the request.
- (4) Every request must contain the verification of the requesting party under oath that he or she has read the request and that the facts set out therein are true.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XXVII QUALIFICATION OF REQUESTS (1) Upon receipt, the commission staff shall review all requests for advisory opinions to determine if the request qualifies under these rules.

(2) If the commission staff determines that a request submitted is incomplete or otherwise does not meet the requirements of these rules, they shall, within 10 calendar days of receipt of such request, notify the requesting person and specify the deficiencies of the request. (3) Each request which qualifies as an advisory opinion request (AOR) under these rules, shall be assigned an AOR number for reference purposes.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XXVIII PUBLIC AVAILABILITY OF REQUESTS (1) Advisory opinion requests which qualify under these rules, shall be made available to the public at the office of the secretary of state promptly upon their receipt and following a determination that they have qualified.

- (2) A copy of the original request and any supplements thereto together with any comments submitted thereon, shall be available for public inspection at the office of the Secretary of State, Montana State Capitol, Helena, Montana 59620.
- (3) Disclosures by an agent of the identity of his or her principal, which are made by separate writing and addressed to the confidence of the secretary of state, shall be kept in confidence by the secretary of state and not made available to the public as per Section 2-2-132(1).

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XXIX COMMENTS ON REQUESTS (1) Any interested person may submit written comments concerning advisory opinion requests at the office of the secretary of state.

- (2) The written comments must be submitted within 10 days following the date the request is made public. Additional time for submission of written comments may be granted upon written request for an extension by the person who wishes to submit comments or may be granted by the secretary of state without an extension request.
- (3) Comments on advisory opinion requests should refer to the AOR number of the request.
- (4) Written comments and requests for additional time to comment shall be sent to the Secretary of State, Montana State Capitol, Helena, Montana 59620.
- (5) Before adopting an advisory opinion, the ethics commission shall accept and consider all written comments submitted within the 10 day comment period or any extension thereof.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XXX REASONABLE GROUNDS (1) Upon qualification of a request and the assigning of an AOR number, the commission staff shall immediately forward to each member a copy of the request together with any public comment received.

request together with any public comment received.

(2) Upon receipt of a copy of a qualified request, each member shall examine such request and reach a conclusion as to whether there are in his or her opinion, reasonable grounds to believe that a violation of the code of ethics has occurred or

may occur in the future, such that the question merits further consideration.

- (3) In reaching such a conclusion, a commissioner may consider the information contained in the request, any comments received from the public, together with any other information which may come to his or her attention.
- (4) Within 10 days after the close of the comment period, each member shall file with the chairman a statement signed by the member that they have read the material provided and that from their examination of the facts, it is their opinion that the advisory opinion request in question either does or does not set forth facts sufficient to demonstrate that there are reasonable grounds to believe that a violation may have occurred such that the matter warrants further consideration.
- (5) Each such statement filed with the chairman shall be available for public inspection.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XXXI HEARINGS ON REQUESTS (1) If a majority of the members of the commission files statements indicating that they do believe there are sufficient grounds to warrant further consideration, then the chairman shall schedule the request for hearing.

(2) Such hearings shall be held and conducted as provided in these rules.

AUTH: 2-2-132(3), MCA IM

IMP: 2-2-132(1)(2), MCA

RULE XXXII DENIAL OF REQUESTS (1) If 10 days have passed since the close of the public comment period and the chairman has not received statements finding reasonable grounds from at least a majority of the members of the commission, then the chairman shall issue an order denying the advisory opinion request.

(2) A copy of the order denying the request shall be mailed to the requesting party and to all persons named in the

request.

(3) An order denying an advisory opinion request shall be signed by the chairman and contain only the statement that the request is being denied because a majority of the commission failed to find reasonable grounds for the request.

(4) A request which is denied for failure to find reasonable grounds for the request may not be resubmitted for six months after the date of denial.

AUTH: 2-2-132(3), MCA

IMP: 2-2-132(1)(2), MCA

RULE XXXIII CONSIDERATION OF REQUESTS (1) In considering requests for advisory opinions and deliberating thereon, it shall be the duty of each member of the commission to interpret

the standards set forth in the code of ethics and apply that code to the facts and circumstances surrounding each request.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XXXIV DRAFT OPINIONS (1) Once the hearing has been held, waived or otherwise stipulated to, the commission staff shall, within 30 days and after consultation with the members, prepare a draft advisory opinion and distribute it to the members.

(2) Members of the commission may consider a draft opinion for up to 10 days during which time they may either sign the opinion indicating their concurrence and return it to the chairman or file with the chairman a statement of nonconcurrence specifying any reasons they wish to set forth.

(3) If a majority of the commission files statements of nonconcurrence, then the chairman shall request that the staff prepare another draft opinion in accordance with any comments received and submit the same to the commission within 30 days.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XXXV PROCEDURE TO ADOPT OPINIONS (1) If a majority of the commission signs a copy of a draft opinion thus indicating their concurrence with the opinion, then that opinion shall have been adopted by the commission.

(2) Each advisory opinion adopted by the commission shall be forwarded to the secretary of state for issue.

(3) No draft opinion shall be considered the opinion of the commission unless it is concurred in by four or more members.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XXXVI DISMISSING REQUEST WITHOUT OPINION (1) If a majority of the commission neither concurs with the draft opinion nor files statements of nonconcurrence within the specified time, then the chairman shall dismiss the request without opinion.

(2) A copy of the order dismissing the request shall be mailed to the requesting party and to all persons named in the request.

(3) An order dismissing a request without opinion shall be signed by the chairman and contain only the statement that the request is being dismissed because a majority of the commission failed to concur in an opinion.

(4) A request which is dismissed without opinion may not be resubmitted for six months from the date of dismissal unless it appears from the request that sufficient facts have changed to warrant resubmission.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XXXVII EXPEDITED PROCEDURE (1) In all cases, the person about whom a request is submitted may, at any time, waive either the hearing or the determination of reasonable grounds or both.

(2) In the event that one or the other or both of these steps are waived, the process will continue as if the step that has been waived had been completed.

(3) Each such waiver must be in writing except that any request by a person concerning any behavior or activity that was their own will be presumed to waive both the hearing and the determination of reasonable grounds unless the request clearly specifies otherwise.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XXXVIII ADVISORY OPINIONS TO INCLUDE (1) Each advisory opinion adopted by the commission shall include a statement about whether the action or behavior in question was, is or would be considered ethical or unethical and whether that action would be considered actionable.

- (2) If the activity in question is considered actionable, the commission may include in its opinion the recommendation that the opinion be forwarded to the appropriate county attorney for further proceedings.
- (3) Each commission opinion may include guidance to the person about whom the opinion is written on questions such as whether;
- (a) a conflict exists between his or her personal interest and his or her official duty;
- (b) the official duties involve the use of discretionary judgment whose exercise in the particular matter would have a significant effect upon the disposition of the matter;
- (c) the conflict would materially affect the independence of judgment of a reasonable person in a similar situation;
- (d) he or she possesses special knowledge which is an indispensable asset of the public agency and is needed by it to reach a sound decision; and
- (e) it would be appropriate to withdraw or abstain from participation, disclose the nature of the conflicting personal interest, or pursue some other designated course of action in the matter.
- (4) Each advisory opinion may include a statement to the appropriate supervising authority that the person about whom the opinion is written be censured, reprimanded or removed from office or employment.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XXXIX PROCEDURE TO ISSUE (1) Within 5 days after an advisory opinion which has been adopted by the commission is forwarded to him, the secretary of state shall issue to the requesting person the written advisory opinion.

- (2) A copy of the advisory opinion so issued shall be made available to the public and shall be distributed to all persons named in the request.
- (3) The secretary of state may issue advisory opinions pertaining only to Part 1, Chapter 2 of Title 2, MCA, or the rules duly prescribed under those statutes.
- (4) No opinion of an advisory nature may be issued by the secretary of state or any of his employees except in accordance with these rules.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XL EFFECT OF ADVISORY OPINION (1) An advisory opinion shall be binding as between the state ethics commission and the requesting party, to the extent that it affects the conduct of their affairs concerning the set of facts presented in the request.

(2) Unless specifically overturned, an advisory opinion may be relied on as precedence for any future questions presented concerning a similar set of facts.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XLI INTRODUCTION (1) The following rules describe the procedure to be followed by the Montana Ethics Commission in investigating requests for advisory opinions. If any rule, sentence, paragraph, or section of these rules or the application thereof to any persons or circumstances shall be adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any rule shall lose its force and effect, such judgment or action shall not affect, impair, or void the remainder of these rules.

(2) In applying these procedural rules, particular care shall be taken to protect the rights of lay persons appearing before the commission without the assistance of counsel. Any procedural requirement prescribed herein may be waived or modified by the commission or hearing examiner where to adhere to strict procedural requirements would create a substantial injustice. Likewise, the procedural requirements prescribed in these rules may not be waived where to do so would create substantial injustice or defeat the purpose of the ethics laws or these rules.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XLII PREHEARING PROCEDURE (1) The prehearing stage is that period from the filing of a request until the request is certified for hearing or disposed of without hearing. During the prehearing stage, the staff receives, qualifies, and investigates requests for advisory opinions. In addition, the commission determines whether there are reasonable grounds to believe that a violation of the code of ethics has occurred

or may occur in the future. If the commission finds reasonable grounds, the case is certified to the commission for hearing.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XLIII INTERVENTION (1) Any person or organization not originally a party to a request filed with the commission may intervene in the request if, in the judgment of the chairman (prior to certification for public hearing) or the commission or hearing examiner (subsequent to certification for public hearing), such action will assist in the orderly disposition or presentation of the case.

(2) Intervention may be permitted at any time, provided however, that in the case of a petition for intervention filed after a case is certified for public hearing, results which produce unfair advantage or undue surprise shall be avoided.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XLIV COMMENCEMENT OF INVESTIGATION (1) Once a request has been received by the commission, the commission staff shall commence investigation of the complaint. In conducting the investigation, the staff should contact the requesting party (or the person on whose behalf the request was filed) to ascertain the basis for the request and to inquire as to such additional facts and allegations as may be necessary to establish reasonable grounds for the request.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XLV INVESTIGATION; POWERS OF COMMISSION (1) The staff of the commission, in investigating a request for an advisory opinion may exercise any and all of the powers of the commission. These include the power to take the testimony of any person under oath, administer oaths, serve interrogatories and require the production for examination of tangible evidence, such as documents, relating to the case.

(2) The powers of the commission to conduct investigations as described herein are continuing from the time that a request is filed until the opinion is issued, or a hearing on the request is held.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XLVI FAILURE TO COOPERATE WITH INVESTIGATION

(1) Whenever any requesting party (or the person on whose behalf the request was filed) refuses to comply with a request by the commission or its staff for information or evidence reasonably necessary for the investigation of the request, the chairman may administratively close the case for failure of the requesting party to cooperate with the commission, or may dismiss so much of the request as relates to that requesting party.

(2) If reasonable grounds are found but the requesting party is unwilling to proceed to a hearing before the commission, the chairman shall also administratively close the case, or so much of the request as relates to that requesting party.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XLVII FAILURE OF RESPONDENT TO COOPERATE WITH INVESTIGATION (1) Whenever any respondent shall refuse to comply with a request by the commission or its staff for information or evidence reasonably necessary for the investigation of the request, the commission may proceed without that information or evidence.

(2) In such event, the commission may make whatever assumptions it deems appropriate including the assumption that the allegations contained in the request are true.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XLVIII PREHEARING INVESTIGATION REPORT (1) When a request is received and qualified, the commission staff shall undertake a prompt investigation of the allegations contained in the request to determine if there are reasonable grounds to believe that a violation of the code may have occurred.

- (2) By the end of the public comment period, the commission staff shall prepare a report of its investigation and forward it to the members of the commission for their consideration.
- (3) The investigation report shall not be made available to the public until such time as the commission has made a determination of either reasonable grounds or no reasonable grounds.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE XLIX CERTIFICATION OF A REQUEST FOR HEARING (1) Whenever the chairman has determined that a majority of the commission have filed statements that reasonable grounds do exist to believe that a violation of the code of ethics either has or may occur, then the chairman shall notify the other members that the request will be set for hearing, providing that the requesting party is willing to proceed to a hearing before the commission at that time.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE L NOTICE OF CERTIFICATION FOR HEARING (1) Notice that a request has been certified to the commission for hearing and a copy of the request shall be mailed to all parties.

- (2) Notice that a request has been certified to the commission for hearing shall include:
- (a) a statement indicating that the request has been certified to the commission for hearing;
- (b) a statement indicating that the commission or hearing examiner will set a time and place for hearing and notify the parties;
- (c) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (d) a reference to the particular sections of the statutes and rules involved;
 - (e) a copy of the request;
 - (f) a copy of the commission's procedural rules; and
- (g) a provision advising the parties of their right to be represented by counsel at the hearing.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE LI DETERMINING TIME AND PLACE FOR HEARING

- (1) The chairman shall schedule the request for hearing at the next meeting of the commission at which there will be sufficient time to hear the matter.
- (2) In scheduling a matter for hearing, the chairman may direct the staff to attend to any necessary details which do not affect the substantive merits of the request.
- (3) The commission may, in its discretion, appoint a hearing examiner to hear the matter on its behalf. Such hearing examiner may be any single commissioner, any member of the commission staff, or the secretary of state.
- (4) When the chairman or the hearing examiner appointed to hear a complaint has determined a time and place for hearing, notice of the time and place shall be served on each party. Service by first class U.S. mail or personal delivery shall be sufficient service under this rule. Whenever a hearing examiner has been appointed, the name and address of the hearing examiner shall be included in the notice.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE LII PRESENTATION OF CASE IN SUPPORT OR REQUEST (1) At hearing, the requesting party may present his or her own case, may be represented by counsel of his or her own choosing, or the case in support of the request may be presented by the commission staff. The secretary of state shall determine, in any given case, whether the commission staff shall be available to present the case in support of the request.

(2) Relevant considerations in deciding whether the staff should present the case in support of the request at the hearing include the wishes of the requesting party, the presence or absence of any disagreements between the requesting party and the staff concerning the conduct of the case, the significance and the complexity of the case, and the workload of the staff.

(3) The staff is not obligated to present the case in support of the request of any requesting party nor is the requesting party obligated to agree to presentation of his or her case by the staff.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE LIII WAIVER OF HEARING (1) The respondent may, at any time, waive his or her right to proceed to hearing on the request. Such waiver may be made with or without the filing of a written response to the request.

- (2) If a response is filed, the requesting party shall be permitted 10 days in which to submit any supplemental statement of position.
- (3) If waiver is made without a response, or after the response and any supplemental statement have been filed, the commission staff shall proceed as if the hearing were complete and prepare its draft opinion based on the information available.

AUTH: 2-2-132(3), MCA IMP: 2+2-132(1)(2), MCA

RULE LIV FAILURE TO APPEAR AT HEARING (1) When notice of a hearing has been given but a party fails to appear at the time specified for hearing, the commission may proceed with whatever information is before it. If the defaulting party is able to show good cause for the absence, a new hearing date may be set.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE LV SUBPOENAS (1) Whenever in the discretion of the commission or hearing examiner it is deemed necessary to compel the attendance of witnesses or the production for examination of any books, papers, documents, or other tangible evidence relating to any matter under investigation or in question before the commission, the commission or hearing examiner may issue a subpoena or subpoena for production of documentary evidence and thereby compel such attendance of witnesses or production of books, papers, documents, or other tangible things.

- (2) Upon written application by the staff, or by any party once a case is certified for hearing, the commission or the hearing examiner may, for good cause shown, issue a subpoena or subpoena for production of documentary evidence in the name of the commission and deliver such subpoena to the party requesting it or the party's attorney. The party requesting the subpoena shall attend to its service according to the Montana Rules of Civil Procedure relating to service of subpoenas generally.
- (3) Any cost of service of a subpoena or subpoena for production of documents, witness and mileage fees shall be borne by the party requesting the subpoena. Fees shall be the

same as those allowed in the case of a civil action in the district court.

- (4) On failure of any person to obey a subpoena, the party who requested the subpoena, or the commission, or the hearing examiner, may make application to the district court for an order from the court enforcing the subpoena.
- (5) Failure of the requesting party to obey a subpoena or subpoena duces tecum may be grounds for dismissal of the request.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE LVI HEARING EXAMINERS (1) Hearing examiners or commission members acting in that capacity have the following powers, in addition to the powers described elsewhere in these rules:

- (a) to administer oaths or affirmations:
- (b) issue subpoenas;
- (c) provide for the taking of testimony by deposition;
- (d) regulate the course of hearing, including setting the time and place for continued hearings and fixing the time for filing of briefs and other documents; and
- (e) direct parties to appear and confer to consider simplification of the issues by consent of the parties.
 - (2) All testimony shall be given under oath or affirmation.
- (3) The commission shall determine the qualifications for and shall appoint hearing examiners as it shall deem appropriate. In addition, any member of the commission may serve as hearing examiner in any case.

(4) The commission shall advise all parties of the appointment of a hearing examiner or of the intention of the commission to hear the request.

AUTH: 2-2-132(3), MCA IMP: 2-2-132(1)(2), MCA

RULE LVII HEARING (1) The hearing shall be conducted before at least four members of the commission, or a designated hearing examiner.

- (2) At the discretion of the presiding officer, the hearing shall be conducted in the following manner:
- (a) statement and evidence of parties in support of the request;
- (b) statement and evidence of parties disputing the request; and
 - (c) rebuttal testimony.
- (3) The presiding officer and the parties or their attorneys shall have the right to question, examine or crossexamine any witnesses.
- (4) The hearing may be continued with recesses as determined by the presiding officer.
- (5) The presiding officer will insure that all parties are afforded the opportunity to respond and present evidence and argument on all issues involved.

(6) Exhibits shall be marked and the marking shall identify the person offering the exhibits. The exhibits shall be preserved by the commission as part of the record of the proceedings.

(7) The commission or hearing examiner may request the parties to file briefs and proposed findings, conclusions and orders subsequent to the hearing according to such time schedule as the commission or hearing examiner may specify.

AUTH: 2-2-132(3), MCA

IMP: 2-2-132(1)(2), MCA

- The rules are proposed to establish a mechanism for the request and issuance of advisory opinions under Section 2-2-132, MCA.
- Interested persons may present their data, views, or 5. arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Larry Akey, Office of the Secretary of State, Montana State Capitol, Helena, Montana 59620, no later than December 14,

Larry Akey, Office of the Secretary of State, has been designated to preside over and conduct the hearing.

The authority and implementing sections to make the proposed rules are listed at the end of each proposed rule.

Secketary of State

Dated this 2nd day of November, 1981.

BEFORE THE SECRETARY OF STATE OF THE STATE OF MONTANA

In the matter of the amendment of rule pertaining to) the adoption of the attorney) general's model rules. NOTICE OF PROPOSED AMENDMENT OF RULE 44.2.101 Incorporation of Model Rules. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons:

- 1. On December 12, 1981, the Secretary of State proposes to amend rule 44.2.101 Incorporation of Model Rules.
 - 2. The rule as proposed to be amended provides as follows:
- 44.2.101 INCORPORATION OF MODEL RULES (1) The-office-of the-secretary-of-state-adopts-certain-attorney-general's-model procedural-rules-and-all-subsequent-amendments-to-the-model procedural-rules-and-incorporates-herein-those-rules-by-reference. The-model-rules-adopted-are-as-follows: ARM-1:3:101, 1:3:102, 1:3:202-through-1:3:211, 1:3:227-through-1:3:221, 1:3:233, 1:3:234 The secretary of state hereby adopts and incorporates by reference ARM 1:3:102, 1:3:206 through ARM 1:3:211, and ARM 1:3:227 through ARM 1:3:234, relating to citizen's participation, noticing and hearing procedures, and declaratory rulings. A copy of the model rules may be obtained from the Secretary of State, Montana State Capitol, Helena, Montana, 59620.
- 3. The rule is proposed to be amended to meet the requirements of 2-4-307, MCA and ARM 1.2.211.
- 4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Alan Robertson, Office of the Secretary of State, Montana State Capitol, Helena, Montana, 59620, no later than December 10, 1981.

5. The authority to make the proposed amendment is based on 2-4-201, MCA and the rule implements 2-4-202, MCA.

IM WALTERMIRE ecretary of State

Dated this 2nd day of November 1981.

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

In the matter of the amendments of Rules 46.12.523, 46.12.524, 46.12.527, 46.12.532, 46.12.537, 46.12.542, 46.12.547, 46.12.557, 46.12.567, 46.12.582, 46.12.605, 46.12.905, 46.12.915, 46.12.1015, and 46.12.1025 pertaining to medical services, reimbursement.)	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS TO RULES 46.12.523, 46.12.524, 46.12.527, 46.12.532, 46.12.537, 46.12.542, 46.12.547, 46.12.557, 46.12.567, 46.12.582, 46.12.605,
and 46.12.1025 pertaining to	ý	46.12.557, 46.12.567,
medical services, reimbursement.)	46.12.582, 46.12.605, 46.12.905, 46.12.915,
	ý	46.12.1015, AND
)	46.12.1025 PERTAINING TO MEDICAL SERVICES, REIM-
)	BURSEMENT

To: All Interested Persons:

- 1. On December 2, 1981, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, ll1 Sanders, Helena, Montana, to consider the amendments of Rules 46.12.523, 46.12.524, 46.12.527, 46.12.532, 46.12.537, 46.12.542, 46.12.547, 46.12.557, 46.12.567, 46.12.582, 46.12.605, 46.12.905, 46.12.915, 46.12.1015, and 46.12.1025 pertaining to medical services, reimbursement.
 - 2. Rule 46.12.523 is proposed to be amended as follows:

46.12.523 PODIATRY SERVICES, REIMBURSEMENT/MEDICINE PROCEDURES

(1) OFFICE PODIATRIC MEDICAL SERVICES

New Patient

90000	Brief service - \$15-57 \$17.13
90010	Limited service - \$23-34 \$25.67
90015	Intermediate service - \$38-91 \$42.80
90020	Comprehensive service - \$54.49 \$59.94

Established Patient

90030	Minimal service - \$6.23 \$6.85
90040	Brief service - \$9+34 \$10.27
90050	Limited service - \$12-45 \$13.70

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90060	Intermediate service - \$15.57 \$17.13
90070	Extended service - \$23.34 <u>\$25.67</u>
90080	Comprehensive service - \$38-91 \$42.80
(2)	HOME PODIATRIC MEDICAL SERVICES
New Patie	<u>nt</u>
90100	Brief service - \$23+34 \$25.67
90110	Limited service - \$31-12 \$34.23
90115	Intermediate service - \$38+90 \$42.79
90117	Extended service - \$46 -68 \$51.35
Establish	ed Patient
90130	Minimal service - \$11-67 \$12.84
90140	Brief service - 615-56 <u>\$17.12</u>
90150	Limited service - 623-34 \$25.67
90160	Intermediate service - \$27-23 \$29.95
90170	Extended service - \$31-12 \$34.23
(3)	HOSPITAL PODIATRIC MEDICAL SERVICES
New and E	stablished Patient
Initial Ho	ospital Care
90200	Brief history and examination, initiation of diagnostic and treatment programs, and preparation of hospital records - \$23.34 \$25.67
90215	Intermediate history and examination, initiation of diagnosis and treatment programs, and preparation of hospital records - $\$33.73$ $\$37.10$
90220	Comprehensive history and examination, initiation of diagnostic and treatment programs, and preparation of hospital records - $$54-47$ $$59.92$

Subsequent Hospital Care

90240	Brief service - \$9-34 \$10.27
90250	Limited service - \$11 -80 <u>\$12.98</u>
90260	Intermediate service - \$23-34 \$25.67
90270	Extended service - \$31-13 \$34.24
90280	Comprehensive service - \$31:13 \$34.24

(4) SKILLED NURSING, INTERMEDIATE CARE, AND LONG-TERM CARE FACILITIES

New or Established Patient

Initial Care

90300	Brief history and physical examination, initiation
	of diagnostic and treatment programs, and prepara-
	tion of hospital records - \$23,34 \$25.67

- 90315 Intermediate history and physical examination, initiation of diagnostic and treatment programs, and preparation of hospital records \$38-91 \$42.80
- 90320 Comprehensive history and physical examination, initiation of diagnostic and treatment programs, and preparation of hospital records \$54-46 \$59.91

Subsequent Care

90340	Brief service - \$9-34 \$10.27
90350	Limited service - \$15.57 <u>\$17.13</u>
90360	Intermediate service - \$23-34 \$25.67
90370	Extended service - \$31-12 \$34.23

(5) NURSING HOME, BOARDING HOME, DOMICILIARY, OR CUSTO-DIAL CARE MEDICAL SERVICES

New Patient

90400 Brief services - \$23-34 \$25.67

90410	Limited service - \$31-13 \$34.24
90415	Intermediate service ~ \$38-91 \$42.80
90420	Comprehensive service - BR
Establishe	ed Patient
90430	Minimal service - \$11.67 \$12.84
90440	Brief service - \$15:57 \$17.13
90450	Limited service \$23-34 \$25.67
90460	Intermediate service - \$23-34 \$25.67
90470	Extended service - \$31-13 \$34.24
(6)	EMERGENCY DEPARTMENT PODIATRIC MEDICAL SERVICES
New Patier	<u>nt</u>
90500	Minimal service - \$6-22 <u>\$6.84</u>
90505	Brief service - \$15.57 \$17.13
90510	Limited service - \$23-34 \$25.67
90515	Intermediate service - \$38.91 \$42.80
90517	Extended service - \$46-68 \$51.35
Establish	ed Patient
90530	Minimal service - \$6.22 \$6.84
90540	Brief service - 69-33 <u>\$10.26</u>
90550	Limited service - \$12-24 <u>\$13.46</u>
90560	Intermediate service - \$15.55 \$17.10
90570	Extended service - \$23-34 <u>\$25.67</u>
(7)	CONSULTATIONS
90600	Limited consultation - \$23-34 \$25.67

90605	Intermediate consultation - \$31-13 \$34.24
90610	Extensive consultation - \$33.74 \$37.11
90620	Comprehensive consultation - \$54-47 \$59.92
90630	Complex consultation \$54.47 \$59.92
Other Prod	cedures
90699	Unlisted medical service, general - BR
(8)	IMMUNIZATION INJECTIONS
90720	Immunizations, each (includes supply of materials); tetanus toxoid, - $$4.49$ $$4.84$
(9)	THERAPEUTIC INJECTIONS
90782	Therapeutic injection of medication (specify); subcutaneous or intramuscular - $$6.23$
90784	Intravenous - \$11.12 \$12.23
90788	Intramuscular injection of antibiotic (specify) - $\$6.23$ $\$6.85$
(10)	CARDIOVASCULAR PODIATRIC MEDICAL SERVICES
<u>Podiatric</u>	Vascular Studies
93700	Peripheral vascular disease study - BR - not to exceed - $\$94-62$ $\frac{\$104.08}{}$
93725	Plethysmography, regional - BR - not to exceed - $\$37\text{-}85$ $\frac{\$41.64}{}$
93740	Temperature gradient studies - BR - not to exceed - $\$26\text{-}49$ $\frac{\$29.14}{}$
93762	Thermogram, peripheral - BR
93770	Determination of venous pressure - \$7.78 \$8.56

(11) OTHER PODIATRIC PROCEDURES

93799 Unlisted cardiovascular service or procedure (see guidelines) - BR

(12) MISCELLANEOUS PODIATRIC DIAGNOSTIC SERVICES

- 95831 Muscle testing, manual, per extremity with report \$12.45 \$13.70
- 95842 Muscle testing, electrodiagnosis (reaction of degeneration, chromaximetry, strength duration curve or cathode/tetanus ratio), one extremity, any one method \$18-68 \$20.55
- 95843 each additional method \$18-68 \$20.55
- 95851 Range of motion measurements and report, each extremity (independent procedure) \$12.45 \$13.70
- 95860 Electromyography, one extremity and related paraspinal area \$62:25 \$68.48
- 95861 Two extremities and related paraspinal area \$93.737 \$102.71
- 95900 Nerve conduction velocity study, motor or sensory, each nerve \$24.89 \$27.38
- 95905 Contralateral nerve \$18+67 \$20.54
- 95910 Nerve conduction velocity study, motor and sensory, each nerve \$43.56 \$47.92
- 95915 Contralateral nerve \$37-34 \$41.07
- 95920 Nerve conduction velocity study, additional ipsolateral or contralateral nerve - \$24-89 \$27.38
- 95930 Achilles reflex response, electrical recording (ART) (For ultrasonsography, see 76500-76999) \$7-78 \$8.56
- 95999 Unlisted micellaneous diagnostic service or procedure (see guidelines) BR

(13) PODIATRIC PHYSICAL MEDICINE, MODALITIES

97000 Office visit with one of the following modalities to one area:

Hot or cold packs - \$9 + 34 $\frac{\$10.27}{10.27}$ Traction, mechanical - \$9 + 34 $\frac{\$10.27}{10.27}$ Electrical stimulation (unattended) - \$9 + 34 $\frac{\$10.27}{10.27}$ Vasopneumatic devices - 69.34 510.27 Paraffin bath - 69.34 510.27 Microwave - 69.34 510.27 Whirlpool - 69.34 510.27 Diathermy - 69.34 510.27 Infrared - 69.34 510.27 Ultraviolet - 69.34 510.27

97050 Office visit with two or more modalities to same area - $$\pm 9 \pm 1 \pm 11.12

Procedures

97100 Office visit with one of the following procedures to one area, initial 30 minutes:

Therapeutic exercises - \$\frac{\pmatrix}{\pmatrix}\$\frac{\pmatrix}{\p

97101 Each additional 15 minutes - \$3:89 \$4.28

97200 Office visit, including combination of any modality(s) and procedure(s), initial 30 minutes - \$\frac{\$\frac{12-45}{213.70}}{}

97201 each additional 15 minutes - \$3-89 \$4.28

Test and Measurements

97700 Office visit, including one of the following tests and measurements, with report, initial 30 minutes - \$18.68 \$20.55

Orthotic checkout - \$18-68 \$20.55 Prosthetic checkout - \$18-68 \$20.55

97701 each additional 15 minutes - \$9-34 \$10.27

97720 Extremity testing for strength, dexterity or stamina, initial 30 minutes - \$18-67 \$20.54

97721 each additional 15 minutes - \$9-34 \$10.27
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97740	Kinetic	activ	ities	to	incre	ase	coor	dinati	ion,
	strength extremiti \$20.54	and/or es or	range trunk),	of ir	motion, nitial 3	one O mi	area nutes	(any - \$16	two 3-67

- 97741 each additional 15 minutes \$9+34 \$10.27
- 97742 Foot imprints and/or outlines. Independent procedure for prescribing for planter foot pads or plates or for evaluating surface contact areas of feet \$11.67 \$12.84
- 97743 Foot, ankle and leg measurements, including foot imprints and outlines of feet for prescribing of orthotics, prosthetics or custom-hand made shoes for orthopedic foot deformities \$38.790 \$42.79
 - (14) PODIATRIC ORTHOMECHANICAL SERVICES AND PROCEDURES

Ankle-Foot Orthoses

- 97750 Ankle-foot orthoses, spring wire type with shoe attachment BR
- 97754 Ankle-joint orthoses, flexible or static posterior, molded plastic shell with foot plate insert, (specify when cast by orthotist) BR
- 97757 Ankle brace without modification, with or without stays (stock item), single \$11.84

Metal Foot Plates

- 97758 Shaeffer plate or any other custom made metal plate (custom made to model), single \$38+98 \$42.79
- 97759 Shaeffer plate (custom made to model) pair $\$77\pm80$ \$85.58
- 97766 Mobilization of toe or toe-joint by use of an orthodigital traction device (toe aligning sling) made to plaster model for the correction of hallux valgus, hammer toe, underlapping or overlapping toe, etc., single \$31-12 \$34.23
- 97767 same as for 97766 but for pair \$62-24 \$68.46

Thermoplastic Plastes, (Biochemical)

97768 Stabilization and/or mobilization of foot by use of a thermoplastic orthotic (custom made to model and

	biomechanically), with forefoot post, single - $\$38-90$ $$42.79$
97769	same as for 97768 but for pair - \$77-90 \$85.69
97770 \$8.56	Addition of rearfoot post, single - \$7.78
977 7 1	Addition of rearfoot post, pair - \$15-56 \$17.12
97772	Addition of forefoot post, single - \$7.78 \$8.56
97773	Addition of forefoot post, pair - \$15.56 \$17.12
97774	Stabilization of heel by use of heel stabilizer, made to plaster model, single - \$38-90 \$42.79
97775	same as for 97774 but for a pair - \$77-89 \$85.58
97776	Heel stabilizer, (plastic heel cup), stock item, single - \$3.89 \$4.28
97777	Same as 97776 but for a pair - \$7.78 \$8.56
Shoes	
97785	Stabilization and/or mobilization of foot by use of exterior modifications to shoes such as orthopedic heels, comma bars, heel or sole wedges, etc. pair; or buildup for shortage, per shoe - \$15-56 \$17.12
97786	Stabilization and restoration of balance to feet, ankles and superstructure by use of custom built shoes made to models, measurements, imprints and orthotic fittings and adjustments for shortage of foot and/or leg, pair - BR

Molded Inlay (Balance Inlays)

97795 The stabilization, balance and mobilization of the foot, partial or total by use of a full extension or partial molded inlay made to foot models with an elevation up to 3/4" and with a matching insert as an interior shoe modification. Removable type, (all types of balance inlays, Bergmann, Levy, Grachman, Contur-A-Mold, Molded Latex, etc.) Single with matching insert or a pair - \$77.80 \$85.58

Shoe Modifications, Interior (Shoe paddings, etc.)

97796 The stabilization and removal of pressure from the affected areas of the feet by use and application of accommodative shoe paddings to the interior of the shoe, pair - \$15.56 \$17.12

Stabilization, equilibrium and restoration of balance to the feet and legs by use of an interior 97797 modification for the shoe by means of a removable insert formed as a prosthetic for amputation of toe, toes or forefoot. Single with matching insert to balance the normal foot - BR

Splints, Mechanical

Mobilization and/or partial immobilization of joint motions in foot and leg by use of one of the follow-97798 ing types of splints attached to shoes and adjusted to shoes and adjusted as indicated for the specific

deformity:

Brachman splint - \$38-99 \$42.79 Denis-Browne splint - \$38.79 \$42.79 Filauer splint - \$38.90 \$42.79 Ganley splint - \$38-90 \$42.79 Gottler splint - \$38-90 \$42.79 Friedman splint - \$38-90 \$42.79 Single splint - \$38-90 \$42.79

Splint, Molded

97891

97901 Immobilization, total or partial of foot and/or ankle by use of splints, such as a posterior molded splint, made of plaster, metal or acrylic (plastic) type of material and attached to the foot and leg. Below knee splint, single, independent procedure -

97892

97902 Immobilization, total or partial of foot and toes by use of a Plantar Full Extension molded splint, made of either plaster, metal or acrylic forms of material and attached to the foot for other surgical conditions, Single - BR

Cast Impressions and Models

97893

Plaster foot cast, negative impression, of a toe or part of the foot, as an independent procedure for prescribing of an orthotic or prosthetic. Single -97903 \$15:56 \$17.12

97894 97904 Same as 97803 97903 but for a pair - \$31-12 \$34.23 99082 Usual travel (eg, transportation and escort of patient) - BR

- 3. The authority of the agency to amend the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101 and 53-6-141, MCA.
 - Rule 46.12.524 is proposed to be amended as follows:

46.12.524 PODIATRY SERVICES REIMBURSEMENT/PODIATRIC SUR-GERY PROCEDURES

(1) INTEGUMENTARY SYSTEM

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Skin, Subcutaneous and Areolar Tissues (a)

Incision Incision and drainage of infected or noninfected sebaceous cyst, one lesion - \$11.93 \$13.1210000 Second lesion - \$5.96 \$6.56 10001 over two, each additional lesion - \$2-98 \$3.28 10002 I & D Sebaceous cyst & removal of sac - \$17-89 10003 \$19.68 Incision and drainage of abscess, eg, carbuncle, and 10060 other cutaneous or subcutaneous abscesses, simple -\$11-93 \$13.12 complicated - BR 10061 Drainage of onychia or paronychia - \$11-93 \$13.12 10100 10101 multiple or complicated - BR Incision and removal of foreign body, subcutaneous tissues, simple - \$11.93 $\frac{$13.12}{}$ 10120 10121 complicated - BR Drainage of hematoma, simple, subcutaneous or 10140 subungual - \$11-93 \$13.12

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10141	Complicated - BR
10160	Puncture aspiration of abscess or hematoma or large bulla - \$8-95 \$9.85
Excision	-Debridement
11000	Debridement of extensive eczematous or infected skin up to 10% of body surface (eg. Tinea Pedis, eczema, etc.) - 611+93 \$13.12
11040	Debridement of abrasions, simple - \$8.95 \$9.85
11041	Debridement of abrasion, extensive or complicated - \ensuremath{BR}
11050	Debridement of keratotic lesions (eg. Keratodermia, intractible plantar keratosis, porokeratosis, clavi, callosities, etc.) one leg (under Anathesia) - 611-93 \$13.12
11051	Same as in 11050 but 2-4 lesions, one leg - $$5.796$ $$6.56$
11052	more than 4 lesions, one leg $$5.96$ $\frac{$6.56}{}$
11100	Biopsy, excision of skin, subcutaneous tissue (including simple closure), unless otherwise listed (independent procedure), one - \$17.99 \$19.69
11101	each additional liaison - \$8-95 \$9.85
Excision	-Benign Lesions
11200	Excision, skin tags, multiple fibrotaneous tags, any area up to 15 - \$11.93 \$13.12
11201	each additional ten lesions - \$5.96 \$6.56
11420	Excision, benign lesions unless listed elsewhere), feet, lesion deameter up to 0.5 cm - \$23.86 \$26.25
11421	Lesion, diameter 0.5 to 1.0 cm - \$29.82 \$32.80
11422	Lesion, diameter 1.0 to 2.0 cm - \$35-80 \$39.38
11423	Lesion, diameter 2.0 to 3.0 cm - BR
11424	Lesion, diameter 3.0 to 4.0 cm - BR

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11426	Lesion, diameter greater than 4.0 cm - BR
11620	Excision, malignant lesions, feet lesion diameter up to 0.5 cm - $$58-46$ $$64.31$
11621	Lesion, diameter 0.5 to 1.0 cm - \$89-49 \$98.44
11622	Lesion, diameter 1.0 to 2.0 cm - $\$119-32$ $\$131.25$
11660	Excision, malignant lesions, lesion diameter more than 2.0 cm complicated or unusually located, any area of foot or ankle - BR
(b)	<u>Nails</u>
11700	Debridement nails, manual, five or less - \$8-94 \$9.83
11701	each additional five or less - \$4:47 \$4.92
11710	Debridement nails, electric grinder, five or less - $\$13.12$
11711	each additional five or less - \$5.96 \$6.56
11730	Avulsion, nail plate, partial, simple, single - $$11.93$ $$13.12$
11731	second nail plate - \$5.96 §6.56
11732	each additional nail plate - \$2+98 \$3.28
11733	Avulsion nail plate - complete simple, single - $\$11.93$ $\$13.12$
11734	second nail plate and all additionals - $\$5.96$ $\$6.56$
11740	Evacuation of Subungual henatema - BR
11750	Excision nail and/or nail matrix, partial, eg., ingrown or deformed nail, for permanent removal - $$659-66$
11751	Excision nail & less matrix complete for permanent removal - \$89-49 \$98.44
11755	Excision, complete (total) of nail, nail bed and/or nail fold, with excision of matirx and with partial

ostectomy of distal phalanx and plasty of toe (onychectomy with dactyloplasty or terminal Symes), unilateral, single toe - \$120-61 \$132.67

11756 Excision, partial to nail fold or nail lip (paraungual tissues) only: eg., onychoplasty to nail fold or lip, one side of toe (one nail margin), unilateral, single toe - \$59.66 \$65.63

11760 Reconstruction nail bed, simple - BR

11762 complicated - BR

(c) Introduction

11900 Injection, intralesional, up to and including seven lesions - \$11.93 \$13.12

11901 more than seven lesions - \$21-47 \$23.62

(d) Repair-Simple

12041 Linear repair, simple up to 2.5 cm - \$17-89 \$19.68

12042 2.5 to 7.5 cm - \$23-34 \$25.67

12044 7.5 to 12.5 cm - \$59+66 \$65.63

12045 12.5 to 20.0 cm - BR

(e) Repair-Complex

- 13120 Linear repair, complex up to 2.5 cm \$53-69 \$59.06
- 13121 2.5 tp 7.5 cm \$89-49 \$98.44
- 13122 greater than 7.5 cm BR

(f) Adjacent Tissue Transfer or Rearrangement

- 14040 Adjacent tissue transfer or rearrangement, defect up to 10 sq. cm. feet \$238:63 \$262.49
- 14041 Adjacent tissue transfer or rearrangement, defect between 10 and 30 sq cm. feet \$298-29 \$328.12
- 14042 Adjacent tissue transfer or rearrangement, more than 20 sq cm unusual or complicated, any area or foot or ankle BR

(g) Free Skin Grafts

- 15000 Excisional preparation or creation of recipient site by excision of essentially intact skin (including subcutaneous tissues), scar, or other lesion prior to repair with free skin graft (list as separate service in addition to skin graft) - BR
- Pinch, split, or full thickness graft to cover small ulcer, tip of digit, or other minimal open area up to defect size 2 cm diameter \$35.79 \$39.37
- 15100 Split graft, feet (except multiple digits), up to 100 sq cm (except 15050) $$\pm$78\pm$97$ \$196.87
- 15101 each additional 100 sq cm or part thereof \$35-79 \$39.37
- 15240 Full thickness graft, free, including direct closure of donor site, feet up to 20 sq cm \$238+64 \$262.50
- 15241 each additional 20 sq cm \$\frac{\$\pmathbf{1}}{1}\frac{1}{2}\text{9} \frac{\$\pmathbf{1}}{2}\text{9} \frac{\$\pmathbf{1}}{3}\text{1.22}
- 15440 Porcine skin dressing for skin defect ~ \$29.82 \$32.80
 - (h) Pedicle Flaps (Skin and deep tissues)
- 15510 Formation of tube pedicle without transfer, or major delay of large flap without transfer, feet \$200-80 \$229.68
- Primary attachment of open tubed pedicle flap to recipient site requiring minimal preparation, feet (except 15580) \$268.46 \$295.31
- Intermediate delay of any flap, primary delay of small flap or sectioning pedicle of tubed or direct flap feet (except 15625) \$\frac{1}{2}76-97\$ \frac{5}{2}94.67
- 15720 Excision of lesion and/or excisional preparation of recipient site and attachment of direct or tubed pedicle flap, feet \$477-26 \$524.99

(i) Micellaneous Procedure

15785 Abrasion of skin for removal of scars, tattoos, actinic changes (keratoses), primary or secondary regional - \$119-29 \$131.22

15791 Superficial chemosurgery (acid peel) regional, foot and/or ankle - BR Burns Local Treatment 16000 Initial treatment, first degree burn, when no more than local treatment required - \$8-95 \$9.85 Dressings and/or debridement, initial or subsequent, 16010 under anesthesia, small - \$23-86 \$26.25 Under anesthesia, large, or with major debridement, per one-half hour - \$59-65 \$65.62 16015 Without anesthesia, office or hospital, small -16020 \$10-12 \$11.13 17100 Electrosurgical destitution or chemocautery (monobi-trickloroacetic acid, phenol) or cryocautery (liquid N₂, CO₂) of benign or quiescent premalignant lesions of skin, with or without curettage, one lesion - \$11.93 \$13.12 17101 second lesion - \$5:96 \$6.56 17102 Over two liaisons, each additional lesion -\$2-98 \$3.28 complicated lesion(s) - BR 17105 17110 (plane, juvenile) warts or molluscum contagiosum, milia, up to 15 - \$11-93 \$13.12 (Retreatment same as office visit) Destruction of 17120 nail root and matrix with partial or total excision or evulsion of nail using one of the following methods: Negative galvanism, electrocoagulation, fulguration or dessication, phenolization, cryotherapy (CO, N2), or with power surgical drill or burr. Unilateral, single toe, one nail margin -\$59-66 \$65.63 17121 each additional side - 629-83 \$32.81 total nail - \$59-65 \$65.62 17125 17340 Cryotherapy (CO2 slush, liquid N2) - \$8.95 \$9.85

Electrolysis epilation

\$19.69

17380

\$17-90

each 1/2 hour -

17499	Unlisted Procedure, integumentary system (see Guidelines) - BR
(k)	Incision
20000	Incision of superficial soft tissue abscess secondary to osteomyelitis or other cause - \$11.93 \$13.12
20005	deep or complicated - BR
20010	with perfusion technique - BR \$19.68
20040	Drainage of infected bursa - \$17-89 \$19.68
20043	Paracentesis (puncture or neddling) of bursa for aspiration or irrigation - \$14.91 \$16.40
20046	Drainage of single infected space of foot, (lumbrical, midplantar, etc. with or without sheath involvement, in hospital - BR
(1)	Excision
20200	Biopsy, muscle, superficial - \$35.79 \$39.37
20205	deep - \$71-59 \$78.75
20220	Biopsy, trochar, bone, superficial - \$95.79 \$39.37
20230	Biopsy for synovial membrane - BR
(m)	Introduction or Removal
20500	Injection of sinus tract, therapeutic (Independent Procedure) - \$11.793 \$13.12
20520	Removal of foreign body in muscle, simple - $\$35.97$ $\$39.57$
20525	deep or complicated - BR
20550	Injection, tendon sheath, ligament or trigger points - \$11-95 \$13.15
20600	Arthrocentesis, aspiration or injection, small joint, eg., toes - \$8+94 \$9.83

intermediate joint or bursa, eg, tarsal joint or ankle joint - \$11-93 \$13.12

20605

- 20650 Insertion of wire or pin for skeletal traction, including removal (Independent Procedure) 635-79 \$39.37
- 20660 Application of tongs or halo, including removal (Independent Procedure) \$89*47 \$98.42
- 20665 Removal of tongs or halo applied by another physician podiatrist \$8-94 \$9.83
- 20670 Removal of buried wire, pin or screw, superficial (Independent Procedure) \$17-89 \$19.68
- deep, buried, wire, pin screw, metal band, nail rod, or plate \$107-38 \$118.12

(n) Grafts or Implants

- 20900 Obtaining bone for graft minor or small, dowel or button, any donor area of foot or ankle \$71+57 \$78.73
- 20902 Major or large \$143-18 \$157.50
- 20924 Obtaining tendon for graft, transferred from distant part BR
- 20926 Obtaining other tissues for graft, eg., paratenon, fat dermis BR
- 20240 Biopsy, bone, excisional, superficial 3.o \$89-47 \$98.42
- 27605 Tenotomy, Achilles tendon, subcutaneous (Independent Procedure) \$29.782 \$32.80
- 27610 Arthrotomy, (capsulotomy), ankle, with exploration, drainage or removal of loose or foreign body \$268.46 \$295.31
- 27612 posterior capsular release, with or without Achilles tendon lengthening (see also 27685) \$298-29 \$328.12

(o) Excision

- 27620 Arthrotonmy (capsulotomy) ankle, for biopsy \$268-40 \$295.24
- 27625 for synovectomy \$357-94 \$393.73

27626	for synovectomy, including teno synovectomy - \$363-92 \$400.31
27630	Excision of lesion of tendon, sheath or capsule (cyst or ganglion) - $\$197 + 38 \frac{\$118.12}{}$
27635	Excision or curettage of bone cyst or benign tumor, tibia or fibula at ankle - \$298-29 \$328.12
27637	with primary autogenous graft (includes obtaining graft) - $\$387.77$ $$426.55$
27638	with primary homogenous graft - \$387-77 \$426.55
27640	Excision of bone, partial (craterization, saucerization, or diaphysectiony) for osteomyelitis, tibial malleolus or fibular malleolus - \$357-94 \$393.73
27645	Resection, radical for tumor, tibial malleolus or fibularmalleolus - ${\tt BR}$
27647	Astragalus or calcaneus - BR
(p)	Introduction and/or Removal
27648	Injection procedure for ankle arthrography - \$29.82 \$32.80
27648 (q)	
	\$32.80
(g)	\$32.80 Repair Revision or Reconstruction Repair of deep wound, ankle, involving fascia,
(q) 27649	Repair Revision or Reconstruction Repair of deep wound, ankle, involving fascia, muscle, artery and/or tendon and/or nerve - BR Suture, primary, ruptured Achilles tendon - \$328-12
(q) 27649 27650	Repair Revision or Reconstruction Repair of deep wound, ankle, involving fascia, muscle, artery and/or tendon and/or nerve - BR Suture, primary, ruptured Achilles tendon - \$328+12 \$360.93 with graft (includes obtaining graft) - \$417+60
(q) 27649 27650 27652	Repair Revision or Reconstruction Repair of deep wound, ankle, involving fascia, muscle, artery and/or tendon and/or nerve - BR Suture, primary, ruptured Achilles tendon - \$328-12 \$360.93 with graft (includes obtaining graft) - \$417-60 \$459.36 Repair or suture of tendon, primary (without free
(q) 27649 27650 27652 27658	Repair Revision or Reconstruction Repair of deep wound, ankle, involving fascia, muscle, artery and/or tendon and/or nerve - BR Suture, primary, ruptured Achilles tendon - \$328-12 \$360.93 with graft (includes obtaining graft) - \$417-60 \$459.36 Repair or suture of tendon, primary (without free graft) leg, flexor, single - \$178-97 \$196.87 secondary with or without free graft - \$238-63

27675 Repair dislocated personal tendons without fibular

27073	osteotomy - BR
27676	with fibular osteotomy - BR
27680	Tenolysis, leg, including tibia, fibula and ankle, flexor, single - \$149-15 \$164.07
27681	multiple, through same incision - \$178-97 \$196.87
27685	Lengthening or shortening of tendon, including tibia, fibula, and ankle, flexor, single (independ- ent procedure) - \$200-80 \$229.68
27686	Multiple, through same incision (the toe extensors are considered as a group to be a single tendon when transplanted into midfoot) - BR
27688	Tenoplasty for lengthening or shortening of tendon of great toe unilateral, (Independent Procedure) - BR
27689	Tenoplasty for lengthening or shortening of tendon, single, of any of lesser toes (Independent Procedure) - BR
27690	Transfer or transplant of tendon, with muscle redirection or rerouting, single, superficial, eg. anterior tibial or extensors into midfoot - \$238-63 \$262.49
27691	anterior tibial or posterior tibial through interosseous space - \$298-29 \$328.12
27692	each additional tendon - \$59-63 \$65.59
27695	Suture, primary, torn, ruptured or severed ligament, ankle, collateral - \$298-29 \$328.12
27696	both collateral ligaments - \$417.60 \$459.36
27698	secondary repair, collateral ligament (eg., Watson-Jones or Evans Procedures) - \$417,60 \$459.36
27700	Arthoplasty, ankle - BR
27702	with implant ("total ankle") - BR

27704 Removal of ankle implant - BR

27705	Osteotomy, tibial malleolus - \$357-94 \$393.73
27707	Osteotomy, fibular malleolus - \$208-80 \$229.68
2770 9	Osteotomy, tibial and fibular malleoli - $\$417+60$ $\$459.36$
(r)	Fractures and/or Dislocations
27760	Conservative treatment, tibia, distal extremity. (Medial malleolus fracture closed (without reduction) - BR
27762	Closed manipulative reduction, tibia, distal extremity (medial malleolus) fracture closed - $689+47$ $\underline{698.42}$
27764	Manipulative reduction, tibia, distal extremity (medial malleolus) fracture open with uncomplicated soft tissue closure - \$131-24 5144.36
27766	Open reduction and fixation, tivia, distal extremity (medial malleolus) fracture closed or open - $\$260-46$ $\$295.31$
27786	Conservative treatment, fibula, distal extremity, (Lateral malleolus) fracture closed - BR
27788	Closed manipulative reduction, fibula, distal extremity (lateral malleolus) fracture closed - $\$99.47$
27790	Manipulative reduction, fibula, distal extremity (lateral malleolus) fracture open with uncomplicated soft tissue closure - $\$119+29$ $\$131.22$
27792	Open reduction with fixation, fibula, distal extremity (lateral malleolus) fracture closed or open - \$268.42 \$295.26
27808	Conservative treatment, ankle, bimalleolar fracture (including Potts) closed (without reduction) - BR
27810	Closed manipulative reduction, ankle, bimalleolar fracture (including Potts) closed - \$149-15 \$164.07
27812	Manipulative reduction, ankle, bimalleolar fracture (including Potts) open with uncomplicated soft tissue closure - \$193-89 \$213.28
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- 27814 Open reduction, ankle, bimalleolar fracture (including Potts) open or closed with or without internal/ external skeletal fixation ~ \$357.94 \$393.73
- 27816 Conservative treatment, ankle, trimalleolar fracture closed (without reduction) BR
- 27818 Closed manipulative reduction, ankle, trimalleolar fracture, closed \$178-97 196.87
- 27820 Manipulative reduction, ankle, treimaleolar fracture open, with uncomplicated soft tissue closure \$298-89 \$229.68
- Open reduction, ankle, trimaleolar fracture closed or open with or without internal/external skeletal fixation \$432,52 \$475.77
- 27840 Manipulative reduction, ankle dislocation closed, without anesthesia BR
- 27842 requiring anesthesia \$59+65 \$65.62
- 27844 Manipulative reduction, ankle dislocation open, with uncomplicated soft tissue closure \$95.45 \$105.00
- 27846 Open reduction, ankle dislocation, closed or open \$357-94 \$393.73
- 27848 Open reduction and fixation, distal tibiofibular joint dislocation (ankle mortise) closed or open \$268.46 \$295.31
 - (s) Manipulation
- 27860 Manipulation of ankle under general anethesia (including application of traction or other fixation apparatus) \$29.83 \$32.81
 - (t) Arthrodesis
- 27870 Fusion, ankle \$507.09 \$557.80
 - (2) FOOT INCISION
 - (a) Miscellaneous
- 27899 Unlisted procedure, leg or ankle BR

28001	Incision and drainage, infected bursa - BR
28002	Deep infection, below fascia, requiring deep dissection, with or without tendon sheath involvement; single bursal space, specify - BR
28003	multiple areas - BR
28004	miltiple areas with suction irrigation - BR
28005	<pre>Incision, deep, with opening of bone cortex for osteomyelitis or bone abscess; - BR</pre>
28006	with suction irrigation - BR
28008	Fasciotomy, plantar and/or toe, subcutaneous - $\$78.75$
28010	Tenotomy subcutaneous, toe single - $$23-86$ $$26.25$
28011	multiple - \$35.79 \$39.37
28020	Arthrotomy, (capsulotomy, with exploration, drainage or removal of loose or foreign body, intertarsal or tarsometatarsal joint - \$178-97 \$196.87
28022	metatarsophalangeal joint - \$107.38 \$118.12
28024	interphalangeal joint (toe) - \$71.58 \$78.74
28030	Neurectomy of intrinsic musculature of foot - \ensuremath{BR}
28035	Tarsal tunnel release (posterior tibial Nerve decompression) - BR
(b)	Excision
28050	Arthrotomy for synovial biopsy, intertarsal or tarsometatarsal joint - \$178.97 \$196.87
28052	metatarsophalangeal joint - \$107-38 \$118.12
28054	interphalangeal joint (toe) - \$71,58 \$78.74
28060	Fasciectomy, excision of plantar fascia, partial (independent procedure) - \$178-97 \$196.87
28062	radical (independent procedure) - BR (For plantar fasciotomy, see 28250)

28070	Synovectomy, intertarsal or tarsometatarsal joint - 6178-97 \$196.87
28072	metatarsophalangeal joint - \$107.38 \$118.12
28080	Excision of Morton's neuroma, single, each - \$107-38 \$118.12
28086	Synovectomy, tendon sheath; flexor - BR
28088	extensor - BR
28090	Excision of lesion of tendon or fibrous sheath or capsula (cyst or ganglion), foot - \$\frac{\$\pm\$107.38 \frac{\$118.12}{}}{}
28092	toes - \$71.758 \$78.74
28100	Excision or curettage of bone cyst or benign tumor, astragalus or oscalcis - \$178-97 \$196.87
28102	with iliac or other autogenous bone graft (includes obtaining graft) - \$208-80 \$229.68
28103	with homogenous bone graft - \$208-80 \$229.68
28104	Excision or curettage of bone cyst or benign tumor, tarsal or metatarsal bones, except astragalus or oscalcis - \$143-80 \$158.18
28106	with iliac or other autogenous bone graft (includes obtaining graft) - \$167+04 \$183.74
28107	with homogenous bone graft - BR
28108	Excision or curettage of bone cyst or benign tumor, phalanges - \$107.38 \$118.12
28109	with homogenous bone graft - BR
28110	Ostectomy, partial excision of fifth metatarsal head, bunionette (independent procedure) - \$71.57 \$78.73
28111	Ostectomy; complete excision of first metatarsal head - BR
28112	other metatarsal head (second, third or fourth) - \$119-29 \$131.22
28113	fifth metatarsal head - \$119-19 \$131.22
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28114	all metatarsal heads with partial proximal phalangectomies (Clayton type procedure) - \$357.794 \$393.73
28116	Ostectomy, excision of tarsal coalition - \$208.88 \$229.68
28118	Ostectomy, calcaneous; partial (Cotton scoop type procedure) - \$200-80 \$229.68
28119	for spur, with or without plantar fascial release - BR
28120	Partial excision of bone (craterization, saucerization, sequestrectomy, or diaphysectomy) for osteopmyelitis, talus, or calcaneous; - \$178-97 \$196.87
28121	with suction irrigation - BR
28122	Partial excision of bone (craterization, saucerization, or diaphysectomy) for osteomyelitis, tarsal or metatarsal bone, except talus or calcaneus; - 6143-18 \$157.50
28123	with suction irrigation - BR
28124	phalanx - \$107-86 \$118.12
28126	Condylectomy, phalangeal base, single toe - BR
28130	Astragalectomy - \$298-29 \$328.12
28135	Calcanectomy - BR
28140	Metatarsectomy - \$178-97 \$196.87
28150	Phalangectomy - \$107:36 \$118.12
28153	Resection, head of phalanx - \$\frac{4119-32}{2121.25}
28160	Hemiphalangectomy or interphalangeal joint excision, single - \$89,47 \$98.42
28162	Ostectomy, total of accessory ossicle os vesalianum - \$107:30 \$118.12
28163	of os trigonum ~ \$119.32 \$131.25
28164	of os tibiale externum - \$143-18 \$157.50

28165 of supernumerary ossicle from metatarsophalangeal joint - \$107-38 \$118.12 of supernumerary ossicle from interphalangeal 28166 joint - \$89:48 \$98.43 28170 Resection, radical, for tumor, foot - BR Introduction and/or removal (c) Injection procedure for arthrography of any one joint of the foot; - \$29-82 \$32.8028180 Repair, Revision, or Reconstruction 28195 Repair of deep wound, foot, involving fascia, muscle, artery and/or tendon and/or nerve - BR 28200 Repair or suture of tendon, primary or secondary, without free graft, foot flexor, single - \$178-97 \$196.87 secondary with free graft (includes obtaining graft) - \$238-64 \$262.5028202 Repair or suture of tendon, extensor, foot single, primary or secondary - \$83.50 \$91.85 28208 28210 (includes obtaining secondary, with graft graft) - \$119-29 \$131.22 28216 Repair of ruptured or divided fascia or aponeurosis; fasciorrhaphy (e.g., of plantar fascia, plantar or dorsal aponeurosis) - BR 28220 Tenolysis, flexor, foot, single - \$149-12 \$164.03 28222 multiple (through same incision) - \$178-94 \$196.83 28225 Tenolysis, extensor, foot, single - \$83,59 \$91.85 28226 multiple, (through same incision) - \$107-38 \$118.12 28230 Tenotomy, open, flexor, foot, single or multiple (independent Procedure) - \$89-47 \$98.42 28232 toe, single (independent procedure) - \$41.76 \$45.94 28234 Tenotomy, open, extensor, foot or toe - \$29-83 \$32.81

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28236	Transfer of tendon, anterior tibial into tarsal bone (Lowman-Young type operation) - BR
28238	Advancement of posterior tibial tendon, with excision of accessory scaphoid bone (kidner type operation) - BR
28239	Kidner procedure with regrooving of medial malleolus for replacement of tendon - \ensuremath{BR}
28240	Tenotomy or release, abductor hallucis muscle (McCauley type operation) - \$107-36 \$118.12
28250	Division of plantar fascia and muscle, Steindler stripping (Independent Procedure) - \$178-97 \$196.87
28260	Capsulotomy, midfoot, medial release only (Independent Procedure) - BR
28261	with tendon length - BR
28262	Extensive, including posterior talotibial capsulotomy and tendon(s) lengthening, as for resistiant club foot deformity - BR
28263	Desmotomy with plasty of spring ligament (plantar calcaneonavicular ligament; Mercado type operation - \ensuremath{BR}
28264	Capsulotomy, midtarsal (Heyman type operation) - \$357-94 \$393.73
28270	Capsulotomy for contracture, metatarsophalangeal joint, with or without tenorrhaphy (Independent Procedure) ~ \$89.42
28272	interphalangeal joint (Independent Procedure) - 641.75 §45.93
28280	Webbing operation (creating syndactylism of toes) for soft corn (Kelikian type operation) - \$107-36 \$118.12
28285	Hammer toe operation, one toe, e.g., interphalangeal fusion, filleting, phalangectomy (Independent Procedure) - \$143-18 \$157.50
28286	for 'cock-up' fifth toe with plastic skin closure (Ruiz-Mora type operation) - \$143-18 \$157.50

28287	Arthroplasty, metatarsophalangeal joint of a lesser toe, (e.g., for repair of partial or total subluxation. Also see 28112) - \$143.18 \$157.50
28288	Ostectomy, partial, exostectomy or condylectomy, single, metatarsal head, second through fifth, each metatarsal head, (separate procedure) - BR
28290	Correction of hallux valgus (bunion) by exostectomy, capsuloplasty, etc., (Silver type operation or any modification thereof) - \$143.18 \$157.50
28292	by arthroplasty, (partial ostectomy, capsulo- plasty, capsulorrhaphy, etc.) metatarsophalan- geal joint of hallux (Keller, McBride, Mayo, or Stone type operation) - \$208780 \$229.68
28293	resection of joint with implant - BR
28294	with tendon transplants (Joplin type operation) - \$283.37 \$311.71
28296	with metatarsal osteotomy (Mitchell, Lapidus, Reverdin, or similar type operation) - \$283-37 \$311.71
28298	correction by phalangeal osteotomy (Akin) - \$238-63 \$262.49
28299	by other methods (e.g., double osteotomy) - $6343-03$ 5377.33
28300	Osteotomy, including internal fixation, of calcis (Dwyer or Chambers type operation) - \$283-37 \$311.71
28302	astragalus (Talus) - \$268-46 \$295.31
28304	other midtarsal bones - \$238+63 \$262.49
28305	other midtarsal bones, with autogenous graft (Fowler type operation), includes obtaining graft - BR
28306	metatarsals, base or shaft, single, for shortening or angular correction, first metatarsal - \$200.00 \$229.68
28308	other metatarsals, base or shaft, single, for shortening or angular correction (e.g. dorsal, abductory or abductory wedge osteotomies) - 167-04 \$183.74

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28309	other metatarsals, multiple, for cavus foot (Swanson type operation) - BR
28310	proximal phalanx, first toe, for shortening, angular or rotational correction - \$83.52 \$91.87
28312	other phalanges, any toe, for shortening, angular or rotational correction ~ \$59-65 \$65.62
28314	Osteotomy, for lengthening of a metatarsal bone, single, unilateral (includes obtaining graft) - 6208-80 \$229.68
28320	Repair of nonunion or malunion tarsal bones (of calcis, astragalus) - BR
28322	metatarsal, with or without bone graft (includes obtaining graft) - \$143-18 \$157.50
28330	Repair for syndactyly of two toes (e.g., freeing of webbed toes with flaps) - $$230-64$ $$262.50$
28331	with use of skin grafts (includes obtaining grafts) - BR
28335	Repair for freeing toes from surgical syndactylia, with flaps, great toe with second toe; - \$238-64 \$262.50
28336	with use of skin grafts (includes obtaining graft) - BR
(e)	Fracture and/or Dislocation
28400	Conservative treatment, os calcis, fracture closed (without reduction) - BR
28405	Closed manipulative reduction, including Cotton or Bohler type reduction, os calcis, fracture closed - BR
28410	Manipulative reduction, os calcis, fracture open, with uncomplicated soft tissue closure - BR
28415	Open reduction, os calcis, fracture closed or open, with or without internal/external skeletal fixation - \$298+29 \$328.12

28420	with primary iliac or other autogenous bone graft (includes obtaining graft) - \$432.52 \$475.77
28430	Conservative treatment, astragalus, fracture closed (without reduction) - BR
28435	Closed manipulative reduction, astragulus, fracture closed - \$89:48 \$98.43
28440	Manipulative reduction, astragalus, fracture open, with uncomplicated soft tissue closure - \$119.31 \$131.24
28445	Open reduction, astragalus, fracture closed or open, with or without internal/external skeletal fixation - \$298-29 \$328.12
28450	Conservative treatment, tarsal bone(s) (except astragalus and os calcis fracture(s) closed) - BR
28455	Closed manipulative reduction, tarsal bone(s) (except astragalus and os calcis, fracture(s) closed) - \$59.65 \$65.62
28460	Manipulative reduction, tarsal bone(s) (except astragalus and os calcis), fracture open, with uncomplicated soft tissue closure) - \$89-47 \$98.42
28465	Open reduction, tarsal bone(s) (except astragalus and os calcis), fracture closed or open, with or without internal/ external skeletal fixation - \$178-97 \$195.87
28470	Conservative treatment, metatarsal(s) closed (without reduction) - BR
28475	Closed manipulative reduction, metatarsal(s), fracture(s), closed - $$65.62$ $$72.18$
28480	Manipulative reduction, metatarsal(s), fracture(s), open with uncomplicated soft tissue closure; - \$89.47 \$98.42
28485	Open reduction, metatarsal(s), fracture(s), closed or open, with or without internal/external skeletal fixation - \$178.97 \$196.87
28490	Conservative treatment, phalanx or phalanges, great toe fracture closed (without reduction) - BR

28495	Closed manipulative reduction, phalanx or phalanges, great toe, fracture closed; - \$35.79 \$39.37
28500	Manipulative reduction, phalanx or phalanges, great toe, fracture open, with uncomplicated soft tissue closure - $\$53.69$ $\$59.06$
28505	Open reduction, phalanx or phalanges, great toe, fracture closed or open, with or without internal/external skeletal fixation - \$107.38 \$118.12
28510	Conservative treatment, phalanx or phalanges, other than great toe, fracture closed (without reduction) - BR
28515	Closed manipulative reduction, phalanx or phalanges, other than great toe, fracture closed; \$29.83 \$32.81
28520	Manipulative reduction, phalanx or phalanges, other than great toe, fracture open, with uncomplicated soft tissue closure; - \$47-72 \$52.49
28525	Open reduction phalanx or phalanges, other than great toe fracture closed or open with or without internal/ external skeletal fixation; - \$89-49 \$98.44
28540	Manipulative reduction, tarsal bone, dislocation closed, without anesthesia - \$21.48 \$23.63
28545	requiring anesthesia - \$59-65 \$65.62
28550	Manipulative reduction, tarsal bone, dislocation open with uncomplicated soft tissue closure; - $\$83 \cdot \91.85
28555	Open reduction, tarsal bone, dislocation closed or open, with or without internal/external fixation, skeletal - \$178-97 \$196.87
28570	Manipulative reduction, astragalotarsal joint, dis- location closed, without anesthesia; - \$29.83 \$32.81
28575	requiring anesthesia; - \$71-57 \$78.73
28580	Manipulative reduction, astragalotarsal joint, dislocation open, with uncomplicated soft tissue closure; - \$95.45 \$105.00
28585	Open reduction, astragalotarsal joint, dislocation closed or open, with or without internal/external skeletal fixation; \$298-29 \$328.12

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28600	Manipulative reduction, tarsometatarsal joint, dislocation closed, without anesthesia; - \$21-47 \$23.62
28605	requiring anesthesia - \$59.65 \$65.62
28606	Treatment of closed tarsometatarsal joint dislocation with percutaneous skeletal fixation - BR
28610	Manipulative reduction, tarsometatarsal joint, dislocation open, with uncomplicated soft tissue closure; - \$83.59 \$91.85
28615	Open reduction, tarsometatarsal joint, dislocation closed or open with uncomplicated soft tissue closure; - \$178-97 \$196.87
28630	Manipulative reduction, metatarsophalangeal joint, dislocation closed, without anesthesia; - BR
28635	requiring anesthesia - BR
28640	Manipulative reduction, metatarsophalangeal joint, dislocation open, with uncomplicated soft tissue closure; - $\$59\text{-}65$ $\frac{\$65.62}{}$
28645	Open reduction, metatarsophalangeal joint, dislocation closed, or open with or without internal/external skeletal fixation; - \$\frac{6119}{29} \frac{\$131.22}{2}
28660	Manipulative reduction, interphalangeal joint, dis- location closed, without anesthesia; - \$21-47 \$23.62
28665	requiring anesthesia - \$35.79 \$39.37
28670	Manipulative reduction, interphalangeal joint, dis- location open, with uncomplicated soft tissue closure; - 647.73 \$52.50
28675	Open reduction, interphalangeal joint, dislocation closed or open, with or without internal/external skeletal fixation; - \$71.57 \$78.73
(f)	Manipulation

Manipulation of toe, one or more, where no other surgical procedure is performed (with or without anesthesia), and includes traction, splinting or fixation apparatus (Independent Procedure) - 659-66

\$65.63

28690

(g) Arthrodesis

- 28705 Pantalar arthrodesis; \$566:74 \$623.41
- 28707 Arthrodesis, intra- or extra-articular, intertarsal (talonavicular, calcaneocuboid or talocalcaneal), single joint; \$328-13 \$360.94
- 28708 Arthrodesis, double intertarsal joints, (talocal-caneal, talonavicular, calcaneocuboid, any combination) \$417-62 \$459.38
- 28715 Triple arthrodesis; \$447-43 \$492.17
- 28725 Subtalar arthrodesis (includes Grice type procedure) \$357.94 \$393.73
- 28728 Arthroesis, subastragular BR
- 28730 Arthrodesis, midtarsal or tarsometatarsal, multiple or transverse; \$328:12 \$360.93
- 28735 with osteotomy, as for flat foot correction \$417-60 \$459.36
- 28737 Arthrodesis, navicular-cuneiform, with tendon lengthening and advancement (Miller type operation) BR
- 28740 Arthrodesis, midtarsal or tarsometatarsal, single joint \$268-46 \$295.31
- 28750 Arthrodesis, great toe, metatarsolphalangeal joint \$208-80 \$229.68
- 28755 Interphalangeal joint \$119-31 \$131.24
- 28760 interphalangeal joint, with reduction of attachment of extensor hallucis longus (Jones type operation) \$178.97 \$196.87
- 28765 Arthrodesis, lesser toe, metatarsolphalangeal joint, single \$148-18 \$163.00
- 28770 Arthrodesis, lesser toe, interphalangeal joint, without tendon transfer, single; \$113-35 \$124.69
 - (h) Miscellaneous
- 28899 Unlisted procedure, foot or toes BR

(i)	Casts
29345	Application of long leg cast (thigh to toes); - \$32-80 \$36.08
29355	walker or ambulatory type - \$38.78 \$42.66
29358	Application of long leg cast brace - BR
29365	Application of cylinder cast (thigh to ankle) - \$29.83 $\frac{$32.81}{}$
29405	Application of short leg cast (below knee to toes); $\$23-86$ $\$26.25$
29425	walking or ambulatory type - \$29-83 <u>\$32.81</u>
29450	Application of clubfoot cast with molding or manipulation, long or short leg; unilateral - $$11-94$
29455	bilateral - \$23-86 <u>\$26.25</u>
29460	Application of forefoot cast - \$14.91 \$16.40
(j)	Splints
29505	Application of long leg splint (thigh to ankle or toes) - \$21:47 \$23.62
29515	Application of short leg splint (calf to foot) - $\$17.90 \ \19.69
(k)	Strapping - Any Age
29540	Strapping, ankle - \$8.95 \$9.85
29545	Strapping, foot - \$8.95 \$9.85
29550	Strapping, toe - \$5.96 \$6.56
29580	Strapping, Unna boot - \$11.94 \$13.13
29590	Denis-Browne splint strapping - BR
(1)	Removal or Repair

29705 Removal or bivalving full leg cast, below knee cast, ankle cast or foot cast - BR

29730 Windowing of cast - \$7-16 \$7.88

29740 Wedging of cast (except clubfoot casts) - \$8.95 \$9.85

29750 Wedging of clubfoot cast, unilateral - \$8-95 \$9.85

29751 bilateral - \$11+94 \$13.13

(m) Other Procedures

29799 Unlisted procedures, musculoskeletal system (see quidelines) - BR

(n) Cardiovasular System

Venous

36470 Injection of sclerosing solution, single vein; - \$8-35 \$9.19

36471 multiple veins, same leg (includes ankle) - \$11.94 \$13.13

(o) Arterial

36600 Arterial puncture, withdrawal of blood for diagnosis - \$5.96 \$6.56

37799 Unlisted podiatric procedure, cardiovascular system (see quidelines) - BR

(p) Nervous System

Peripheral Nerves

Injection (Nerve Block)
Anesthetic Agent, Diagnostic or Therapeutic

64450 Injection anesthetic agent, peripheral nerve or branch; - \$17.90 \$19.69

(q) Exploration, Neurolysis or Nerve Decompression

64702 Neurolysis, digit; - \$143-18 \$157.50

64704 Neurolysis, nerve of foot; - \$238:63 \$262.49

64722 Decompression; unspecified nerve(s) (specify) - BR

64726 Decompression, plantar digital nerve - BR

Neurolysis, internal with or without microdissection (list separately as E4727 in addition to code number of neurolysis) - BR

(r) Excision

Somatic Nerves

6 4 774	Excision	of	traumatic	$n\epsilon$	euroma,	cutaneous	nerve,
	surgicall	y id	entifiable;	-	\$89-5 0	\$98.45	

- 64776 digital nerve, one or both, same digit; \$89.50 \$98.45
- 64778 digital nerve, each additional digit (list separately by this number) BR
- 64782 foot \$178-97 \$196.87
- 64783 foot each additional nerve, except same digit (list separately by this number) BR
- 64787 Insertion of plastic cap on nerve end BR
- 64788 Excision of neurofibroma or neurolemmoma; cutaneous nerve \$170-97 \$196.87
- 64790 major peripheral nerve BR
- 64792 extensive (including malignant type) \$596-57 \$656.23

Repair (Neurorrhaphy)

- 64830 Microdissection and/or microrepair of nerve (list separately using 64830 in addition to code for nerve repair BR
- 64831 Suture of nerve (neurorrhaphy), digital, foot, one nerve; \$298-29 \$328.12
- 64832 each additional digital nerve \$35.79 \$39.37
- 64834 Suture of one nerve, foot, sensory \$238-63 \$262.49
- 64840 Suture of nerve, foot, posterior tibial nerve primary or secondary; BR
- 64837 suture of each additional nerve, foot BR

Other Procedures

64999 Unlisted procedure, nervous system (see guidelines)
- BR

Diagnostic Radiology

(For	biomechanical	determination	and	diagnostic	evaluation)
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73500	Radiologic	examination,	hip,	unilateral,	one	view;
	- \$19-46 \$2	21.41	_			

- 73510 complete, minimum of two views \$24-29 \$26.72
- 73520 Radiologic examination, hips, bilateral, minimum of two views, of each hip, including anteroposterior view of pelvis; \$37+35 \$41.09
- 73540 Radiologic examination, pelvis and hips, infant or child minimum of two views; \$24-89 \$27.38
- 73550 Femur, anteroposterior and lateral views; 623-34 \$25.67
- 73560 Radiologic examination, knee, anteroposterior and lateral views 617:12 \$18.83
- 73570 knee, three or more views \$24-89 \$27.38
- 73590 Radiologic examination, tibia and fibula, anterio-posterior and lateral views; \$18-68 \$20.55
- 73592 lower extremity, infant, minimum of two views \$\frac{48+68}{20.55}\$
- 73600 Radiologic examination, ankle, anteroposterior and lateral views; \$17-12 \$18.83
- 73610 complete, minimum of three views; \$23-34 \$25.67
- 73620 Radiologic examination, foot, anteroposterior and lateral views; 615-57 \$17.13
- 73630 complete, minimum of three views; \$16-86 \$18.55
- 73650 Radiologic examination, os calcis, minimum of two views; \$17-12 \$18.83
- 73660 toe or toes, minimum of two views $\$14-\theta\theta$ \$15.40

(s) Miscellaneous

- 76020 Radiologic examination, bone age studies, \$23+34 \$25.67
- 76040 bone length studies (orthoroentgenogram) \$38-91 \$42.80
- 76080 Radiologic examination, fistual or sinus tract study, supervision and interpretation only; $\$46 \div 69$ \$51.36
- 76081 complete procedure BR
- 76127 Procedures using Polaroid or similar photographic media BR
- 76130 Radiologic examination at bedside or in operating room, not otherwise specified BR
- 76134 in home BR
- 76137 outside regular hours BR
- 76140 Consultation on x-ray examination made else where, written report; BR
- 76300 Themography BR
- 76499 Unlisted diagnostic radiologic procedure (see guidelines) - BR

(t) Peripheral Vascular System

- 76900 Peripheral flow study (Doppler), arterial \$50-36 \$64.20
- 76910 venous \$58+36 \$64.20
- 76920 arterial and venous (76900 and 76910 combined) \$79.42 \$77.46
 - (u) Micellaneous
- 76970 Ultrasound study follow-up (not listed above) BR
- 76999 Unlisted diagnostic ultrasound examination (see quidelines) BR
 - (v) Microbiology

87081	Culture, all other sources, screening only, for single organism per plate or tube; - $\$5:19$ $\$5:71$
87085	including sensitivity study, up to 20 disks; - $\$16-20$ $\$17.82$
87101	Culture, fungi, isolation, skin; - \$6 - 16 <u>\$6.78</u>
87102	other source - \$7-46 \$8.21
87106	definitive identification - \$12.32 \$13.55
87205	Smear, primary source, with interpretation; routine stain for bacteria, fungi, or cell types - $\frac{66-50-57.15}{2}$

- 5. The authority of the agency to amend the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101 and 53-6-141, MCA.
 - 6. Rule 46.12.527 is proposed to be amended as follows:

46.12.527 OUTPATIENT PHYSICAL THERAPY SERVICES, REIMBURSEMENT The department will pay the lowest of the following for outpatient physical therapy services not also covered by medicare: the provider's actual (submitted) charge for the service; the provider's medicaid median charge for the service; the 75th percentile of the range of weighted medicaid median charges for each service covered by this rule; or the department's fee schedule contained in this rule.

The department will pay the lowest of the following for outpatient physical therapy services which are also covered by medicare: the provider's actual (submitted) charge for the

The department will pay the lowest of the following for outpatient physical therapy services which are also covered by medicare: the provider's actual (submitted) charge for the service; the amount allowable for the same service under medicare; or the department's fee schedule contained in this rule.

A. D. L Consultation	16-50 27-50	$\frac{18.15}{30.25}$
Electrophysiological evaluation	27-50	30.25
Electromyography	55-00	60.50
Physical Therapy Evaluation	27-50	30.25
Home Instruction	27÷50	30.25
Muscle Testing	27-50	30.25
Hubbard Tub	22-00	$\overline{24.20}$
Hubbard Tub + 1 modality	22-00	24.20
Hubbard Tub + 2 modalities	25-30	27.83
<pre>Hubbard Tub + 3 modalities</pre>	27+50	30.25
Isolation Hubbard Tub	22-00	24.20
Whirlpool	1 3+ 20	$\overline{14.52}$

Whirlpool + 1 modality	14-30	$\frac{15.73}{2}$
Whirlpool + 2 modalities	22-00	24.20
Whirlpool + 3 modalities		36.30
Gait Training	22-00	24.20
Postural Drainage	1 4-30	15.73
Therapeutic Exercise	16-50	18.15
One Modality	11-00	12.10
Two Modalities	12-10	13.31
Three Modalities	16-50	18.15
Four Modalities	16-50	18.15
Five Modalities	19-80	21.78

- 7. The authority of the agency to amend the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101 and 53-6-141, MCA.
 - 8. Rule 46.12.532 is proposed to be amended as follows:
- 46.12.532 SPEECH PATHOLOGY SERVICES, REIMBURSEMENT (1) The department will pay the lowest of the following for speech pathology services not covered by medicare: the provider's actual (submitted) charge for the service; the provider's medicaid median charge for the service; the 75th percentile of the range of weighted medicaid median charges for each service covered by this rule, or 621-50 \$23.65 per hour.

The department will pay the lowest of the following for speech pathology services which are also covered by medicare: the provider's actual (submitted) charge for the service; the amount allowable for the same service under medicare, or \$21-50 \$23.65 per hour.

- 9. The authority of the agency to amend the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101 and 53-6-141, MCA.
 - 10. Rule 46.12.537 is proposed to be amended as follows:
- $\frac{46.12.537}{\text{will pay}} \quad \underline{\text{AUDIOLOGY SERVICES}}, \; \underline{\text{REIMBURSEMENT}} \quad \underline{\text{The department will pay the lowest of the following for audiology services not also covered by medicare: the provider's actual (submitted) charge for the service; the provider's medicaid median charge for the service; the 75th percentile of the range of weighted medicaid median charges for each service covered by this rule; or the department's fee schedule contained in this rule.$

The department will pay the lowest of the following for audiology services which are also covered by medicaid: the provider's actual (submitted) charge for the service; the amount allowable for the same service under medicaid; or the department's fee schedule contained in this rule.

AUDIOLOGY FEE SCHEDULE

Basic Audio Assessment (BAA)	20-00	$\frac{44.00}{22.00}$
Speech Discrimination Test	8+00	8.80
Speech Reception Threshold	8-99	8.80
Pure Tone Air Threshold	8-00	8.80
Pure Tone Bone Threshold	8-00	8.80
Tympanogram (unilateral)	3-00	3.30
Tympanogram (bilateral)	6-99	6.60
Acoustic Reflex (bilateral)	8-99	8.80
Static Compliance	6-00	6.60
Bekesy	10-00	$1\overline{1.00}$
SISI (two or more frequency)	10-00	$\overline{11.00}$
Loudness Balance or ABLB	10÷00	11.00
Stenger	10-00	$\overline{11.00}$
Doefler - Stewart	10-00	11.00
Lombard	10-00	11.00

- 11. The authority of the agency to amend the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101 and 53-6-141, MCA.
 - 12. Rule 46.12.542 is proposed to be amended as follows:
- 46.12.542 HEARING AID SERVICES, REIMBURSEMENT (1) The department will pay the lowest of the following for hearing aid services not also covered by medicare: the provider's actual (submitted) charge for the service; the provider's medicaid median charge for the service; the 75th percentile of the range of weighted medicaid median charges for each service covered by this rule; or the department's fee schedule contained in this rule.

The department will pay the lowest of the following for hearing aid services which are also covered by medicaid: the provider's actual (submitted) charge for the service; the amount allowable for the same service under medicare; or the department's fee schedule contained in this rule.

(2) Hearing aid fee schedule:

MAR Notice No. 46-2-305

List of Services	Fee
Purchase of instrument	Wholesale cost & \$250-00 \$275.00 dispensing fee
Hearing aid rental	\$1.00 \$1.10 per day
Hearing aid service & repair (which includes a 6 month warranty)	\$60-00 \$66.00 maximum per year per aid
MAR Notice No. 46-2-305	21-11/12/81

Hearing aid recasing	\$30.00 \$33.00 maximum per year per aid
Accessories (Cords, receivers, etc.)	\$35.00 \$38.50 maximum per year per aid
Bone ossilator	\$65-00 $$71.50$ maximum per year per aid
Ear mold replacement	\$\frac{15-00}{516.50}
Hearing aid batteries	\$7.50 \$8.25/silver oxide standard package \$5.00 \$5.50/all other standard package

- 13. The authority of the agency to amend the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101 and 53-6-141, MCA.
 - 14. Rule 46.12,547 is proposed to be amended as follows:

46.12.547 OUTPATIENT OCCUPATIONAL THERAPY SERVICES, RE-IMBURSEMENT The department will pay the lowest of the following for outpatient occupational therapy services not also covered by medicare: the provider's actual (submitted) charge for the service; the provider's medicaid median charge for the service; the 75th percentile of the range of weighted medicaid median charges for each service covered by this rule; or the department's fee schedule contained in this rule.

or the department's fee schedule contained in this rule.

The department will pay the lowest of the following for outpatient occupational therapy services which are also covered by medicare: the provider's actual (submitted) charge for the service; the amount allowable for the same service under medicare; or the department's fee schedule contained in this rule.

A. D. L		18.15
Occupational Therapy Evaluation	27-50	30.25
Home Instruction	27÷50	30.25
One Modality	11-00	12.10
Two Modalities	12-10	13.31
Three Modalities	16-50	18.15
Four Modalities		18.15
Five Modalities	1 9+80	21.78

15. The authority of the agency to amend the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101 and 53-6-141, MCA.

16. Rule 46.12.557 is proposed to be amended as follows:

46.12.557 PERSONAL CARE SERVICE, REIMBURSEMENT The department will pay the lowest of the following for personal care services not covered by medicare: the provider's actual (submitted) charge for the service; the provider's medicaid median charge for the service; the 75th percentile of the range of weighted medicaid median charges for each service covered by this rule; or the department's fee schedule contained in this rule.

The department will pay the lowest of the following for personal care services which are also covered by medicare: the provider's actual (submitted) charge for the service; the amount allowable for the same service under medicare; or the department's fee schedule contained in this rule. (1) Payment for personal care service shall be minimum wage plus 15 percent in lieu of fringe benefits except where exigent circumstances exist, a reasonable payment rate may be negotiated between the department and the provider.

- (2) On a weekly basis, payment shall not exceed 80 percent of the cost of nursing home per diem except when prior authorized.
 - (3) Payment for registered nurse supervision shall be:(a) established by a contract with the department when
- (a) established by a contract with the department when provided by a licensed home health agency;
- (b) \$7.50 \$8.25 per hour when provided by an independent registered nurse; or
- (c) where exigent circumstances exist, a reasonable payment rate may be negotiated between the department and the provider.
- 17. The authority of the agency to amend the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101 and 53-6-141, MCA.
 - 18, Rule 46.12.567 is proposed to be amended as follows:
- 46.12.567 PRIVATE DUTY NURSING SERVICE, REIMBURSEMENT The department will pay the lowest of the following for private duty nursing services not also covered by medicare: the provider's actual (submitted) charge for the service; the provider's medicaid median charge for the service; the 75th percentile of the range of weighted medicaid median charges for each service covered by this rule; or \$40-00 \$44.00 per eight (8) hour shift.

The department will pay the lowest of the following for private duty nursing services which are also covered by medicare: the provider's actual (submitted) charge for the service; the amount allowable for the same service under medicare; or \$40.00 \$44.00 per eight (8) hour shift.

- 19. The authority of the agency to amend the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101 and 53-6-141, MCA.
 - 20. Rule 46.12.582 is proposed to be amended as follows:
- 46.12.582 PSYCHOLOGICAL SERVICES, REIMBURSEMENT The department will pay the lowest of the following for psychological services not also covered by medicare: the provider's actual (submitted) charge for the service; the provider's medicaid median charge for the service; the 75th percentile of the range of weighted medicaid median charges for each service covered by this rule; or the department's fee schedule found in this rule.

The department will pay the lowest of the following for psychological services which are also covered by medicare: the provider's actual (submitted) charge for the service; the amount allowable for the same service under medicare; or the department's fee schedule contained in this rule.

\$34-27 \$37.69 for individual psychological services; (1)

or

- \$10,28 \$11.30 for group psychological services. (2)
- 21. The authority of the agency to amend the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101 and 53-6-141, MCA.
 - 22. Rule 46.12.605 is proposed to be amended as follows:
- $\frac{46.12.605}{\text{ment}} \quad \underline{\text{DENTAL}} \quad \underline{\text{SERVICES}}, \quad \underline{\text{REIMBURSEMENT}} \quad \text{The department} \\ \text{will pay the lowest of the following for dental services}$ not also covered by medicare: the provider's actual (submitted) charge for the service; the provider's medicaid median charge for the service; the 75th percentile of the range of weighted medicaid median charges for each service covered by this rule; or the department's fee schedule found in this rule.

The department will pay the lowest of the following for dental services which are also covered by medicare: provider's actual (submitted) charge for the service; the provider's medicaid median charge for the service; the amount allowable for the same service under medicare; or the department's fee schedule contained in this rule.

- (1) Preventive and diagnostic services:
- (a) examination and execution of forms - 7-80 9.36; (b) complete intra-oral radiograms, minimum 14 films -26.00;
 - single periapical radiograms, first film 5.20; (c)
 - (d)
 - each additional film, periapical 2.60; bite-wing radiograms, 2 films 7:80 9.36; intra-oral occlusal maxillary or mandibular 6.50;

(g) cephalometric radiograms or panorex, diagnostic only - 26.00;

(h) extra-oral radiograms, maxillary or mandibular lateral film -19.50;

(i) allowable charges for x-rays in a single visit shall

not exceed the allowable charges for a full mouth x-ray;

(j) consultation fee (necessity to be shown) per session -13.00;

hospital calls - 19.50; (k)

simple operations under general anesthesia in hospi-(1)tal - 39.00:

(m) house calls and nursing home calls - 9.10;

- vitality tests one tooth or per quadrant 7.80;
- (O) palliative (emergency treatment of dental (includes only minor procedures, i.e., temporary fillings, incision and drainage, topical medicaments, irrigation, pericoronitis, etc.) - 7.80;
- (p) stannus flouride 8%, one treatment, including prophylaxis - 22.10;

flouride - 7.70; (q)

(r) prophyliaxis, includes routine scaling and polishing/adults and children - 16.90;

Amalgam restorations: (2)

- (a) deciduous, one surface - 12-32 14.78;
- deciduous, two surface 20+16 24.19; deciduous, three surface 28-16 33.79; (b)
- (c)
- (d) each additional surface, deciduous - 3.30; one surface, permanent - 12:32 14.78; (e)
- (f) two surface, permanent - 20-16 24.19;
- (g) three surface, permanent 20-16 33.79;
 (h) each additional surface (includes cusp restoration, veneer, groove extension, etc.) permanent 4-80 5.76;
 (i) pins for retention (maximum 2) each pin 3.90.
 (3) Silicates and fiberglass restorations (per surface):

 - silicate 13.00; (a)
- (b) compost resin (addent, dakor, adaptic, concise, prestige, etc.) 19-20 23.04.
- composite fillings for posterior teeth will be paid (c) at the rate of a similar amalgam restoration except for buccal surfaces.
 - (4) Additional operative procedures:
- acrylic jacket, immediate treatment for fractured (a) anterior - 26.00;
 - treatment filling (emergency) 6.50; (b)

recement inlay - 6.50; (c)

- pulpotomy need authorization 19-20 23.04; No extra fee for pulp capping or bases. (d)
- (e)
- Crown and bridge: (5)
- three-quarter cast crown 125.45; full cast crown 125.45; (a)
- (b)

(c) cured acrylic jacket crown, laboratory processed -104.00;

(d) porcelain jacket - 143.00;

porcelain veneer (microbond, ceramco, etc.) - 184-00 (e) 220.80;

(f) full cast crown with acrylic facing - 184.00;

- (g) gold and semi-precious crowns will be reimbursed at the same rate.
- (6) Pedodontics, spacers, crowns, etc. amalgam restorations same as permanent teeth:

(a) chrome crown - 40-00 48.00;

(b) immediate treatment of fractured anterior permanent tooth, includes pulp testing, pulp capping and use of metal band or crown form with sedative filling - 20.80;

(c) chrome crown and loop spacer or other types (space

maintainer) - 52.00;

- (d) bilateral space maintainer or lingual arch 82.50;
- acrylic denture, without clasps, supplying 1 to 4 (e) (flipper) - 65.00;
- (f) each additional tooth, permanent on acrylic denture (flipper) - 6.50;
 - chrome wire clasps, adams, t or ball, each 6.50;

stainless steel band - 12.00. (h) (7)Prosthodontics:

complete maxillary denture, acrylic, plus necessary (a) adjustment - 336.00:

complete mandibular denture, acrylic, plus necessary (b) adjustment - 336.00;

- (c) acrylic upper or lower partial denture with cast chrome clasps and rests replacing at least 4 posterior teeth plus adjustments - 260.00;
- (d) maxillary cast chrome partial denture, saddles, 2 clasps and rests, replacing missing posterior teeth and one or more anterior teeth, plus adjustments - 325.00.

 - (8) Relines and repairs, etc.: (a) cured resin reline, lower 86.45;
 - (b) cured resin reline, upper - 86.45;
- broken denture repair, no teeth, metal involved -(c) 32:00 <u>38.40</u>;
- (d) denture adjustment only where dentist did not make dentures - 7.80;
- (e) replacing broken tooth on denture, first tooth -24.00;
- (f) each additional tooth after procedure (e) and (g) -6.50;
- (g) adding teeth to partial to replace extracted natural teeth, first tooth - 32.50;
 - (h) replacing clasp, new clasp 45.50;
- repairing (welding or soldering) palatal bars, (i) lingual bars, metal connectors, etc. on chrome partials -84.50;

duplicate (jump) upper complete denture - 110.50;

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(k)
          lower jump or duplicate - 110.50;
     (1)
          placing name on new, full or partial dentures -
10.00.
     (9)
          Pontics:
     (a)
          steele's facing type, each - 97.50;
          pontic - ceramic only - 147.50;
     (b)
          cured acrylic, laboratory processed, veneer - 97.50;
     (c)
     (10)
          Repairs:
          recement bridge - 13.00;
     (a)
     (b)
          recement crown - 6.50;
     (c)
          porcelain facing - 26.00;
     (d)
          replace broken steele's facing, post intact - 22.00;
          gold post - 55.00;
steel post or dowel with amalgum buildup - 26.00;
     (e)
     (f)
          replace broken steele's facing, post broken - 32.50.
     (g)
     (11)
          Oral surgery:
     (a)
          I and D of abcess extra-oral - 50.00;
          removal of tooth (includes shaping of ridge bone) -
     (b)
14-88 17.85;
     (C)
          surgical removal of tooth, soft tissue impaction -
32.50;
     (d)
          surgical removal of tooth, partial bone impaction -
58.50;
          surgical removal of tooth, complete bone impaction -
     (e)
97.50;
     (f)
          alveolectomy, not in conjection with extractions,
per quadrant - 32.50;
     (g) excision of hyperplastic tissue/each quad - 32.50;(h) removal of retained, residual roots, foreign bodies
in bony tissue - 32.50;
     (i) removal of cyst - 50.00;
         removal of retained, residual roots, foreign bodies
     (j)
in maxillary sinus - 97.50;
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(m) biopsy, including pathology lab charges - 26.00; maxilla, open reduction - 326.30; (n)

removal of exostosis torus, maxillary or mandibu-

- fracture, simple, maxilla, treatment and care -(0) 253.50;
 - mandible, open reduction 436.80; (p)

frenectomy - 45.50;

- (q) fracture, simple, mandible, treatment and care -253.50;
- facial surgery usual and customary charges which (r)are reasonable.
 - (12) Endodontics:

(k)

(1)lar - 65.00;

(j)

- (a) root canal chemotherapy and mechanical preparation, scaling and filing) - 112.00;
 (b) root canal, each additional root up to two - 30.00;

- (c) root canal and apicoectomy combined operation -97-50 117.00;
- apicoectomy not in conjunction with root canal -(d) 58.50.
 - (13) Anesthesia:
 - general anesthesia administered in office 39.00; (a)
 - (b) nitrous oxide - 4.00;
 - oral premedication \$10.00; (c)
 - parenteral premedication \$39.00 (d)

 - (14) Periodontal services:(a) periodontal prophylaxis per quadrant 16.90;
 - gingival resection 32.50; (b)
- (15) Dentist examining more than one medicaid recipient in a long-term care facility on the same day shall be allowed payment for one nursing home call over the examination fees. Examination is considered a recorded evaluation.
 - (16) Reimbursement orthodontia:
 - examination 7.89 9.36; (a)
- full treatment records and diagnosis 45.50 (b) 54.60;
- full treatment, initial fee includes appliances -(c) 315.00;
- (d) full treatment, monthly fee (prior authorization will state maximum number at months) 31.50;
 - (e) full treatment, retention service - 3.50;
 - (f) serial extractions, supervision - 3.50;
 - (g)
 - partial treatment, expansion appliance 175.00; partial treatment head gear appliance 175.00; (h)
- special appliance, bilateral space maintainer, upper (i) and lower - 82.50;
- (j) special appliance, unilateral space maintainer -52.00:
 - special appliance, expansion appliance 175.00; special appliance, retainer 87.50; special appliance, habit appliance 87.50. (k)
 - (1)
 - (m)
- $23\,.$ The authority of the agency to amend the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101 and 53-6-141, MCA.
 - Rule 46.12.905 is proposed to be amended as follows:
- 46.12.905 OPTOMETRIC SERVICES, REIMBURSEMENT (1) department will pay the lowest of the following for optometric services not also covered by medicare: the provider's actual (submitted) charge for the service; the 75th percentile of the range of weighted medicaid median charges for each service covered by this rule; or the department's fee schedule contained in this rule.

The department will pay the lowest of the following for optometric services which are also covered by medicare: the -1435-104

provider's actual (submitted) charge for the service; amount allowable for the same service under mediare; or the department's fee schedule contained in this rule.

Visual Examination for diagnosis only. ing procedures are included:

- Case history, symptoms, and occupational vision (a) evaluation
- Analysis and neutralization of patients current (b) lenses and frames

Visual acuity testing, distance and near (c)

(d) Eye health examination

(i) pupillary reflexes (direct, consensual, and accommodativé)

ophthalmoscopy (media and fundus inspection) (ii)

(iii) external inspection (cornea, lids, and adnexa)

ocular motility (versions) (iv) Visual Analysis

(e) (i) keratometry or ophthalmometry

(ii) preliminary oculomoter coordination evaluation (pursuits, saccadics, cover tests, N.P.C.)

(iii) refraction at far point: static retinoscopy, subjective refraction

(iv) refraction at near point: dynamic retinoscopy,

subjective refraction phorometric tests at far point and near point: (V) phorias,

ductions, blur points, accommodative measurements The fee is: \$23-25 \$25.57 (f)

(2) Visual Examination, prescription, and follow-up. The following procedures are included:

(a) Case history, symptoms, and occupational vision evaluation,

Analysis and neutralization of patients current (b) lenses and frames

(c) Visual acuity testing, distance and near

(d) Eye health examination

(i) pupillary reflexes (direct, consensual, and accommodative)

ophthalmoscopy (media and fundus inspection) (ii)

(iii) external inspection (cornea, lids, and adnexa)

ocular motility (versions) (iv)

(e) Visual Analysis keratometry or ophthalmometry (i)

(ii) preliminary oculomoter could (pursuits, saccadics, cover tests, N.P.C.)
(iii) refraction at far point: oculomoter coordination evaluation

static retinoscopy, subjective refraction

(iv) refraction at near point: subjective refraction dynamic retinoscopy,

phorometric tests at far point and near point: ductions, blur points, accommodative measurements phorias,

Prescribing: writing ophthalmic lens power pre-

scription(s)

- (g) Follow-up observation at visit following the delivery and fitting of new lens prescription: observation of patient's reactions and evaluation of visual performance with new glasses or other therapy performing of any indicated frame or lens adjustments re-prescribing of lens and/or frame if indicated
 - (h) The fee is: \$31-00 \$34.10

(3) Measuring:

(a) measuring, verifying, single vision service (for standard frame and basic power ophthalmic lenses) - \$9-30 \$10.23

(b) measuring, verifying, bifocal lens service - \$12-40

\$13.64 (c) measuring, verifying, trifocal lens service - \$15.50 \$17.05 (a) measuring, verifying, cataract lens service - \$23-25 \$25.57

74) Fitting:

fitting, servicing, single vision frame service -(a) \$9-30 \$10.23

(b) fitting, servicing, bifocal frame service - \$12-40 \$13.64

- fitting, servicing, trifocal frame service \$15.50 (c) \$17.05
- (d) fitting, servicing, cataract frame service - \$23-25 \$25.57

(5) Hearing Aid Dispensing Services

- (a) Add to measuring and verifying services - \$7:75 \$8.52
 - (b) Add to fitting services - \$7.75 \$8.52

(6) Non-basic Diagnostic Services

Visual examination, additional visits - \$7.75 \$8.52 (a) (b) Visual field, peripheral field examination, using perimeter or equivalent, white fields - \$7.75 \$8.52

(c) Visual fields, periphereal field examination using perimeter or equivalent, color fields - \$10.85 \$11.93

- central field examination using (d) Visual fields, tangent screen or equivalent
 - (i) white fields \$7.75 \$8.52 (ii) color fields - \$10.85 \$11.93

(e) Screening, visual skills examination, using keystone tests or equivalent - \$6-20 \$6.82

(f) Screening, multiple pattern visual fields, using harrington-flecks or equivalent - \$4.65 \$5.11

(g) Screening, limited tests for completion of insurance, government or school forms - \$6-20 \$6.82

(h) Color vision tests, using 20 isochromatic or equivalent - \$3-10 \$3.41

Tonometry, tension - \$6-20 \$6.82

(i)Biomicroscopy - \$6+20 \$6.82

(k) Special reports - \$46-50 \$51.15 per hour

(1)Consultation (schools, government) - \$46.59 \$51.15 per hour

(m) Office Consultation - \$6-20 \$6.82

(n) Out-of-office calls (add to other service)

(i) day-time - \$7-75 \$8.52

(ii) night-time - \$12-40 \$13.64

- (0) Mileage charge (beyond 10 miles from office) - \$-15 \$.17 per mile
 - (p) Post cataract diagnostic examination - \$23-25 \$25.57
 - (g) Cataract lens change or regrind - \$15.50 \$17.05

Non-Basic Ophthalmic Lens Services

(a) Non-Basic spherical and Shero-Cylindric Powers (+ = + or - = +) for each 4 diopters of sphere over Basic Power up to 12.00D (not applicable to cataract lenses) - add, per pair \$4-65 \$5.11

(b) For each 2 diopters cylinder over basic power - add,

per pair \$4-65 \$5.11

Special base curve - add, per pair \$3-10 \$3.41 (c)

(d) Prism Power

(i) total prism power less than 5 prism diopters - add, per pair \$4-65 \$5.11

(1i) total prism power 5 diopters or more - add, per pair \$7-75 \$8.52

Lenticular grinding

- concave add, per pair \$7-75 \$8.52
- (ii) convex add, per pair \$7.75 \$8.52
- (f) Slab-off grinding - add, per pair \$7.75 \$8.52
- Tinted or colored glass (g)
- (i) single vision lenses - \$3-10 \$3.41

(ii) multifocal lenses - 63-10 S3.41
(h) Oversize, fused flat top multifocal segment, 35 & 45 mm wide - 63-10 S3.41

Dual segment bifocal (to be added to bifocal value

units) - add, per pair \$15-50 \$17.05 (j) Dual segment trifocal (to be added to trifocal value

units) - add, per pair \$15.50 \$17.05

High add fused bifocal, 3.00 - 4.00 diopters - add, (k)

- per pair \$3.10 \$3.41 High add fused bifocal, over - 4.00 - add, per pair (1)67-75 \$8.52
- (m) High add one-piece bifocal over 4.00 diopters add, per pair \$7-75 \$8.52
- (n) Plastic single vision lens add, per pair \$3-10
- \$3.41 plastic multifocal lens - add, per pair 67-75 \$8.52 (o)
- (p) Coating, anti-reflection or color add, per pair \$3-10 \$3.41
 - Iseikonic lens add, per pair \$139.50 \$153.45 (q)
 - Safety Hardening add, per pair \$3-10 \$3.41

Service Code for metal frames - \$6.20 \$6.82 (8)

(9) Contact Lens Therapy: These services to be performed at visits following the visual examination.

(a) Contact lens diagnostic examination include biomicroscopy, corneal measurements, ocular adnexa measurements, control lens observations, and contact lens refraction -\$15-50 \$17.05

Fitting Procedure, basic spherical lens include: integration of all diagnostic data to determine (b)

(i) physical specifications and refractive prescription of initial lens,

ordering from laboratory,

(iii) verifying finished lenses for physical specifications and refractive properties,

(iv) biomicroscopic and fluorescein evaluation of finished lenses in patients eye,

(v) contact lens refraction with finished lens,

(vi) instructing patient in insertion and removal procedures,

(vii) subsequent office visits to evaluate lens perfor-mance as wearing-time is increased (biomicroscopic and fluorscein inspections),

(viii) determination of necessary lens modifications or complete lens changes, as indicated,

- re-specifying, re-prescribing, and re-ordering of (ix) lenses as indicated,
 - (X) office laboratory modifications as indicated, and re-verifying of new or modified lenses.

(xi)

(xii) The fee is: \$232,50 \$255.75

The following fees may be added to contact lens (c) diagnostic examination or contact lens fitting procedure, basic spherical lens.

Procedures, Fitting Spherical Prism Ballast (i) Lenses - \$77:50 \$82.25 (ii) Fitting Pr

- Procedures, Lenticular and/or Aphakic Lenses - \$38.75 \$42.62
 - (iii) Fitting Procedures, Toric Lenses \$77.50 \$85.25 (iv) Fitting Procedures, Bifocal Lenses -\$155-00
- \$170.50 (v) Fitting Procedures, Keratoconus Lenses - \$155-00
- \$170.50 (vi) Office Call, observation and consultation - \$7.75
- \$8.52 (10) The following are independent procedures:
 - Instruction visit for previous contact lens wearer; (a)
 - fitted elsewhere \$23-25 \$25.57 (i)
 - fitted in your office \$10-85 \$11.93 (ii)
- Fitting Procedure for previous (b) contact wearer - \$150-00 \$165.00
 - Duplication of new contact lenses \$58-12 \$63.93 (c)
 - Fitting Procedure, monocular only \$150-00 \$165.00 (d)

(11)Contact Lens Laboratory Adjustments

(a) This service applies to new patients fitted elsewhere and your patients past customary servicing period. It includes edge-refinishing, size reducing, fenestrating, repolishing and bleeding. The fee is \$7.75. - \$8.52 (b) Analysis and neutralization of contact

lenses

69-30 \$10.23

(12) Servicing and Repairs, Frame Adjustments. Apply to: new patients fitted elsewhere and your patients past customary servicing period

Conventional frame (minor adjustments) - \$3.10 \$3.41 Conventional frame (complete realignment) - \$6.20 (a) (b)

- \$6.82
 - (c) Iseikonic lenses \$6+20 \$6.82
 - Low vision aid \$7.75 \$8.52(d)
 - (e) Special frame - \$7.75 \$8.52Hearing aid frame - \$7-75 \$8.52 (f)
- (13) Servicing and Repairs: Frame Replacements (standard
- frame) (a) Duplicate frame (2 003 + 004 using single vision service units) - \$13.95 \$15.34

(b) Different frame (requiring lens or frame reshap-

ing) - \$17-95 \$18.75

- (c) Front Replacement (3 003 + 004 using single vision service units) - \$11-62 \$12.78
- (d) Temple Replacement, per temple (service per pair) -\$3-88 \$4.62
 - (e) Hinge Repair - \$4-65 \$5.11
 - Ptosis Crutch \$15-59 \$7.05 (f)
 - (14) Servicing and Repairs: Minor Frame Reports
 - Replace Screws \$1.55 \$1.70 (a)
 - Supply Jumbo Pads \$1.70 (b)
 - (c) (d)
- Supply Temple Covers \$\frac{1}{5}\frac{5}{5}\frac{1}{.70}\$
 Supply Fad Covers \$\frac{1}{5}\frac{5}{5}\frac{1}{.70}\$
 Supply Hinge Springs or Tension Washers \$\frac{4}{3}\frac{1}{10}\$ (e) \$3.41
 - (f) Solder Repair - \$3-10- \$3.41
- Rocking Pads added to Zyl or aluminum frame \$3-10 (g) \$3.41
 - (h) Rightening hinge to front or temple - \$1.70
 - New top-rims \$3-10- \$3.41
 - (15) Servicing and Repairs: Lens
- Neutralization of Lenses for Copy of Prescription -(a) \$4-65 \$5.11
- (b) Lens replacment, one lens, single vision service -\$9-30 \$10.23
- (c) Lens replacement, one lens, bifocal service - \$12-40 \$13.64
- (d) replacement, one lens, trifocal service -Lens \$15-50 \$17.05
 - (16) Diagnostic Drug Procedures

(a) Cycloplegic examination/refraction, independent procedure - \$38-75 \$42.62

(b) Supplemental mydiadic, add to fee for other procedures - \$7-75 \$8.52

(c) Supplemental cycloplegic including post-cycloplegic

office visit - \$15.50 \$17.05

(d) Ophthalmoscopy, independent procedures, mydriasis, direct and/or indirect - \$15.59 \$17.05

(e) Ophthalmoscopy with contact fundus lens procedure,

add to fee for other procedures - \$10-83 \$11.91

(f) Gonioscopy, add to fee for other procedure - \$12.49 \$13.64

(g)

Gonioscopy, independent procedure - \$21.70 \$23.87
Tonography, independent procedure - \$31.00 \$34.10
Intra-ocular photography, independent procedure, (h) (i) anterior segment - \$15.59 \$17.05

(j) Intra-ocular photography, independent procedure, posterior segment - \$31-00 \$34.10

- (k) Supplemental differential diagnostic procedures using topical pharmaceuticals, add to fee for other procedures - 610-85 \$11.93
- (1) Ophthalmoscopy with contact fundus lens procedure, independent procedure 621.70 \$23.87

(m) Ophthalmodynamometry, supplemental procedure, add to fee for other procedures - \$9-30 \$10.23

(n) Ophthalmodynamometry, independent procedure - \$15.50

- (16) Visual training shall be reimbursed at the lowest of usual and customary charges, which are reasonable, the amount payable by medicare or \$18.00 \$19.80 per hour.
- 25. The authority of the agency to amend the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101 and 53-6-141, MCA.
 - 26. Rule 46.12.915 is proposed to be amended as follows:
- $\frac{46.12.915}{\text{pay}} \hspace{0.1cm} \underline{\text{EYEGLASSES}}, \hspace{0.1cm} \underline{\text{ReIMBURSEMENT}} \hspace{0.1cm} \text{The department will} \\ \text{pay} \hspace{0.1cm} \underline{\text{the lowest of the following for eyeglasses not also} \\ \text{covered by medicare: the provider's actual (submitted) charge} \\$ for the service; the provider's medicaid median charge for the service; the 75th percentile of the range of weighted medicaid median charges for each service covered by this rule; or the department's fee schedule contained in this rule.

The department will pay the lowest of the following for eyeglasses which are also covered by medicare: the provider's actual (submitted) charge for the service; the amount allowable for the same service under medicare; or the department's

fee schedule contained in this rule.

(1) Lab costs for eyeglasses - optometrist

	Per Pa	<u>iir</u>	
Hardened lenses-single vision Hardened Lenses-bifocals Hardened lenses-trifocals	\$19-80 30-80 36-30	$\frac{21.78}{33.00}$ $\frac{39.93}{39.93}$	
Plastic lenses Add to single lenses Add to bifocal/trifocal	2+20	2.42 7.26	
Tinting, add to lense Frames	6-60 3-30 21-00	$\frac{\cancel{3.63}}{\cancel{3.10}}$	
Contact lenses Cataract lense Balance lense	35-00 61-60	$\frac{38.50}{67.76 \text{ per}}$	lense
parance rense	±±÷00	24.20 per	lense

(2) Costs for eyeglasses - opticians and opthamologist

	Per Pai	<u>.r</u>
Single Vision	\$30-00	33.00
Bifocal	43-00	47.30
Trifocal	55-00	60.50
Plastic lenses		
Add to single lenses	4-00	4.40
Add to bifocal/trifocal	11-00	$1\overline{2.10}$
Tint (soft light 1, 2, and 3)	3-30	3.63
Frame	26-00	2 8.60
Metal Frame	30-00	33.00
Cataract lense	61+60	67.76 per lense
Balance lense	22-00	24.20 per lense
4 drop cataract		
Single vision	165-00	181.50
Bifocal	190-00	209.00
Balance lense	67-50	74.25
Frame (for 4 drop cataract)	30-00	33.00

- 27. The authority of the agency to amend the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101 and 53-6-141, MCA.
- 28. Rule 46.12.1015 is proposed to be amended as follows:
- 46.12.1015 SPECIALIZED NONEMERGENCY MEDICAL TRANSPORTATION, REIMBURSEMENT The department will pay the lowest of the following for specialized nonemergency medical transportation not also covered by medicare: the provider's actual (submitted) charge for the service; the provider's medicaid median charge for the service; the 75th percentile of the

range of weighted medicald median charges for each service covered by this rule; or the department's fee schedule contained in this rule.

The department will pay the lowest of the following for specialized nonemergency transportation which are also covered by medicare: the provider's actual (submitted) charge for the service; the amount allowable for the same service under medicare; or the department's fee schedule contained in this rule.

(1) The provider's rates as approved by the public service commission or the rates allowed by the following specialized nonemergency medical transportation fee schedule.

(2) Specialized nonemergency medical transportation fee schedule.

(a) Transportation under 16 miles...\$-8-00 \$8.80 one way \$14-00 \$15.40 round trip

Transportation over 16 miles....\$ -50 .55 per mile

Waiting time for transportation Computed in 15 minute increments or fraction thereof

Waiting time for under 16 miles.... No payment

When one way transportation is over 16 miles and the unloaded miles exceeds ten percent of the loaded miles, the miles from the departure point to the pick-up point plus the miles from the delivery point to the departure point shall be paid for at the rate of.....\$ +25 .28 per mile

(b) There shall be no charge for usual passenger baggage which is not cargo.

Children under six years of age accompanied by an (c) adult paying passenger shall be carried free.

- 29. The authority of the agency to amend the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101 and 53-6-141, MCA.
- 30. Rule 46.12.1025 is proposed to be amended as follows:
- 46.12.1025 AMBULANCE SERVICES, REIMBURSEMENT (1) Ambulance attendant services are included in the providers base
- Reusable devices and equipment such as backboards, neckboards and inflatable leg and arm splints are considered

part of the ambulance service and are included in the providers base rate.

- (3) Nonreusable items and disposable supplies such as oxygen, gauze and dressings, are reimbursable as a separate charge.
- (4) Medicaid reimbursement for mileage is allowed for
- patient loaded miles only outside the city limits.

 (5) The department will pay the lowest of the following for ambulance services not also covered by medicare: the provider's actual (submitted) charge for the service; the provider's medicaid median charge for the service; the 75th percentile of the range of weighted medicaid median charges for each service covered by this rule; or the individual provider's January July 1980 medicaid rate plus 10 percent. The department will pay the lowest of the following for ambulance services which are also covered by medicare: the provider's actual (submitted) charge for the service; amount allowable for the same service under medicare; or the individual provider's January July 1980 medicaid rate plus 10 percent.
- 31. The authority of the agency to amend the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101 and 53-6-141, MCA.
- 32. HB 500, an appropriation bill passed by the 47th Legislature, provides for a 10% increase of payment rates to medicaid providers (other than nursing homes, hospitals and home health agencies which are all on a cost reimbursement basis) beginning on July 1, 1981 and another 10% increase on July 1, 1982. The first increase has been delayed by the Department of Social and Rehabilitation Services until January 1, 1982 to help offset the deficit caused by greatly reduced federal financial participation. These proposed amendments would implement the increase in reimbursement appropriated by the legislature.

With concern to Rule 46.12.605, the funds available for the 10% were applied to eighteen procedures. The procedures include those recommended by the Montana Dental Association and those recommended by the Montana State Orthodontic Society except for three modifications. Two procedures were removed from the list and one procedure was added after reviewing the average billed charges.

Errors in the procedures codes of Rules 46.12.523 and 46.12.524 are also being corrected at this time.

 Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, MT 59604, no later than December 11, 1981.

34. The Office of Legal Affairs, Social and Rehabilitation Services has been designated to preside over and conduct the hearing.

Director, Social and Rehabilitation Services

Certified to the Secretary of State October 29 , 1981.

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

In the matter of the amendment of Rule 46.12.801 and the adoption of rules pertaining to prosthetic devices, durable medical equipment and medical supplies, definitions, requirements, and reimbursement of NOTICE OF PUBLIC HEAR-ING ON PROPOSED AMEND-MENT OF RULE 46.12.801

AND THE ADOPTION OF RULES PERTAINING TO MEDICAL SERVICES

TO: All Interested Persons

- 1. On December 2, 1981, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rule 46.12.801 and the adoption of rules pertaining to prosthetic devices, durable medical equipment and medical supplies, definitions requirements and reimbursement.
 - 2. Rule 46.12.801 is proposed to be amended as follows:

46.12.801 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, DEFINITION (1) Prosthesis, appli-

ances and medical supplies may be provided upon the recommendation of the attending physician. This includes artificial limber artificial eyes, hearing aids, braces, splints, durable medical equipment such as wheelchairs, walkers, canes, crutches, hospital beds, and sicknoom equipment. The rental or purchase of oxygen and oxygen equipment will also be charged to the prosthesis and appliance benefit. "Prosthetic devices" means replacement, corrective, or supportive devices or appliances which artificially replace a missing portion of the body to:

(a) prevent or correct physical deformity or malfunction; or

(b) support a weak or deformed portion of the body.

(2) All prosthesis, braces, splints, durable medical equipment and other appliances which cost less than \$75.00 may be purchased without prior authorisation from the economic assistance division. It is necessary, however, to have a physician prescription attached to each claim. The equipment must be primarily medical in nature and appropriate for home use. It is necessary to secure prior authorisation from the economic assistance division for items which cost more than \$75.00. If equipment is to be rented, the total rental cost should not exceed the purchase prior. "Durable medical equipment" means medical equipment for use in a patient's home, including, but not limited to, wheelchairs, walkers, canes, crutches, hospital beds and sickroom equipment.

- (3) In addition to the \$75.00 value restriction without prior authorisation, the following medical assistance program as it relates to proothesis, appliances, and medical supplies, including, but oxygen and oxygen equipment.
- (a) Orthopedic shoes are not a benefit unless they are attached to a brace or other device.
- (b) Shoe repair and shoe corrections are not benefits of the program.
- (e) Wheelehairs, walkers, etc. utilized by nursing home patients may not be provided unless the item is of special design for the particular patient and is used exclusively by him or unless it is a necessary part of a discharged home plan.
- (d) Convenience and comfort items such as air cleaners; grab bars; bed tables and tub seats are not a benefit of the program:
- (4) The department will pay the lowest of the fellowing for prosthetic devices, durable medical equipment, and medical supplies not also covered by medicare: the provider's actual (submitted) charge for the item, the provider's medicaid median charge for the item, the 75th percentile of the range of weighted medicaid median charges for each item covered by this rule.

The department will pay the lower of the following for prosthetic devices, durable medical equipment and medical supplies which are also covered by medicare: the provideria actual (submitted) charge for the item; or the amount allowable for the same item under medicare.

- 3. The authority of the agency to amend the rule is based on Section 53-6-113, MCA, and the rule implements Section 53-6-101 and 53-6-141, MCA.
 - 4. Rule I is proposed to be adopted as follows:

RULE I PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, REQUIREMENTS These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

- (1) Prosthetic devices, durable medical equipment and medical supplies must be prescribed by a physician or other licensed practitioner of the healing arts within the scope of his practice as defined by state law.
- (2) The following are limitations of the medical assistance program as it relates to prosthesis, appliances, and medical supplies;
- (a) Orthopedic shoes are excluded unless they are attached to a brace or other device.

- Shoe repair and shoe corrections are excluded.
- (c) Wheelchairs, walkers, etc. utilized by nursing home patients may not be provided unless the item is of special design for the particular patient and is used exclusively by him or unless it is a necessary part of a discharged home
- Convenience and comfort items such as air cleaners, grab bars, bed tables and tub seats are not a benefit of the program.
- 5. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101 and 53-6-141, MCA.
 - Rule II is proposed to be adopted as follows:

PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLIES, REIMBURSEMENT/GENERAL REQUIREMENTS (1) The department will pay the lowest of the following

- for prosthetic devices, durable medical equipment, and medical supplies not also covered by medicare: the provider's actual (submitted) charge for the item; the medicaid fee schedule; the provider's medicaid median charge for the item; the 75th percentile of the range of weighted medicaid median charges for each item covered by this rule.
- The department will pay the lower of the following for prosthetic devices, durable medical equipment and medical supplies which are also covered by medicare: the provider's actual (submitted) charge for the item; the medicaid fee schedule; or the amount allowable for the same item under medicare,
- (2) Rental of prosthetic devices and durable medical equipment shall not exceed the purchase price plus one month's rental or where a patient's age or physical condition requires frequent changes in prosthetic devices and/or durable medical The limitation of rental shall apply to each equipment. change in prosthetic device and/or durable medical equipment.
- All prosthesis, durable medical equipment and medical supplies listed as by report (BR) in the reimbursement fee schedule require prior authorization by the designated peer review organization.
- All prosthesis, durable medical equipment and medical supplies listed as by report (BR) in the reimbursement/fee schedule will be reimbursed at the lower of 90% of billed charges or no more than the manufacturer's 1980 suggested retail price or the requirements listed in item (1) of this rule.
- 7. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101 and 53-6-141, MCA.

8. Rule III is proposed to be adopted as follows:

RULE III PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, REIMBURSEMENT/FEE SCHEDULE

(1) MEDICAID FEE SCHEDULE FOR RENTAL OF MEDICAL SUPPLIES AND EQUIPMENT

Crutches, stand, wood/per month - \$6.00

Crutches, for arm/per month - \$13.20

Crutches, special/per month - \$14.30

Hospital bed, standard with mattress/per month - \$39.00

Hospital bed, electric with mattress/per month - \$81.00

Hospital bed, electric or standard, side rails/per month - \$13.00

Trapeze bar with stand/per month - \$27.00

Trapeze bars/per month - \$13.00

Walker, regular/per month - \$16.00

Walker, wheeled/per month - \$19.00

Wheelchair, standard, folding/per month - \$49.50

Wheelchair, standard hospital/per month - \$38.50

Wheelchair, standard with accessory/per month - \$49.50

Wheelchair, standard, motor/per month - \$55.00

Wheelchair, child, with accessory/per month - \$28.60

Wheelchair, custom, special/per month - \$44.00

Wheelchair accessory/per month - \$49.50

Raised toilet seat/per month - \$7.70

Miscellaneous supplies and equipment/per month - BR

Standard commode/per month - \$13.00

Wheeled commode/per month - \$16.00

Hoyerlift/per month - \$55.00

Seat lift/per month - \$55.00

Ultrasonic nebulizer/per month - \$49.50

Asthmastix/per month - BR

IPPB/per month - \$60.00

Portabird/per month - \$55.00

Handevent/per month - \$55.00

Respirator/per month - \$49.50

Linde reservoir/per month - \$44.00

Linde walker unit/per month - \$38.50

PCU container/per month - \$44.00

LV 160/per month - \$38.50

Liberator stroller/per month - \$99.00

Mada Duo-pak 13 B/per month - \$27.50

Lifesaving unit 5000/per month - \$26.40

Lifesaving unit 5010/per month - \$26.40

Oxygen regulator/per month - \$18.50

Cylinder/per month - \$6.60

Regular humid unit/per month - \$16.50

Oxygen tent/per month - \$33.00

Port-carry unit with E tank/Reg/per month - \$22.00

Liberator/per month - \$60.50

Briox oxyeconcentrator/per month - \$264.00

Water mattress/per month - \$38.50

Raised toilet seat/per month - \$7.70

Dialysis equipment/per month - BR

MAR Notice No. 46-2-306

21-11/12/81

Dialysis Unibed tank/per month - \$22.00 Dialysis Duo bed tank/per month - \$44.00 Dialysis Tri bed tank/per month - \$66.00 Jobst pressure pump/per month - \$44.00

(2) MEDICALD FEE SCHEDULE FOR PURCHASE OF MEDICAL SUPPLIES AND EQUIPMENT

Surgical Supplies

Syringes -

Insulin (glass)/each - \$.22

Tuberculin (glass)/each - \$.22

General (glass)/each - BR

Special (glass)/each - \$12.10

Insulin (disposable)/each - \$.22

Tuberculin (disposable)/each - \$.22

General (disposable)/each - \$.29

Special (disposable)/each - \$.29

Asepto syringes/each - \$.25

Needles

Regular (permanent)/each - \$.19

Regular (disposable)/each - \$.25

Special (permanent)/each - \$.22

Special (disposable)/each - \$.33

Analysis Reagents and Equipment

Urine test - BR

Tes-tape/roll - \$4.00

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Clinitest tablets/each - \$.0475

Clinitest tablets (foilrap roll)/each - \$.05

Clinitest strips/each - \$.06

Albustix strips/each - BR

Keto-Diastix/each - \$.11

Combistix strips/each - \$.04

Uristix strips/roll - BR

Acetest tablet roll/per tablet - \$.088

Acetest tablets/each - \$.09

Ketostix strips/each - \$.16

Diastix/each - \$.06

Durable Sick Room Apparatus

Cane, regular - \$12.00

Cane, quad - \$32.85

Crutches, stand, wood - \$21.95

Crutches, stand, metal - \$27.50

Crutches, for arm - \$52.80

Crutches, special - \$28.60

Dialysis equipment - BR

Hospital bed, standard with mattress - \$824.18

Hospital bed, electric with mattress - \$1,149.25

Hospital bed, standard, side rails/per rail - \$55.00

Hospital bed, electric, side rails/per rail - \$55.00

Postural drainage board - \$49.50

Alternating pressure pad - \$33.00

Alternating pressure pad with pump - \$335.94

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Hoyer lift - \$577.50

Seat lift - \$1,050.50

Standard commode - \$71.50

Wheeled commode - \$110.00

General Equipment

Bed pan, regular - \$11.14

Bed pan, fracture - \$7.69

Thermometer, fever/each - \$1.60

Emesis basin - \$7.00

Urinal, female, metal - \$29.32

Urinal, male, metal - \$34.00

Heating pad - \$17.54

Traction, hip - BR

Traction, neck - \$26.40

Vaporizer, steam type - \$13.15

Humidifier - \$29.26

Vaporizer, cool type - \$21.84

Handheld nebulizer - \$6.55

Whirlpool bath (portable) - \$320.00

Sitz bath - \$55.00

Cervical collar - \$21.45

Trapeze bars - \$20.00

Walker, regular - \$60.45

Walker, wheeled - \$154.00

Wheelchair, standard folding - \$625.00

Wheelchair, standard hospital - \$363.00

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Wheelchair, standard with accessory - \$755.00

Wheelchair, standard motor - \$1,556.60

Wheelchair, child, folding - \$550.00

Wheelchair, child, with accessory - \$443.00

Wheelchair, custom special - \$973.50

Waterpik - \$39.55

Bathtub stool - \$50.60

Wheelchair accessory - BR

Flotation cushion wheelchair/each - \$30.00

Bathtub seat - \$70.94

Bathtub rails/each - BR, not to exceed \$36.95

Raised toilet seat - \$50.30

Wheelchair repair - BR

Ostomy pouch, self administered - \$11.00

Disposable colostomy bags - \$12.05

Disposable colostomy appliance accessory - \$15.92

Disposable colostomy appliance - BR

Colostomy shield appliance - \$7.70

Colostomy irrigating appliance - \$6.60

Colostomy irrigate accessory - \$.74

Colostomy appliance (non-disposable) - BR

Colostomy appliance accessory - \$5.45

Disposable ileostomy appliance - \$44.46

Disposable ileostomy accessory - \$35.15

Disposable urostomy bags/each - \$1.55

Male urinal, complete/each - \$9.75

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Urinal bag (each) - \$3.17

Suspensory (for use with urinal) - \$20.86

Disposable urinal collect bag/each - \$3.17

Urinal accessories (drainage tube) - \$7.98

Bedside collect unit, complete - \$9.96

Bedside drainage bags - \$6.38

Incontinance clamp - \$31.55

Urethral catheter with tray (rubber silicone)/each - \$4.97

Urethral catheter, each - \$.77

Indwelling catheter (foley, ballon retention)/each - \$7.55

Feeding tube/per foot - BR

Colon tube/per foot - BR

Gastric tubes/per foot - \$.45

Syringe tubing - BR

Wrist splint - \$17.22

Arm splint - \$8.80

Finger splint - \$.83

Leg splint - \$29.66

Installment DME or machine set-up - BR

Ultrasonic nebulizer - \$467.50

Asthmastix - BR

IPPB, air - \$462.00

IPPB, oxygen - \$462.00

Portabird - \$520.00

Handevent - \$114.40

Respirator - \$434.50

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Mada Duo-pak (with adjustable flow regulator) - \$209.72

Lifesaving unit 5000 - \$140.45

Lifesaving unit 5010 - \$184.80

Regular humidifier unit - \$18.45

D cylinder - BR

E cylinder - \$75.68

R cylinder - BR

Cylinder No 5 - BR

- 02 contents Linde Reservoir \$41.25
- 02 contents Liberator \$45.10
- 02 contents L V 160 \$313.50
- 02 contents PCU Reservoir \$39.60
- 02 contents G P 45 \$264.00
- 02 contents D cylinder \$11.55
- 02 contents E cylinder \$11.55
- 02 contents GDL-K cylinder \$19.53
- 02 contents H cylinder \$19.53
- 02 contents J cylinder \$23.21
- 02 contents M cylinder \$9.46
- 02 contents 0 cylinder BR
- 02 contents Q cylinder \$13.20
- 02 contents R cylinder \$9.90
- 02 contents S cylinder \$12.38

IPPB Kit - BR

Cannula - \$2.50

Connective tubing/per foot - \$.44

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Portable aspirator - \$9.96

Connectors - \$.88

Face mask - \$2.75

Mouth piece - \$.66

Nasal catheter - \$1.49

Disposable IPPB tubing - \$3.85

Disposable humidifiers - \$1.57

Extension hoses - \$1.65

Mada plastic nebulizer W mask & tube - \$6.60

Nasal 02 kit - \$16.50

02 tubing - \$1.93

Delivery charge - BR

Oxygen regulator - \$16.50

Liquid 02 330 - BR

Liquid 02 80 - BR

Aquapak - \$4.13

Anatomical Supports

Appliances, surgical - BR

Scrotal truss - \$43.23

Umbilical truss - BR

Shoulder brace - \$15.40

Sacroiliac support - \$13.25

Lumbosacral support (corsets) - \$93.50

Post hernia truss - \$11.54

Hinged joint steel knee cap - BR

Knee brace - \$15.35

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Wrist brace - BR

Corsets - \$66.00

Abdominal support - \$12.65

Dorso lumbar support - \$103.20

Mastectomy support - \$27.50

Orthopedic brace - BR

Acrylic neck brace - \$26.40

Foam cervical collar - \$10.40

Dennis Brown splint - \$22.00

Ankle brace - BR

Orthopedic shoes, brace - \$201.58

Orthotic appliances - BR

Girdle attachment brace - BR

Rib belt - BR

Repair of prosthesis - BR

Repair orthopedic appliance - BR

Elastic supports - BR

Elastic stockings (sheer type, Jobst or similar) - \$24.60

Elastic stockings (surgical type) - \$24.60

Miscellaneous Supplies and Equipment

Miscellaneous supplies and equipment - BR

Gel cushion - \$42.30

Enema supplies - \$11.00

Allergenic extract - BR

Injection supplies - BR

Isotopes - \$47.61

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Eye prosthesis - \$330.00

Overbed table - \$12.65

Foam cushion - \$9.85

Water mattress - \$96.00

Foam mattress - \$69.50

Tracheotomy tubes - \$11.00

Stump sox/pair - \$15.00

Protective helmet - \$26.50

Transfer board - \$12.50

Helping Hand - \$22.00

Disposable gloves/each - \$.08

Gauze, bandages, tape - BR

Rest-On foam pads - \$3.98

Disposable under pads/each - \$.29

Sheepskin - BR

Oversponges/each - \$.06

Arm sling - \$3.60

Dermacin - \$2.20

Contraceptives

Diaphragm - \$6.60

Condoms/one dozen - \$3.00

IUD's - CU7 ~ \$20.00

IUD's - Progestasert - \$9.00

IUD's - others - \$6.00

Pills/one cycle - \$3.00

Foam, Jelly, Creme - \$3.30

21-11/12/81

MAR Notice No. 46-2-306

- 9. The authority of the agency to adopt the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101 and 53-6-141, MCA.
- 10. The purpose of the proposed adoption and amendments of these rules is to more accurately define prosthetic devices, durable medical equipment and medical supplies. Further, the proposed adoption and amendment establishes the requirements necessary for Medicaid patients to be recipients of prosthetic devices, durable medical equipment and medical supplies reimbursed by the Medicaid Program and establishes the first specific reimbursement schedule for payment by the Medicaid Programs for prosthetic devices, durable medical equipment and medical supplies.
- 11. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604, no later than December 11, 1981.
- 12. The Office of Legal Affairs, Social and Rehabilitation Services has been designated to preside over and conduct the hearing.

rector, Social and Rehabilitation Services

Certified to the Secretary of State October 29 , 1981.

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

In the matter of the amendment) NOTICE OF PUBLIC HEARING of Rule 46.12.2003 pertaining to medical services, reimbursement) ON PROPOSED AMENDMENT TO) RULE 46.12.2003, PERTAIN+) ING TO MEDICAL SERVICES, REIMBURSEMENT

To: All Interested Persons:

- 1. On December 2, 1981, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rule 46.12.2003, pertaining to medical services, reimbursement.
 - The rule is proposed to be amended as follows:

46.12.2003 PHYSICIAN SERVICES, REIMBURSEMENT/GENERAL RE-QUIREMENTS AND MODIFIERS The department will pay the lowest of the following for physician services not also covered by medicare: the provider's actual (submitted) charge for the service; the provider's medicaid median charge for the service; the 75th percentile of the range of weighted medicaid median charges for each service covered by this rule; or the department's fee schedule found in rules 46.12.2004, 46.12.2005, 46.12.2006, 46.12.2007, and 46.12.2008.

The department will pay the lowest of the following for physician services which are also covered by medicare: the provider's actual (submitted) charge for the service; the provider's medicaid median charge for the service; the amount allowable for the same service under medicare; or the department's fee schedules found in rules 46.12.2004, 46.12.2005, 46.12.2006, 46.12.2007, and 46.12.2008- plus 10% for those services for which a dollar amount is specified. The following reimbursement fee schedule applies to all rules in this sub-chapter.

(1) Services paid by report (BR) will be paid at 94.6000% of the fees which are comparable to usual and customary charges established by the provider in 1976.

(2) MODIFIERS

Listed services and procedures may be modified under certain circumstances. When applicable, the modifying circumstance should be identified by the addition of the appropriate modifier code, which is a two digit number placed after the usual procedure number from which it is separated by a hyphen. If more than one modifier is used, the "Multiple Modifiers" code placed first after the procedure code indicates that one or more additional modifier codes will follow. All procedures where a modifier is used may be paid By Report (BR). Modifiers commonly used are as follows:

- -22 Unusual Services: When the service(S) provided is greater than that usually required for the listed procedure, it may be identified by adding modifier '-2' to the usual procedure number. A report may also be appropriate. (Pertains to Medicine, Anesthesia, Surgery, Radiology, and Pathology and Laboratory.)
- -23 Unusual Anesthesia: Periodically, a procedure, which usually requires either no anesthesia or local anesthesia, because of unusual circumstances must be done under general anesthesia. This circumstance may be reported by adding the modifier '-23' to the procedure code of the basic service. (Pertains to Anesthesia, Surgery.)
- -26 Professional Component: Certain procedures (eg, laboratory, radiology, electrocardiogram, specific diagnostic services) are a combination of a physician component and a technical component. When the physician component is reported separately, the service may be identified by adding the modifier '-26' to the usual procedure number. (Pertains to Medicine, Surgery, Radiology, and Pathology and Laboratory.)
- -30 Anesthesia Service: The anesthesia service may be identified by adding the modifier '-30' to the usual procedural code number of the basic service. (Pertains to Anesthesia.)
- -47 Anesthesia by Surgeon: When regional or general anesthesia is provided by the surgeon, it may be reported by adding the modifier '-47' to the basic service. (This does not include local anesthesia.) (Pertains to Anesthesia, and Surgery.)
- -50 Multiple or Bilateral Procedures: When multiple or bilateral procedures are provided at the same operative session, the first major procedure may be reported as listed. The secondary or lesser procedure(s) may be identified by adding the modifier '-50' to the usual procedure number(s). (Pertains to Surgery, and Radiology.)
- -52 Reduced Services: Under certain circumstances a service or procedure is partially reduced or eliminated at the physician's election. Under these circumstances the service provided can be identified by its usual procedure number and the addition of the modifier '-52', signifying that the service is reduced. This provides a means of reporting reduced services without disturbing the

- identification of the basic service. (Pertains to Medicine, Anesthesia, Surgery, Radiology, and Pathology and Laboratory.)
- -54 Surgical Care Only: When one physician performs a surgical procedure and another provides preoperative and/or postoperative management, surgical services may be identified by adding the modifier '-54' to the usual procedure number. (Pertains to Surgery.)
- -55 Postoperative Management Only: When one physician performs the postoperative management and another physician has performed the surgical procedure, the postoperative component may be identified by adding the modifier '-55' to the usual procedure number. (Pertains to Medicine, and Surgery.)
- -56 Preoperative Management Only: When one physician performs the preoperative care and evaluation and another physician performs the surgical procedure, the preoperative component may be identified by adding the modifier '-56' to the usual procedure number. (Pertains to Medicine, and Surgery.)
- -66 Surgical Team: Under some circumstances, highly complex procedures (requiring the concomitant services of several physicians, often of different specialties, plus other highly skilled, specially trained personnel and various types of complex equipment) are carried out under the 'surgical team' concept. Such circumstances may be identified by each participating physician with the addition of the modifier '-66' to the basic procedure number used for reporting services. (Pertains to Surgery.)
- -75 Concurrent Care. Services Rendered by More than One Physician: When the patient's condition requires the additional services of more than one physician, each physician may identify his or her services by adding the modifier '-75' to the basic service performed. (Pertains to Medicine, Anesthesia, Surgery, and Radiology.)
- -76 Repeat Procedure by Same Physician: The physician may need to indicate that a procedure or service was repeated subsequent to the original service. This may be reported by adding the modifier '-76' to the procedure code of the repeated service (Pertains to Medicine, Surgery, and Radiology.)
- -77 Repeat Procedure by Another Physician: The physician may need to indicate that a basic procedure performed by

- another physician had to be repeated. This may be reported by adding modifier '-77' to the repeated service. (Pertains to Medicine, Surgery, and Radiology.)
- -80 Assistant Surgeon: Surgical assistant services may be identified by adding the modifier '-80' to the usual procedure number(s). (Pertains to Surgery.)
- -81 Minimum Assistant Surgeon: Minimum surgical assistant services are identified by adding the modifier '-81' to the usual procedure number. (Pertains to Surgery.)
- -90 Reference (Outside) Laboratory: When laboratory procedures are performed by a party other than the treating or reporting physician, the procedure may be identified by adding the modifier '-90' to the usual procedure number. (Pertains to Medicine, Surgery, Radiology, and Pathology and Laboratory.)
- -99 Multiple Modifiers: Under certain circumstances two or more modifiers may be necessary to completely delineate a service. In such situations modifier '-99' should be added to the basic procedure, and other applicable modifiers may be listed as a part of the description of the service. (Pertains to Medicine, Anesthesia, Surgery, and Radiology.)
- 3. HB 500, an appropriation bill passed by the 47th Legislature, provides for a 10% increase of payment rates to medicaid providers (other than nursing homes, hospitals and home health agencies which are all on a cost reimbursement basis) beginning on July 1, 1981 and another 10% increase on July 1, 1982. The first increase has been delayed by the Department of Social and Rehabilitation Services until January 1, 1982 to help offset the deficit caused by greatly reduced federal financial participation. This proposed amendment would implement the increase in reimbursement appropriated by the legislature.
- 4. The authority of the department to amend the rule is based on Section 53-6-113, MCA and the rule implements sections 53-6-101 and 53-6-141, MCA.
- 5. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, MT 59604, no later than December 11, 1981.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State October 29 , 1981.

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

In the matter of the amend- ment of Rules 46.12.1001.)	NOTICE OF PUBLIC HEARING ON
)	PROPOSED AMENDMENT OF RULES
46.12.1002 and 46.12.1005)	46.12.1001, 46.12.1002 AND
pertaining to medical ser-)	46.12.1005 PERTAINING TO
vices, transportation and)	MEDICAL SERVICES
per diem	i	

TO: All Interested Persons

- On December 2, 1981, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, consider the amendment of Rules 46.12.1001, 46.12.1002, and 46.12.1005 pertaining to medical services, transportation and per diem.
- Rule 46.12.1001 is proposed to be amended as 2. follows:
- 46.12.1001 TRANSPORTATION AND PER DIEM, DEFINITION (1) Transportation and per diem are those services necessary to secure medically necessary examinations and treatment covered by the medicald program. They do not include ambulance service or specialized transportation service for the handicapped. Transportation and per diem are available for a recipient and a necessary attendant. When the medical service involves a denor, transportation and per diem for the denor may also be covered under the recipient's eligibility-

(a) Transportation may be provided by a common carrier or by a private vehicle-

(b) Per diem includes meals and ledging(1) Transportation service means travel, furnished by common carrier or private vehicle, to secure medically necessary examination and treatment for a medicaid recipient.

(a) Transportation service does not include ambulance service or specialized transportation service for the

handicapped.

(2) Per diem means expenses for a medicald recipient's cost of meals and lodging enroute to and from medical care, and while receiving medical care.

(3) Transportation and per diem services are available for an attendant when the recipient's medical condition or age

requires the services of an attendant.

(4) Transportation and per diem services are available for a donor when a recipient's treatment involves the medical services of a donor.

- 3. The authority of the department to amend the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101 and 53-6-141, MCA.
- 4. Rule 46.12.1002 is proposed to be amended as follows:
- $\frac{46.12.1002}{(1)} \frac{\text{TRANSPORTATION AND PER DIEM, REQUIREMENTS}}{(1)} \frac{1}{\text{Transportation and per diem shall be allowed when medically necessary for a recipient to obtain nonemergency services which are not reasonably available locally- or in the state.}$

(2) In-state tTransportation and per diem shall be prier authorized by the local county welfare director. prior to payment.

- (3) Out-of-state transportation and per diem shall be prior authorized by the county welfare director and is not allowed unless out-of-state service is medically necessary and the service is not reasonably available in the state-
- (4) (3) A recipient shall not be directly reimbursed for transportation and/or per diem.

(5) (4) Transportation shall be by the least expensive available means suitable to the recipient's medical needs. (6) (5) Transportation and/er per diem are available

- (6) (5) Transportation and/er per diem are available only to get for individuals to acceptable obtain services from the nearest medicaid providers of their choice who are generally available and commonly used by other residents of the community.
- (7) Payments shall be made for transportation and per diem for an attendant when it is demonstrated that the recipient's condition or age requires the care of an attendant.
- (8) (6) Reimbursement for transportation and per diem to secure medical services not included under the medicaid program shall not be allowed.
- (9) (7) When a recipient requires attendant care to obtain and return from hospitalization outside his own community, attendant per diem will be allowed during the hospitalization up to the maximum amount of one return round trip.
- (10) (8) When a recipient dies enroute to or during treatment outside of his community, the cost of the recipient's transportation to the medical service is allowed. The cost of returning a deceased recipient is not allowed.
- 5. The authority of the department to amend the rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101 and 53-6-141, MCA.
- 6. Rule 46.12.1005 is proposed to be amended as follows:

46.12.1005 TRANSPORTATION AND PER DIEM, REIMBURSEMENT The department will pay the lowest of the following for transportation and per diem not also covered by medicare: the provider's actual (submitted) charge for the service; the provider's medicaid median charge for the service; the 75th percentile of the range of weighted medicaid median charges for each service covered by this rule; or the department's fee schedule contained in this rule.

The department will pay the lowest of the following for transportation and per diem which are also covered by medicare: the provider's actual (submitted) charge for the service; the amount allowable for the same service under medicare; or the department's fee schedule contained in the rule.

Reimbursement for common carrier will be paid on the basis of usual and customary charges.

(2) Reimbursement for transportation by private vehicle

will be at the current state rate for state employees.

(3) Reimbursement for per diem when lodging expenses are necessary shall be actual expenses incurred up to a maximum of \$17-00 per day for each person- \$20.40 per recipient and \$20.40 per attendant, when necessary. When lodging expenses are not necessary, medicaid payment for meals shall not exceed the following rates:

 Morning
 (12:01 a.m. to 10:00 a.m.)
 \$2.50

 Mid-day
 (10:01 a.m. to 3:00 p.m.)
 \$3.00 p.m.)

 Evening
 (3:01 p.m. to 12:00 midnight)
 \$6.00

 (4)
 Reimbursement for private air charter shall be 93
 Morning Mid-day sents \$1.11 per nautical mile- for the round trip.

- The authority of the department to amend the rule is based on Section 53-6-113, MCA, and the rule implements
- 8. This amendment of the rules is being proposed to provide for a 20% increase in medicaid per diem and private air charter reimbursement. Medicaid recipients must be provided with transportation and per diem when necessary to assure access to medical services. The proposed amendments would allow for more adequate reimbursement of food and lodging costs incurred by Medicaid recipients when necessary medical service is not available locally. The proposed amendments allow for adequate air charter reimbursement when it is medically necessary for a recipient to be transported by air. These amendments also more clearly define transportation and per diem services.
- 9. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Writ-ten data, views or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilita-

Sections 53-6-101 and 53-6-141, MCA.

tion Services, P.O. Box 4210, Helena, MT 59604, no later than December 11, 1981.

10. The Office of Legal Affairs, Social and Rehabilitation Services has been designated to preside over and conduct the hearing.

Director, Social and Rehabilitation Services

Certified to the Secretary of State October 29 , 1981.

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

In the matter of the adoption) NOTICE OF PUBLIC HEARING of a rule pertaining to the) ON THE PROPOSED ADOPTION OF transfer of resources) A RULE PERTAINING TO TRANSFER OF RESOURCES

TO: All Interested Persons

- 1. On December 3, 1981, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the adoption of a rule pertaining to transfer of resources.
 - 2. The rule proposed to be adopted provides as follows:

RULE I TRANSFER OF RESOURCES (1) Definitions:

(a) Non-excluded resource means any asset which would have counted in whole or in part toward the resource limit at the time of transfer.

- (i) In instances where the property transferred is the individual's home, he must have actually been living in the home at the time of the transfer in order for the home to be considered his principle residence and, therefore, an excluded resource. For example, if the individual was living in a nursing home at the time his home was transferred, the home would count as a non-excluded resource for eligibility.
- (b) Fair market value means an amount equal to the resource's actual value at the time of transfer.
- (c) Compensation means money, real or personal property, food, shelter, or services which are received by an individual in exchange for the resource.
- (d) Uncompensated value means the fair market value of a resource at the time of the transfer minus the amount of compensation received by the individual in exchange for the resource.
- (e) Transfer of real or personal property means any transfer of an individual's proportionate right or title to property. Transfers to joint tenancy or to tenancy in common are included in this definition.
 - (2) General rule:
- (a) When an individual or his eligible spouse disposes of non-excluded real or personal property for less than its fair market value within 24 months before the month of application or redetermination for medicaid, it is presumed that the transfer was made to establish eligibility unless the individual presents convincing evidence that the disposal was exclusively for some other purpose.

The uncompensated value of the non-excluded real or personal property which was transferred shall be counted toward the general resource limitation for medicaid eligibility according to one of the following, whichever applicable:

until the individual secures the return of the (i) transferred property, at which time eligibility will be re-

evaluated;

(ii) until the individual receives adequate compensa-

tion, at which time eligibility will be re-evaluated;
(iii) until the individual pays for medical expenses equal to the sum of the uncompensated value of the property transferred and the value of other nonexcluded resources less the applicable general resource limit; or

- (iv) for a period of time which shall be measured from the month of application or redetermination and at a rate of one month for each \$500 of the uncompensated value of the transferred property except that, when the uncompensated value of the property is \$12,000 or less, the period of time shall not cause the uncompensated value to be counted as a resource for more than 24 months from the date of the transfer.
- (c) Under (b)(iii) above, medical expenses include only those:
- (i) which are not subject to payment by a third party; and
- (ii) in the case of applicants, which are incurred not more than three months prior to the month of application; or (iii) in the case of recipients, which are incurred in

the month of redetermination and after.

- (d) Under (b)(iv) above, when the uncompensated value of transferred property is less than \$500, it shall be counted as a resource for one month.
 - (3) Applicability:
- The above rule applies to all applications and (a) redeterminations for medicaid filed January 1, 1982 or later, except that:
- (i) the above rule does not apply to property transferred prior to April 1, 1981.

(4) Determining compensation for transferred real or personal property:

(a) The value of compensation received is based on the agreement and expectations of the parties at the time of the transfer. Compensation may be in the form of:

cash, in the total amount paid or agreed to be paid in exchange for the resource, excluding interest;

(ii) real or personal property which is valued according to its fair market value and which is exchanged for the real or personal property transferred;

(iii) support and/or maintenance which are provided pursuant, for the transfer of real property, to the consideration section of a deed or, for the transfer of personal property, to a valid contract entered into prior to the rendering of the support of maintenance and which are valued at the fair market value of the support and/or maintenance and the length of time it can reasonably be expected to be provided:

(iv) services which are provided pursuant, for the transfer of real property, to the consideration section of a deed or, for the transfer of personal property, to a valid contract entered into prior to the rendering of the service and which are valued at the fair market value of the service and the frequency and duration of the service over a reasonable period of time.

(5) Notification of individual:

In all cases in which an amount of uncompensated value is established, the individual must be advised of the

fact before eligibility is approved or denied.

(i) Notice will be sent to the individual informing him that an uncompensated transfer of property has been identified in his case, stating the value of the property so transferred, and explaining the individual's right to rebut the presumption that the transfer was made to qualify for assistance.

(ii) If the individual does not respond to the letter

within 15 days, the department will assume that he does not want to rebut the presumption that the transfer was made to

qualify for assistance.

(6) Rebuttal of presumption that real or personal property was transferred to establish medicaid eligibility:(a) If the individual wishes to rebut the presumption

- that real or personal property was transferred for the purpose of establishing eligibility for medicaid, it is the individual's responsibility to present convincing evidence that the real or personal property was transferred exclusively for some other reason.
- The individual's statement of rebuttal (i) include:
- the individual's reason for transferring the real or (A) personal property;

the individual's attempts to transfer the real or (B)

personal property at fair market value.

(C) the individual's representation and documentation that he did receive fair market value if that is his belief and contention or the individual's reasons for accepting less than fair market value for the real or personal property; (D) the individual's means of or plans for supporting

himself after the transfer;

- (E) the individual's relationship, if any, persons to whom the real or personal property was transferred;
- any pertinent documentary evidence (such as legal documents, realtor agreements, and relevant correspondence regarding the transfer of property).

- (ii) The presence of one or more of the following factors, while not conclusive, may indicate that real or personal property was transferred exclusively for some purpose other than establishing eligibility. This list is not allinclusive.
- (A) The occurrence after transfer of the real or personal property of the unexpected traumatic onset of disability.

(B) The occurrence after transfer of the real or personal property of the unexpected loss of:

(I) other resources which would have precluded medicaid eligibility; or

(II) income which would have precluded medicaid

eligibility.

- (C) The individual's total countable resources would have been below the general resource limit during each of the preceding 24 months if the real or personal property had been retained.
- (D) The property transfer was approved by or ordered by a court of law.
- (E) The individual was the victim of fraud, misrepresentation or coercion and the transfer was based upon such fraud, misrepresentation or coercion, provided that the individual has taken any and all possible steps to recover such property or the equivalent thereof in damages.

(7) Determination if transfer of real or personal

property was for reasons other than to qualify:

- (a) If the individual had some other purpose for transferring the real or personal property but establishing eligibility for medicaid has also been a factor in his decision to transfer, the presumption is not successfully rebutted.
- 3. The authority of the Department to adopt the rule is based on Section 53-2-201, MCA, and the rule implements Sections 53-2-601 and 53-6-113, MCA.
- 4. Chapter No. 383 of the 1980 Session Laws requires the Department to promulgate rules to specify when public assistance may be denied to a person who has transferred property fraudulently--i.e., for the purpose of qualifying for assistance. The amending Act further requires the Department to promulgate these rules so that they raise a rebuttable presumption that any transfer of property for less than fair market value within 2 years of the date of application for public assistance was for the purpose of qualifying for public assistance. For the reasons above, this rule has been proposed.
- 5. Interested parties may submit their data, views, or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the

Office of Legal Affairs, Department of Social and Rehabilitation Services, P. O. Box 4210, Helena, Montana 59604, no later than December 11, 1981.

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

Director, Social and Rehabilitation Services

Certified to the Secretary of State November 2 , 1981.

BEFORE THE STATE AUDITOR AND EX-OFFICIO COMMISSIONER OF INSURANCE OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION OF of rules relating to medicare) RULES FOR MEDICARE SUPPLEsupplement insurance and the MENT INSURANCE AND REPEAL) repeal of rule 6.6.501 OF RULE 6.6.501)

TO: All Interested Persons:

1. On August 27, 1981, the State Auditor, in his capacity as the Commissioner of Insurance, published notice of the proposed repeal of rule 6.6.501 and adoption of rules pertaining to medicare supplement insurance at pages 865 through 879 of the 1981 Montana Administrative Register, issue number 16.

2. The Commissioner has repealed rule 6.6.501 as proposed, and has adopted the proposed rules with the following changes: 6.6.502

Rule I PURPOSE The purpose of this subchapter is to provide for the reasonable standardization of coverage and simplification of terms and benefits of medicare supplement policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies that may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and to provide for full disclosures in the sale of accident and sickness insurance coverages to persons eligible for Medicare by reason of age.

Rule-II--AUTHORITY--This-subchapter-is-adopted-pursuant-to the-authority-vested-in-the-commissioner-under-Sections-33-22-9047-33-22-905;-and-33-22-907;-MCA-(enacted-by-Chapter-298;-baws of-1901)-and-implements-Sections-33-22-901-through-33-22-9097-AGA-6.6.503

Rule ### II APPLICABILITY AND SCOPE

- (1) Except as otherwise specifically provided, this subchapter applies to:
- (a) All medicare supplement policies and subscriber contracts delivered or issued for delivery in this state on or after the effective date hereof, and
- All certificates issued under group medicare supplement policies or subscriber contracts, which policies or contracts have been delivered or issued for delivery in this state on or after the effective date hereof.

 (2) This subchapter does not apply to:
- Individual pPolicies or contracts issued pursuant to a (a) conversion privilege under a policy or contract of group or individual insurance when such group or individual policy or contract includes provisions which are inconsistent with the requirements of this regulation, or
- (b) Medicare supplement policies issued to employees or members as additions to franchise plans in existence on the

21-11/12/81

effective date of this regulation.

- 6.6.504

 Rule #W III DEFINITIONS For purposes of this subchapter, the following-definitions-apply:
 - fl) -- "Applicant" means:
- (a)--in-the-case-of-an-individual-medicare-supplement policy-or-subscriber-contract,-the-person-who-seeks-to-contract for-insurance-benefits;-and
- (b)--in-the-case-of-a-group-medicare-supplement-policy-or subscriber-contract,-the-proposed-certificate-holder-
- (2)--"Gertificate"-means-a-certificate-issued-under-a-group medicare-supplement-policy-that-has-been-delivered-or-issued-for delivery-in-this-state-
- (3)--"Medicare-supplement-policy"-means-a-group-or-individual-policy-of-disability-insurance-or-a-subscriber-contract-of a-health-service-corporation-that-is-advertised,-marketed,-or designed-primarily-as-a-supplement-to-reimbursements-under medicare-for-the-hospital,-medical,-or-surgical-expenses-of persons-eligible-for-medicare-by-reason-of-age,--The-term-does not-include:
- (a)--a-policy-or-contract-of-one-or-more-employers-or labor-organizations-or-of-the-trustees-of-a-fund-established by-one-or-more-employers-or-labor-organizations;-or-combination thereof;-for-employees-or-former-employees;-or-combination thereof;-or-for-members-or-former-members;-or-combination thereof;-of-the-labor-organizations;-or
- (b)--a-policy-or-contract-of-any-professional;-trade;-or occupational-association-for-its-members-or-former-or-retired members;-or-combination-thereof;-if-the-association:
- (i)---is-composed-of-individuals-all-of-whom-are-actively engaged-in-the-same-profession,-trade,-or-occupation;
- (ii)--has-been-maintained-in-good-faith-for-purposes-other than-obtaining-insurance;-and
- (iii)-has-been-in-existence-for-at-least-2-years-prior-to
 the-date-of-its-initial-offering-of-the-policy-or-plan-to-its
 members;
- (e)--individual-policies-or-contracts-issued-pursuant-to-a conversion-privilege-under-a-policy-or-contract-of-group-or individual-insurance-when-the-group-or-individual-policy-or contract-includes-provisions-that-are-inconsistent-with-the requirements-of-this-subchapter-or-policies-issued-to-employees or-members-as-additions-to-franchise-plans-in-existence-on-the effective-date-of-this-subchapter-
- terms defined in Section 33-22-903, MCA, will have the same meaning in this subchapter unless clearly designated otherwise.
- Rule V IV POLICY DEFINITIONS AND TERMS No insurance policy or subscriber contract may be advertised, solicited, or issued for delivery in this state as a medicare supplement policy untess-such-policy-or-subscriber-contract-contains-definitions-or terms-which if it contains, as to matters set forth in (1) through (10) below, definitions or terms which do not conform to the requirements of this rule.

- (1) "Accident", "Accidental Injury", or "Accidental Means" must be defined to employ "result" language and may not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.
- (a) The definition may not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person that is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."
- (b) The definition may provide that injuries may not include injuries for which benefits are provided under any workers' compensation, employer's liability or similar law, motor vehicle no-fault plan, unless prohibited by law, or injuries occurring while the insured person is engaged in any activity pertaining to any trade, business, employment, or occupation for wage or profit.
- (2) "Benefit Period" or "Medicare Benefit Period" may not be defined more restrictively than as defined in the Medicare program.
- (3) "Convalescent Nursing Home", "Extended Care Facility", or "Skilled Nursing Facility" must be defined in relation to its status, facilities, and available services.
- (a) A definition of the home or facility may not be more restrictive than one requiring that it:
 - (i) be operated pursuant to law;
- (ii) be approved for payment of Medicare benefits or be qualified to receive such approval, if so requested;
- (iii) be primarily engaged in providing, in addition to room and board accommodations, skilled nursing care under the supervision of a duly licensed physician;
- (iv) provide continuous 24 hours a day nursing service by or under the supervision of a registered graduate professional nurse (R.N.); and
 - (v) maintain a daily medical record of each patient.
 - (b) The definition of such home or facility may exclude:
- (i) a home, facility, or part thereof used primarily for rest;
- (ii) a home or facility for the aged or for the care of drug addicts or alcoholics; or
- (iii) a home or facility primarily used for the care and treatment of mental diseases or disorders, or custodial, or educational care.
- (4) "Hospital" may be defined in relation to its status, facilities, and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals.
- (a) The definition of the term "hospital" must not be more restrictive than one requiring that the hospital:
 - (i) be an institution operated pursuant to law; and
- (ii) be primarily and continuously engaged in providing or operating, either on its premises or in facilities available to the hospital on a prearranged basis and under the supervision of a staff of duly licensed physicians, medical, diagnostic, and

major surgical facilities for the medical care and treatment of sick or injured persons on an inpatient basis for which charge is made; and

- (iii) provide 24 hour nursing service by or under the supervision of registered graduate professional nurses (R.N.'s).
 - (b) The definition of the term "hospital" may exclude:
- (i) convalescent homes, convalescent, rest, or nursing facilities; or
- (ii) facilities primarily affording custodial, educational, or rehabilitory care; or
- (iii) facilities for the aged, drug addicts, or alcoholics; or
- (iv) any military or veterans' hospital or soldiers' home or any hospital contracted for or operated by any national government or agency thereof for the treatment of members or ex-members of the armed forces, except for services rendered on an emergency basis when a legal liability exists for charges made to the individual for such services.
- (5) "Medicare" must be defined in the policy. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended", or "Title I, Part I of Public Law 39-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act", "as then constituted and any later amendments or substitutes thereof", or words of similar import.
- (6) "Medicare Eligible Expenses" means health care expenses of the kinds covered by Medicare, to the extent recognized as reasonable by Medicare. Payment of benefits by insurers for Medicare eligible expenses may be conditioned upon the same or less restrictive payment conditions, including determinations of medical necessity, as are applicable to Medicare claims;
- (7) "Mental or Nervous Disorders" must be defined to include at least neurosis, psychoneurosis, psychopathy, psychosis, or personality disorder of any kind.
- (8) "Nurses" may be defined so that the description of nurse is restricted to a type of nurse, such as registered graduate professional nurse (R.N.), a licensed practical nurse (L.P.N.), or a licensed vocational nurse (L.V.N.). If the words "nurse", "trained nurse", or "registered nurse" are used without specific instruction, then the use of such terms requires the insurer to recognize the services of any individual who qualified under such terminology in accordance with the applicable statutes or administrative rules of the licensing or registry board of the state.
- (9) "Physician" may be defined by including words such as "duly qualified physician" or "duly licensed physician". The use of such terms requires an insurer to recognize and to accept, to the extent of its obligation under the contract, all providers of medical care and treatment when such services are within the scope of the provider's licensed authority and are provided pursuant to applicable laws.

(10) "Sickness" must not be defined more restrictively than the following: "Sickness means sickness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force." The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

6.6.506
Rule \(\foatigmu\) PROHIBITED POLICY PROVISIONS

- (1) (a) No insurance policy or subscriber contract may be advertised, solicited, or issued for delivery in this state as a medicare supplement policy if such policy or subscriber contract limits or excludes coverage by type of illness, accident, treatment, or medical condition, except as follows:
- (i) foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain, or symptomatic complaints of the feet;
- (ii) mental or emotional disorders, alcoholism, and drug addiction;
- (\mbox{iii}) illness, treatment, or medical condition arising out of:
- (A) war or act of war (whether declared or undeclared); participation in a felony, riot or insurrections; service in the armed forces or units auxil*iary thereto,
- (B) suicide (same or insame), attempted suicide or intentionally self-inflicted injury,
 - (C) aviation,
- (iv) cosmetic surgery, except that "cosmetic surgery" may not include reconstructive surgery when such service is incidental to or follows surgery resulting from trauma, infection, or other diseases of the involved part;
- (v) care in connection with the detection and correction by manual or mechanical means of structural imbalance, distortion, or subluxation in the human body for purposes of removing nerve interference and the effects thereof, if such interference is the result of or related to distortion, misalignment, or subluxation of or in the vertebral column;
- (vi) treatment provided in a governmental hospital except as required in Sections 33-22-112 and 33-30-1002, MCA; benefits provided under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law; services rendered by employees of hospitals, laboratories, or other institutions; services performed by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance;
 - (vii) dental care or treatment;
- (viii) eye glasses, hearing aids, and examination for the prescription or fitting thereof;
- (ix) rest cures, custodial care, transportation, and routine physical examinations;
 - (x) territorial limitations.

- (b) Supplement policies may not contain, when issued, limitations or exclusions of the type enumerated in subsections (i), (v), (ix), or (x) above that are more restrictive than those of Medicare. Nedicare supplement policies may exclude coverage for any expense to the extent of any benefit available to the insured under Medicare.
- (2) No medicare supplement policy may use waivers to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.
 6.6.507

Rule VII VI MINIMUM BENEFIT STANDARDS

- (1) An insurance policy or subscriber contract may not be advertised, solicited, or issued for delivery in this state as a medicare supplement policy unless it meets the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.
- (2) The following general standards apply to medicare supplement policies and are in addition to all other requirements of this regulation:
- (a) A medicare supplement policy may not deny a claim for losses incurred more than 6 months from the effective date of coverage for a preexisting condition. The policy may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within 6 months before the effective date of coverage;
- (b) A medicare supplement policy may not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents;
- (c) A medicare supplement policy must provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes:
- (d) A-"nonconcellable",-"guaranteed-renewable",-or-"non-cancellable-and-guaranteed-renewable"-medicare-supplement-policy may-not:
- (i)--provide-for-termination-of-coverage-of-a-spouse-solely because-of-the-occurrence-of-an-event-specified-for-termination of-coverage-of-the-insured,-other-than-the-nonpayment-of-premium, or
- $\label{thm:concelled-or-nonrenewed-by-the-insurer-solely-on-the-grounds-of-deterioration-of-health;-and$
- A medicare supplement policy may not be cancelled or non-renewed by the insurer solely on the grounds of deterioration of health, nor may such a policy provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.
- (e) -- Termination of -a-medicare-supplement-policy-must-be without-prejudice-to-any-continuous-loss-that-commenced-while

the-policy-was-in-force;-but-the-extension-of-benefits-beyond the-period-during-which-the-pelicy-was-in-force-may-be-predicated dpon-the-continuous-total-disability-of-the-insured; -limited-to the-duration-of-the-policy-benefit-period,-if-any,-or-payment-of the-maximum-benefits-

- (3) A medicare supplement policy must provide the following minimum benefits:
- (a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through 90th day in any Medicare benefit period;
- (b) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;
- (c) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90% of all Medicare Part A cligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;
- (d) Coverage of 20% of the amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket deductible of \$200 of such expenses and to a maximum benefit of at least \$5,000 per calendar year.

6.6.508

Rule VIII LOSS RATIO STANDARDS

- (1) Medicare supplement policies must be expected to return to policyholders in the form of aggregate benefits under the policy, as estimated for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience and earned premiums for such period and in accordance with accepted actuarial principles and practices:
- (a) At least 75% of the aggregate amount of premiums collected in the case of group policies, and(b) At least 60% of the aggregate amount of premium
- collected in the case of individual policies.
- (2) For purposes of this section, medicare supplement policies issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, must be treated as individual policies.

6.6.509

- Rule #X VIII REQUIRED DISCLOSURE PROVISIONS
- Medicare supplement policies must include a renewal, continuation, or nonrenewal provision. The language or specifications of the provision must be consistent with the type of contract to be issued. The provision must be appropriately captioned, must appear on the first page of the policy, and must clearly state the duration of renewability, if limited, and the duration of the term of coverage for which the policy is issued and for which it may be renewed.

 (2) Except for riders or endorsements by which the insurer
- effectuates a request made in writing by the insured or exercises a specifically reserved right under a medicare supplement

policy, all riders or endorsements added to a medicare supplement policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy must require a signed acceptance by the insured. After the date of policy issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing and signed by the insured, unless the increased benefits or coverage is required by law. If a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge must be set forth in the policy.

- (3) A medicare supplement policy that provides for the payment of benefits based on standards described as "usual and customary", "reasonable and customary", or words of similar import must include a definition and an explanation of the terms in its accompanying outline of coverage.
- (4) If a medicare supplement policy contains any limitations with respect to preexisting conditions, the limitations must appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations".
- Medicare supplement policies or certificates, other than those issued pursuant to direct response solicitation, must have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within 10 days of its delivery and to have the premium refunded if after examination of the policy or certificate the insured person is not satisfied for any reason. Medicare supplement policies or certificates issued pursuant to a direct response solicitation to persons eligible for Medicare by reason of age must have a notice prominently printed on the first page or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if after examination the insured person is not satisfied for any reason.
- Insurers issuing accident and sickness policies, (6) certificates, or subscriber contracts that provide hospital or medical expense coverage on an expense incurred or indemnity basis, other than incidentally, to persons eligible for Medicare by reason of age must provide to all applicants a medicare supplement "buyer's quide". The "buyer's quide" required to be provided is the pamphlet "Guide to Health Insurance for People with Medicare", developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration of the U.S. Department of Health and Human Services, or any reproduction or official revision of that pamphlet. Specimen copies may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., or subject to availability of supplies, from the Montana Department of Insurance. The guide is identified as Department of Health and Human Services/Health Care Financing Administration Form Number NCFA-02110. Delivery of the "buyer's guide" must be made

whether or not such policies, certificates, or subscriber contracts are advertised, solicited, or issued as medicare supplement policies as defined in this subchapter. Except in the case of direct response insurers, delivery of the "buyer's guide" must be made to the applicant at the time of application and acknowledgement of receipt of the "buyer's guide" must be obtained by the insurer. Direct response insurers must deliver the "buyer's guide" to the applicant upon request but not later than at the time the policy is delivered.

- (7) Except as otherwise provided in (Rule ±X VIII) 6.6.509(9), the terms "Medicare Supplement", "Medigap", and words of similar import must not be used unless the policy is issued in compliance with (Rule ♥±±+ VI) 6.6.507.
- (8) Insurers must provide an outline of coverage for medicare supplement policies, as provided below:
- (a) Insurers issuing medicare supplement policies for delivery in this state must provide an outline of coverage to each applicant at the time application is made and, except for direct response policies, must obtain an acknowledgement of receipt of such outline from the applicant;
- (b) If an outline of coverage is provided at the time of application and the medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate must accompany such policy or certificate when it is delivered and contain the following statement, in no less than 12 point type, immediately above the company name: "NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."; and
- (c) The outline of coverage provided to applicants pursuant to subsection (a) must be in the form prescribed in (Rule HF X) 6.6.511, sample form A.
- (9) Any accident and sickness insurance policy or subscriber contract, other than a medicare supplement policy; disability income policy; basic, catastrophic, or major medical expense policy; single premium nonrenewable policy or other policy identified in (Rule *** II) 6.6.503(2) issued for delivery in this state to persons eliqible for Medicare by reason of age must notify be accompanied by a notice to the insureds under the policy or subscriber contract that the policy or subscriber contract is not a medicare supplement policy. The notice must either be printed on or attached to the first page of the outline of coverage delivered to insureds under the policy or subscriber contract, or if no outline of coverage is delivered, to the first page of the policy, certificate, or subscriber contract delivered to insureds. The notice must be in no less than 12 point type and must contain the following language: "THIS (POLICY, CERTIFICATE, OR SUBSCRIBER CONTRACT) IS NOT A MEDICARE SUPPLEMENT (POLICY OR CERTIFICATE). If you are eligible for Medicare review the Medicare Supplement Buyers Guide available from the company."

(10) Insurers must preserve any signed acceptance or acknowledgment required under this rule for three years.

(Rule X IX) 6.6.510 REQUIREMENTS FOR REPLACEMENT

- (1) Application forms must include a question designed to elicit information as to whether a medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant containing such a question may be used.
- (2) Upon determining that a sale will involve replacement and prior to issuance or delivery of the medicare supplement policy or certificate, an insurer, other than a direct response insurer, or its agent must furnish the applicant a notice regarding replacement of accident and sickness coverage. One copy of the notice must be provided to the applicant and an additional copy signed by the applicant must be retained by the insurer for three years. A direct response insurer must deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of accident and sickness coverage. In no event, however, will such notice be required in the solicitation of "accident only" and "single premium nonrenewable" policies.
- (3) The notice required by subsection (2) for an insurer, other than a direct response insurer, must be provided in substantially the form prescribed in (Rule X \pm X) 6.6.511, sample form B.
- (4) The notice required by subsection (2) for a direct response insurer must be in substantially the form prescribed in (Rule $\pm\pm$ X) 6.6.511, sample form C.
- (Rule X = X) 6.6.511 SAMPLE FORMS The following are sample forms the outline of coverage and notices regarding replacement of medicare supplement policies:
 - (1) Sample form A outline of coverage:

(COMPANY NAME) OUTLINE OF MEDICARE SUPPLEMENT COVERAGE

- (1) Read Your Policy* Carefully This outline of coverage provides a very brief description of the important features of your policy. This is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth in detail the rights and obligations of both you and your insurance company. It is, therefore, important that you READ YOUR POLICY CAREFULLY!
 - * The term "certificate" should be substituted for the word "policy" throughout the outline of coverage where appropriate.
- (2) Medicare Supplement Coverage Policies of this category are designed to supplement Medicare by covering some

hospital, medical, and surgical services which are partially covered by Medicare. Coverage is provided for hospital inpatient charges and some physician charges, subject to any deductibles and copayment provisions which may be in addition to those provided by Medicare, and subject to other limitations which may be set forth in the policy. The policy does not provide benefits for custodial care such as help in walking, getting in and out of bed, eating, dressing, bathing, and taking medicine (delete if such coverage is provided).

(3) (a) (for agents:)

Neither (insert company's name) nor its agents are connected with Medicare.

(b) (for direct responses:)

(insert company's name) is not connected with Hedicare.

(4) (A brief summary of the major benefit gaps in Medicare Parts A & B with a parallel description of supplemental benefits, including dollar amounts, provided by the medicare supplement coverage in the following order:)

SERVICE	BENEFIT	MEDICARE PAYS	THIS POLICY PAYS	YOU PAY
HOSPITALIZATION				
semiprivate room and board, general nursing and miscel-	First 60 days	All but \$(180)		
laneous hospital services and supplies.	61st to 90th day	All but \$(45) a day		
Includes meals, special care units,		•		
<pre>drugs, lab tests, diagnostic x-rays, medical supplies,</pre>	91st to 150th day	All but \$(90) a day		
operating and re- covery room, anes- thesia, and rehabil- itation services.	Beyond 150 days	Nothing		
POSTHOSPITAL SKILLED NURSING				-
CARE In a facility ap-	First 20 days	100% of costs		

All but \$(22.50)

Nothing

a day

proved by Medicare,
you must have been
in a hospital for at
least three days and
enter the facility
within 14 days after
hospital discharge.

MEDICAL EXPENSE

Physician's

80% of services. reasonable inpatient charge (after and outpatient \$(60) demedical ductible) services and supplies at a hospital, physical and speech therapy, and ambulance.

- (5) (Statement that the policy does or does not cover the following:)
 - (a) Private duty nursing,
 - (b) Skilled nursing home care costs (beyond what is covered by Medicare),
 - (c) Custodial nursing home care costs,
 - (d) Intermediate nursing home care costs,
 - (e) Home health care above number of visits covered by Medicare,
 - (f) Physician charges (above Medicare's reasonable charge),
 - (g) Drugs (other than prescription drugs furnished during a hospital or skilled nursing facility stay),
 - (h) Care received outside of U.S.A.,
 - Dental care or dentures, checkups, routine immunizations, cosmetic surgery, routine foot care, examinations for the cost of eyeglasses or hearing aids.
- (6) (A description of any policy provisions which exclude, eliminate, resist, reduce, limit, delay, or in any other manner operate to qualify payments of the benefits des-

cribed in (4) above, including conspicuous statements;)

- (a) (That the chart summarizing Medicare benefits only briefly describes such benefits.)
- (b) (That the Health Care Financing Administration or its Medicare publications should be consulted for further details and limitations.)
- (7) (A description of policy provisions respecting renewability or continuation of coverage, including any reservation of rights to change premium.)
- (8) (The amount of premium for this policy.)
- (2) Sample form B Notice Regarding Replacement: (To be used by an insurer other than a direct response insurer.)

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS INSURANCE

According to (your application) (information you have furnished), you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with a policy to be issued by (Company Name) Insurance Company. Your new policy provides 10 days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

- (1) Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.
- (2) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
- (3) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical/health history. Failure to include all material medical information on an application may

provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

The above "Notice to Applicant" was delivered to me on:

(Date)
(Applicant's Signature)

(3) Sample form C - Notice Regarding Replacement, (To be used by a direct response insurer.)

NOTICE TO APPLICANT REGARDING REPLACEMENT OF ACCIDENT AND SICKNESS INSURANCE

According to (your application) (information you have furnished) you intend to lapse or otherwise terminate existing accident and sickness insurance and replace it with the policy delivered herewith issued by (Company Name) Insurance Company. Your new policy provides 30 days within which you may decide without cost whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

- (1) Health conditions which you may presently have (pre-existing conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.
- (2) You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
- (3) (To be included only if the application is attached to the policy.) If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure

that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to (Company Name and Address) within 10 days if any information is not correct and complete, or if any past medical history has been left out of the application.

(Company name)

Rule XHE XI SEVERABILITY If any part of this subchapter is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this subchapter is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Rule XIII EFFECTIVE DATE This subchapter is effective on December- 31_7 -1981. February 1, 1982.

COMMENTS AND RESPONSES

COMMENT

Does a medicare supplement policy or contract have to contain all the policy definition and terms listed in Rule V IV if the policy or contract does not use some of the definitions and terms to define or limit coverage?

RESPONSE

The language in Rule V IV is changed to require inclusion of only those definitions and terms, which are used in a medicare supplement policy or contract to define or limit coverage.

4. COMMENT

Do the proposed rules require a medicare supplement policy or contract to provide complete coverage for Part A and Part B deductible amounts?

RESPONSE

Full coverage of Medicare Part A and Part B deductibles is not required. If a medicare supplement policy or contract provides coverage for the deductibles, however, Rule VII (2) (c) provides that the policy coverage must automatically expand to encompass any increases in the deductibles which may occur under the Medicare program.

5. COMMENT

The terms "continuous loss," and "total disability," as they appear in Rule $\forall \pm \pm VI(2)$ (e) are vague. Furthermore, the term "total disability," which usually relates to a person's ability to work, has little application to medicare supplement insurance where most consumers are retired and not employed.

RESPONSE

Comment accepted; Rule VII VI(2)(e) is stricken.

6. COMMENT

Rule VII (3) (d) is ambiguous in that it does not state whether the \$200 allowed as a deductible for Part B expenses includes the deductible already paid by the consumer under the Medicare program.

RESPONSE

As the deductible normally paid by a consumer under the Medicare program is an "out-of-pocket" expense, it is included within the \$200 deductible for Part B expenses allowed in a medicare supplement policy or contract.

COMMENT

The requirement imposed upon insurers in Rule #X VIII(2) to obtain an acceptance signed by an insured for all riders or endorsements that reduce or eliminate benefits or coverage, or that increase benefits or coverage with a concomitant increase in premium, is unduly burdensome, especially when Medicare deductibles have increased on a regular basis each year forcing insurers to increase premiums.

RESPONSE

Rule ## VIII(2) is not unreasonable in light of the benefits provided to consumers by reason of the requirement of a signed acceptance. Furthermore, Rule ## VIII(2) does not require an insurer to obtain a signed acceptance where the insurer raises premiums on a policy in order to offset increased policy costs brought about by raises in Medicare deductibles. This expansion in policy coverage is "required by law" under Rule V## VI(2)(c) and is, therefore, excluded from the requirements of Rule ## VIII(2)

8. COMMENT

Retention of copies of the acknowledgement of receipt of the buyer's guide, the outline of

coverage, and the notice regarding replacement imposes a hardship upon insurers due to cost associated with storage and handling.

RESPONSE

The benefits provided by adequate disclosure outweigh the administrative costs associated with obtaining acknowledgements of receipt.

COMMENT

No indication is given as to how long the acknowledgement of receipt must be retained by the insurer.

RESPONSE

A three year period for retention is established for all acknowledgments obtained from insureds.

10. COMMENT

The effective date presently provided in the proposed rules does not allow insurers adequate time to revise their medicare supplement policies and contracts for compliance.

RESPONSE

The effective date is changed from December 31, 1981 to February 1, 1982.

11. COMMENT

Are insurers required to provide notices regarding replacement which follow substantially the same format of the form letters provided in the rules if some of the information provided in the form letters is inapplicable to the circumstances of a particular policy?

RESPONSE

The form letters are only guides to be used for replacement notices. If information contained in the form letters is inappropriate, it may be changed or deleted, provided permission is first obtained from the Commissioner.

12. COMMENT

Are limited benefit policies excluded under the medicare supplement insurance rules?

RESPONSE

Limited benefit type policies are not excluded by the medicare supplement insurance rules, but these policies must meet Medicare supplement minimum standards. As the issue of limited benefit policies is not addressed in the rules presently being adopted, questions regarding specific aspects of limited benefit type policies can only be resolved on a case-by-case basis by the Commissioner, or by the adoption of additional rules.

13. COMMENT

 $\overline{\text{The loss}}$ ratio for individual policies should be set at 65%.

RESPONSE

Rule VIII VII (1) (b) sets the loss ratio for individual policies at 60%. This ratio is derived from the National Association of Insurance Commissioner's recommendations.

Norma E. Seiffert, CPIW
Chief Deputy Insurance Commissioner

Certified to the Secretary of State, ____November 2, 1981.

BEFORE THE BOARD OF PUBLIC EDUCATION OF THE STATE OF MONTANA

In the matter of the amendment) of Chapter 55 concerning the) various accreditation stan-)	NOTICE OF AMENDMENT OF ARM CHAPTER 55, STANDARDS OF ACCREDITATION
dards of the state schools)	

TO: All Interested Persons:

- 1. On September 17, 1981 the Board of Public Education published notice of amendment to ARM Chapter 55, Accreditation Standards, at page 964 of the 1981 Montana Administrative Register. issue number 17.
 - 2. The agency has amended the rule as proposed.

3. No comments or testimony were received.

ALLEN D. GUNDERSON, CHAIRMAN

y Moron

Assistant to the Board

Certified to the Secretary of State November 2, 1981.

BEFORE THE BOARD OF PUBLIC EDUCATION OF THE STATE OF MONTANA

ment of ARM 10,64,301 and fol-) R	NOTICE OF AMENDMENT AND REPEAL OF ARM CHAPTER 64 FRANSPORTATION
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TO: All Interested Persons:

1. On September 17, 1981 the Board of Public Education published notice of amendment and repeal of ARM Section 64, Transportation, at page 976 of the 1981 Montana Administrative Register, issue number 17.

2. The agency has amended and repealed the rules as

proposed.

No comments or testimony were received.

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ALLEN D. GUNDERSON, CHAIRMAN BOARD OF PUBLIC EDUCATION

by

Assistant to the Board

Certified to the Secretary of State November 2, 1981.

BEFORE THE BOARD OF LIVESTOCK OF THE STATE OF MONTANA

In the matter of the proposed) adoption of emergency rules) requiring a Tuberculosis test) on wild species of cloven-) hoofed ungulates before they) may be brought into the state,) and before a change of owner-) ship.

NOTICE OF ADOPTION OF EMERGENCY RULES REQUIRING A TUBERCULOSIS TEST ON WILD SPECIES OF CLOVEN-HOOFED UNGULATES BEFORE THEY MAY BE BROUGHT INTO THE STATE AND BEFORE ANY CHANGE OF OWNERSHIP.

To: ALL INTERESTED PERSONS

- Statement of reasons for emergency:
- (a) In October of 1981, test results of tuberculosis tests performed on elk, privately-owned in the states of South Dakota and North Dakota showed that many animals in captivity had contracted the disease of tuberculosis.
- (b) Privately-owned elk and other ungulates which are now in the state of Montana have been exposed to herds of privately-owned elk which have possibly been infected with or exposed to tuberculosis.
- (c) At present, tests are being conducted on privatelyowned elk and other ungulates in Montana which may have been exposed or possibly infected.
- (d) In order to prevent the spread of tuberculosis, a particularly virulent disease, the department hereby finds that an imminent emergency exists which threatens public health, safety, and welfare, and which requires the adoption and implementation of theserulegimmediately, without prior notice.
- 2. The text of the rules is as follows: RULE I TUBERCULOSIS TEST, IMPORTATION OF WILD SPECIES OF CLOVEN-HOOFED UNGULATES.
- (1) All wild species of cloven-hoofed ungulates brought into the state must be tested for tuberculosis and found to be negative.
- (2) The test must: be of a type approved for use by the department; be performed not more than 60 nor less than 30 days prior to entry into the state; and, be conducted by a federally accredited veterinarian.
- (3) Åll test results shall be recorded on or attached to all copies of the animals health certificate. (History: Secs. 81-2-102, 81-2-103, 2-4-303 MCA; IMP, 81-2-102, 81-2-103 MCA, Eff. 11/2/81.)
- RULE II TUBERCULOSIS TEST, CHANGE OF OWNERSHIP OF WILD SPECIES OF CLOVEN-HOOFED UNGULATES.
- (1) (a) All privately-owned wild species of cloven-hoofed ungulates sold or moved must be tested for tuber-culosis and found to be negative.

- (b) When animals are to be moved only from one location in the state to another and there is no change of ownership, the state veterinarian may, if there is no significant danger to public health, waive the tuberculosis test require-
- The test must be performed not more than 60 nor less than 30 days prior to the date they are sold or moved. (History: Secs. 81-2-102, 81-2-103, 2-4-303 MCA; IMP. 81-2-102, 81-2-103 MCA, Eff. 11/2/81.)
- The rationale for the proposed rules are as set forth in the statement of reasons for emergency.
 4. These emergency rules will expire February 28,
- 1982.
- These rules are authorized under sections 81-2-102, 81-2-103, and 2-4-303 MCA. They implement the same.

Chairman, Board of Livestock

Administrator & State Veterinarian

Certified to the Secretary of State November 2, 1981.

BEFORE THE BOARD OF OIL AND GAS CONSERVATION

In the Matter of the Amendment of Rule 26.22.1607 pertaining to notice of examiner's preliminary determinations under rules implementing the National Gas Policy Act of 1978.

NOTICE OF AMENDMENT OF RULE 36.22.1607, DEADLINES FOR ACTION ON DETER-MINATIONS

TO: ALL INTERESTED PERSONS

- 1. On September 30, 1981, the Board of Natural Resources and Conservation published Notice of a proposed amendment to ARM 36.22.1607 concerning the mailing of the examiner's preliminary monthly determination under the Board's rules implementing the National Gas Policy Act of 1978, at page 1095 of the 1981 Montana Administrative Register, issue number 18.
 - 2. The Board has adopted the rule as proposed.
- No comments, testimony, or requests for a public hearing were received.
- 4. The authority of the Board to make the proposed amendment is based on Section 82-11-115, MCA, and the rule implements Section 82-11-115, MCA.

Richard A. Campbell, Chairman Board of Oil and Gas Conservation

Y: <u>Liebman</u> Dee Rickman

Assistant Administrator Oil and Gas Conservation Division

Certified to the Secretary of State Cet. 30 , 1981.

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

IN THE MATTER of Adoption)	NOTICE OF ADOPTION OF	NEV
of rules for handling cases)	RULES FOR RADIO COMMON	
involving Radio Common)	CARRIERS	
Carriers.)		

TO: All Interested Persons

1. On August 27, 1981, the Department of Public Service Regulation published notice of a proposed adoption of new rules covering the procedure to be used in all cases involving radio common carriers, at pages 943-944 of the 1981 Montana Administrative Register, issue number 16.

The agency has adopted the rules with the following

changes:

Rule I. 38.5.401 DEFINITIONS (1) For purposes of this rule, "Radio Common Carrier" means: any party providing or reselling communication services furnished through a general mobile radio base station, or a central office radio base station, between a radio subscriber station and a wire telephone, between a radio subscriber station and a mobile radio unit, or between two radio subscriber stations, where a radio subscriber stations, where a radio subscriber station is a fixed radio telephone, which has been licensed by the Federal Communications Commission, used by a subscriber for communications.

subscriber for communications.

Rule II. 38.5.402 PROCEDURE GOVERNED (1) These rules (as well as the Commission's Procedural Rules ARM Title 38, Chapter 2) govern practice and procedure in rate cases involving radio common carriers before the Public Service Commission of the state of Montana, in accordance with applicable laws of

the state of Montana.

Rule III. 38,5.403 LETTER OF TRANSMITTAL (1) The letter of a Radio Common Carrier transmitting a proposed new rate schedule to the Commission for filing to alter the provisions of a rate schedule shall:

(a) Include a brief description of the proposed changes

in service, rate, or charge; and

(b) Name an employee of the carrier who shall be responsible for answering questions concerning the application.

- Rule ### IV. 38.5.404 NOTICE (1) Upon receipt of a properly completed application to alter the provisions of an existing rate schedule and letter of transmittal, the Commission will publish this information in a Notice of Opportunity for Public Hearing.
- (2) This Notice shall also contain the following language: As the Commission believes that competitive conditions prevail in this industry, your request for a hearing must contain a preliminary showing either that competitive conditions do not prevail with respect to this Radio Common Carrier or that this application represents some other type of abuse by the applicant.

(3) If a request for a hearing is made that does not meet the requirements of paragraph (2) of this rule, the Commission staff will contact the person requesting the hearing to determine if either of the showings required by paragraph (2) of this rule can be made. If the showings cannot be made, no hearing will be held.

(4) The Commission shall liberally construe its rules of discovery (ARM 38.2.3301-38.2.3305) in order to effectuate the

goals of this rule.

3. <u>Comment</u>: The changes made are in response to suggestions by staff attorneys for the Administrative Code Committee to clarify the language in the proposed rules. No other comments on the proposed rules were received.

GORDON E. BOLLINGER, Chairman

CERTIFIED TO THE SECRETARY OF STATE NOVEMBER 2, 1981.

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

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In the matter of the adoption
                                                  ) NOTICE OF ADOPTION OF AN
of an emergency rule; the emer-
                                                  ) EMERGENCY RULE; EMERGENCY
gency amendments of Rules
                                                   AMENDMENTS OF RULES
46.10.108, 46.10.207, 46.10.301
                                                   46.10.108, 46.10.207,
46.10.303, 46.10.304, 46.10.308, 46.10.319, 46.10.401, 46.10.402, 46.10.403, 46.10.404, 46.10.406, 46.10.505, 46.10.506, 46.10.508, 46.10.510, 46.10.511, 46.10.512, 46.10.513, and 46.10.514; the
                                                  ) 46.10.301, 46.10.303,
                                                   46.10.304, 46.10.308,
46.10.319, 46.10.401,
46.10.402, 46.10.403,
46.10.404, 46.10.406,
46.10.505, 46.10.506,
46.10.508, 46.10.510,
                                                  )
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emergency repeal of Rules
46.1\overline{0}.50\overline{7}, 4\overline{6}.10.509 and
                                                    46.10.511, 46.10.512,
46.10.515; and the emergency
                                                    46.10.513, and 46.10.514; EMERGENCY REPEAL OF RULES
repeal of emergency Rule
46.10.110 (RULĒ I/October 1,
                                                   46.10.507, 46.10.509 AND
1981) pertaining to the Aid to
                                                    46.10.515; AND THE EMERGENCY
Families with Dependent Child-
                                                  ) REPEAL OF EMERGENCY RULE
ren (AFDC) Program
                                                   46.10.110 PERTAINING TO THE
                                                   AID TO FAMILIES WITH DEPEN-
                                                  ) DENT CHILDREN
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All Interested Persons

 Statement of reasons for emergency:
 (a) On September 21, 1981, the United States Department of Health and Human Services published in Volume 46 of the Federal Register at page 46750 (Monday, September 21, 1981) interim regulations implementing changes in the Aid to Families with Dependent Children (AFDC) program as a result of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35). The federal regulations and law are effective October 1, 1981. State law mandates that the department administer all state and federal funds allocated to the department for public assistance in conformity with federal and state law. department is prohibited from spending AFDC funds unless it is in compliance with federal law. See sections 53-2-201, 53-2-206, 53-2-306, 53-4-211, 53-4-212 and 53-4-215, MCA. Therefore, the department finds that there is imminent peril to public health, safety and welfare which requires the department to adopt, amend and repeal the following rules immediately, without prior notice.

(b) On October 1, 1981, the department adopted an emergency rule (ARM 46.10.110), which incorporated by reference federal regulations, in order to remain in compliance with the state and federal laws. The department is repealing this emergency adoption and replacing that rule with the herein emergency adoption, amendment and repeal of rules to further refine and clarify the federal regulation changes which resulted from the Omnibus Budget Reconciliation Act of 1981.

Montana Administrative Register

- 2. Rule 46.10.507 to be repealed is on page 46-813 of the Administrative Rules of Montana.
- 3. The authority of the department to repeal the rule is based on Section 53-4-212, MCA, and the rule implements Sections 53-4-231, 53-4-241 and 53-4-242, MCA.
- 4. Rule 46.10.509 to be repealed is on page 46-814 of the Administrative Rules of Montana.
- 5. The authority of the department to repeal the rule is based on Section 53-4-212, MCA, and the rule implements Sections 53-4-231, 53-4-241 and 53-4-242, MCA.
- 6. Rule 46.10.515 to be repealed is on page 46-816 of the Administrative Rules of Montana.
- 7. The authority of the department to repeal the rule is based on Section 53-4-212, MCA, and the rule implements Sections 53-4-231, 534-241, and 53-4-242, MCA.
- 8. Rule 46.10.110 is an emergency adoption effective October 1, 1981 and is being repealed as set forth in the statement of reasons for emergency. The authority of the department to repeal the rule is based on Sections 53-2-201 and 53-4-212, MCA and the rule implements Sections 53-4-211 and 53-4-215, MCA.
 - 9. Rule 46.10.108 is amended as follows:
- 46.10.108 OVERPAYMENTS AND UNDERPAYMENTS (1) When it is discovered that an administrative error resulted in an underpayment of an assistance grant, it may be corrected by increasing the grant for the following month to cover the underpayment. Gerreetive payments are limited to a 12-month period preceding the month in which the underpayment was discovered.
- (a) For purposes of determining continued eligibility and amount of assistance, such retroactive corrective payments shall not be considered as income or as a resource in the month paid nor in the following month.
- (b) No retroactive payment need be made where the administrative cost would exceed the amount of the payment.
- (2) Current payments of assistance will net be reduced because of prior overpayment unless the recipient agrees to a repayment schedule which allows full recovery sooner than recovery through reductions in grant amounts. Recovery through reductions in grant amounts. Recovery through reductions in grant amounts will be done in a manner that insures the recipient will have a monthly cash amount (sum of available earned income and reduced grant amount) to meet his assistance unit's needs of no less than 90% of the benefit standard for his assistance unit size. has income er resources currently available in the amount by which the

agency proposes to reduce payments. Where evidence elearly establishes that a recipient willfully withheld information concerning his income, resources or other eircumstances, the state may recoup prior overpayments from current assistance grants irrespective of current income or resources.

(a) willful withholding of information includes:

(±) willful misstatements (either oral or written) made in response to oral or written questions from the agency; (ii) willful failure by the receipient to report changes in income and resources; and

(iii) willful failure by the recipient to report receipt of a payment which he knows or should know represents an

erroncous everpayment-

(b) (3) Cases where the recipient willfully withheld information causing overpayment are to be referred to the program integrity bureau for the determination of the possibility of fraud.

bility of fraud.

(a) Willful withholding of information include:

(i) Willful misstatements (either oral or written) made in response to oral or written questions from the agency;

(ii) Willful failure by the recipient to report changes in income and resources; and

(iii) Willful failure by the recipient to report receipt of a grant amount which he knows or should know represents an erroneous overpayment of grant amount.

(e) (b) In cases where the overpayment resulted from the willful misstatements or withholding of information on the rest of the recipient the amount to be recovered will be 125%

part of the recipient, the amount to be recovered will be 125% of the amount of the overpayment.

(3) Recoupment of overpayments not occasioned by willful withholding of information is limited to the 12 months

- preceding the month in which the overpayment is discovered-(4) When recoupment is made from current assistance payments, the proportion deducted from the grant is limited on ease-by-ease so as not to cause undue hardship on recipients.
- (5) (c) Any recoupment of overpayments due from with-holding of information may be made from available income and resources, including disregarded, set-aside or reserved items, or from current assistance payments or from both.

(6) Recipients are not to be held responsible for agency generated errors if such recoupment would result in an unduc

hardship to the recipient-

- (7) (4) The department will notify recipients at least every six months of their responsibility for reporting their income as defined in sub-chapter ARM 46.10.505 and resources as defined in ARM 46.10.410 (2)(3) and 46.10.406.
- (a) Recipients must report all available income and resources (including disregarded, set-aside, or reserved items), as well as current assistance payments.

- The department shall furnish a form on which recipients must acknowledge every six months that the reporting obligations have been brought to their attention and such obligations are understood by them.
- The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Sections 53-4-211 and 53-4-231, MCA.
 - Rule 46.10.207 is amended as follows:
- 46.10.207 NOTICE OF ADVERSE ACTION (1) Each person who receives assistance must be notified ten days in advance of any action that reduces, terminates or suspends this grant. Notification must be in writing and contain information about the amount of decrease or closure, the reason for the action, and must advise the client of the date on which the action will take effect. Where the notice is mailed, the date of mailing shall be the first day of the notice period. The notice must inform the client of his right to a fair hearing and his right to contact the department prior to the effective date of the action to discuss any disagreement or misunderstanding. The agency may dispense with the ten-day notice but shall send prior notice not later than the date of action
- (a) the state or county office has factual information confirming the death of a recipient;

(b) the state or county office receives a clear written statement signed by the recipient that he no longer wishes assistance, or that gives information which requires termination or reduction of assistance and has indicated in writing that he understands that this must be the consequence of supplying this information;

(c) the recipient has been admitted or committed to an institution, and further payment to that individual does not qualify for federal financial participation under the state

plan;

(d) the recipient's whereabouts are unknown and the state or county office mail directed to him has been returned by the post office indicating that no known forwarding address is available; the recipient's assistance check must, however, be made available to him if his whereabouts become known during the payment period covered by the returned check;

(e) a recipient has been accepted for assistance in a new jurisdiction and that fact has been established by the

jurisdiction previously providing assistance;

(f) the only change is that of payee or category and no person has been eliminated from the payment;

(g) the recipient has been placed in skilled nursing care, intermediate care or other long-term care situation or a change in the level of care is specified by the division; (h) a child receiving aid to dependent children is removed from a home as a result of judicial determination or voluntarily placed in foster care by his legal quartien; ex

voluntarily placed in foster care by his legal guardian; er
(i) a special allowance granted for a specific period is
terminated and the recipient has been informed in writing at
the time of initiation that the allowance would automatically
terminate at the end of the specified period.;

(j) a monthly report is received from a recipient that contains information that is used to reduce or terminate

assistance; or

(k) a monthly report was not received from a recipient by the 8th of the month or was incomplete when it was received, and assistance is reduced or terminated on this basis.

- (2) A recipient shall be notified of a grant change five days before the effective date of the action where the agency obtains facts indicating that a probable fraud had taken place and a referral of the fraud will be made to the program integrity bureau.
- (3) Recipients are to be informed at the time of application and reminded at the time of redetermination to report to the county welfare department within ten days any changes in employment, income, resources, and/or any other changes in economic circumstances. Living or marital circumstances are considered to affect income and any changes in these or the individual's general economic situation are to be reported to the county welfare office.
- 12. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.
 - 13. Rule 46.10.301 is amended as follows:
- 46.10.301 AGE (1) A dependent child must be under the age of 18 or age 18 if he is a full-time student in a secondary school and if he may reasonably be expected to obtain a secondary school diploma or its equivalent in or before the month of his 19th birthday. Between the ages of 18 and 21 years regularly attending school; college, university, or vocational or technical training.
- (2) There is no age requirement for the caretaker relative in an AFDC payment.
- (3) The needs of an unborn child must be included in the AFDC payment, if other eligibility factors are met.
- 14. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.
 - 15. Rule 46.10.303 is amended as follows:

46.10.303 AFDC DEPRIVATION REQUIREMENTS (1) A dependent child must be deprived of the support of a parent or both parents due to:

(a) death;

separation or divorce; (b)

(c) desertion;

(d) parents not married to each other;

(e) institutionalization;

(f) military service of one parent;(g) physical or mental incapacity;

unempleyed parent- unemployment of the parent who is (h)

the household's principal wage earner.

(2) Continued absence of a parent from the home, when the nature of the absence causes a disruption of family ties, constitutes the basic reason for deprivation of parental support in (a) through (f) above.

(3) Physical or mental incapacity of a parent, or unem-ployment of a parent constitutes deprivation though family ties are not destroyed.

- The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.
 - 17. Rule 46.10.304 is amended as follows:

46.10.304 UNEMPLOYED PARENT (1) An unemployed parent is any natural or adoptive parent who during the previous two years (24 months), starting with the month before application, was the principal wage earner as evidenced by wage information from both parents, and who:

(a) is employed less than 100 hours a month or exceeds

that standard if his work is intermittent and the excess is of a temporary nature as evidenced by the fact that he was under the 100-hour standard for the prior two months and is expected

to be under the standard during the next month; er

(b) has six or more quarters of work within any thirteen calendar quarter period ending within one year prior to the application for assistance or, within the one-year period, received unemployment compensation or was qualified under the State's unemployment compensation law.

(i) A "quarter of work" means a period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31 in which the applicant received earned

income of not less than \$50.

(ii) An individual shall be deemed "qualified" for unemployment compensation under the State's unemployment compensation law if he would have been eligible to receive such benefits upon filing application, or if he performed work not covered by this law which, if it had been covered, together with any covered work he performed would have made him eligible to receive benefits upon filing application; and

(c) must have been unemployed at least 30 days; and

(d) must apply for and accept any unemployment compensation benefits to which he is entitled; these unemployment benefits are to be subtracted from the AFDC assistance to

which he is entitled; and

(e) has not, without good cause, within a prior 30 day period, refused a bona fide offer of employment or training for employment. Participation in a strike is not good cause for refusing to accept employment or training for employment. The department must make a determination that the offer was actually made. The parent who is the principal wage earner must be given an opportunity to explain why he refused to accept the offer. The following factors must be considered:

(i) whether there was a definite offer of wages meeting.

(i) whether there was a definite offer of wages meeting

minimum wage requirements;

(ii) questions regarding the parent's principal wage earner's inability to engage in such employment for physical reasons or for lack of transportation to and from such employment; and

(iii) working conditions such as risk to health, safety, or lack of workmen's compensation protection.

(2) A parent The principal wage earner must be currently registered with WIN or with the employment security division and be available for work. The entire family is ineligible for AFDC if the principal wage earner fails to comply with

this provision.

(3) A parent principal wage earner who is in a training program under the employment security division is considered unemployed if the requirements of (1) above are met.

(4) A parent principal wage earner unemployed because of a lawful strike may not be eligible even if he meets all other

eligibility requirements.

- (5) A parent principal wage earner unemployed because of conduct or circumstances which result or would result in disqualification for unemployed compensation under state law is disqualified for AFDC/UP assistance payments, including when unless the disqualification for unemployment compensation is a result of being unemployed due to a lawful strike.
- (6) A full-time student is not eligible for AFDC/UP payments since he is not considered available to accept fulltime employment.
- (7) In a two-parent household, only one parent must meet the criteria of this section.
- The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.
 - Rule 46.10.308 is amended as follows: 19.

46.10.308 WORK REGISTRATION REQUIREMENTS (WIN) (1) All persons applying for and receiving AFDC must make every reasonable effort to seek gainful employment, including registra-tion for employment with the Montana employment security division. Exceptions to the above-noted requirements will be:

(a) methers er members ef household whe (a) methers or members of household who have responsibility for the care of any child under six years of age or of an incapacitated adult or child. A parent or other caretaker relative of a child under age 6, an incapacitated child, or an incapacitated adult who personally provides full-time care of that child or adult with only very brief and infrequent absences from that child or adult;

(b) children, age 16-21, to 18 who are attending regularly enrelled full time, as defined by the institutional contents of the child or adult.

program in which they are enrolled, an elementary, secondary, or secondary level vocational school in any school or training pregram recognized by federal, state or local government

agencies;

(c) children who are 18 attending secondary school full-time with expectation for a diploma or its equivalent in or before the month of his/her 19th birthday;

(e) (d) persons who are aged 65 or over;
(d) (e) persons physically or mentally incapable of engaging in gainful employment as verified by medical or psychological reports;

(e) (f) children under the age of 16; or (f) (g) a mether er ether female caretaker of a child, when the nonexempt parent father er ether nemekempt adult male is registered and is willing to participate.

(2) Persons required to register for employment are also

required to:

(a) report for an appraisal interview conducted with staff and to participate effectively in the program as determined by WIN staff; and

(b) assist in redetermination and reappraisal to mainstantian status once every six months so report for an appraisal interview conducted by WIN

tain a current registration status once every six months so that the WIN staff can maintain a current file on the person.

(3) A person may contest a determination of nonexempt status through the fair hearing process.

- (4) Clients determined to be exempt from registration must be informed of their right to volunteer for the program and their right to withdraw at any time without loss of AFDC benefits.
- (5) Any change which affects the WIN registration status must be reported to the WIN office within three days.
- The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.
 - Rule 46.10.319 is amended as follows:

46.10.319 EMERGENCY ASSISTANCE TO NEEDY FAMILIES WITH DE-PENDENT CHILDREN, PROCEDURES FOLLOWED IN DETERMINING ELI-GIBILITY (1) The person makes application at the county welfare department where he lives.

(2) Eligibility requirements for emergency assistance

must be verified and documented.

(3) To receive emergency assistance the child must be:

(a) living with, or within six months prior to the application did live with, a specified relative in a place of residence maintained by the relative;

(b) without resources immediately available to meet his

needs;

(c) less than 19 21 years old and, if between the ages of 16 and 19 21 years and not attending school must agree to

accept training or employment.

(4) A child is not eligible for emergency assistance if his caretaker relative refuses without good cause to accept employment or training for employment. Participation in a strike is not good cause for refusing to accept employment or training for employment. Nothing in this section shall be interpreted to require any person enrolled in and attending school regularly to accept employment or training as a condition of receiving emergency assistance.

(5) Emergency assistance may be used in addition to but not as a substitute for categorical assistance or general assistance. Emergency assistance may be extended to those aid to dependent children families on a supplementary basis who have specified needs arising from an emergency situation.

(6) The completed application is submitted to the county welfare board who shall notify the person of approval or reasons for disapproval of his application.

(7) The assistance payment is mailed directly to the client except in protective payee or vendor payments.

(8) There are no residency requirements for emergency assistance.

- 22. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.
 - Rule 46.10.320 (RULE I) is adopted as follows: 23.

RULE I (46.10.320) DENIAL OF BENEFITS TO STRIKERS

(1) Participation in a strike does not constitute good cause to leave, or to refuse to seek or accept, employment.
(2) AFDC benefits will be denied to any family for any

month in which any caretaker relative with whom the dependent child is living is, on the last day of the month, participating in a strike.

(3) No individual's needs will be included in determining the amount of benefit payable for any month to a family if, on the last day of such month, the individual is partici-

pating in a strike.

(4) A strike is defined as a temporary concerted stoppage of work by a group of employees (not necessarily members of a union) to express a grievance, enforce a demand for changes in the conditions of employment, obtain recognition, or resolve a dispute with management. Also included in this definition is a work stoppage by reason of the expiration of a collective bargaining agreement.

- 24. The authority of the department to adopt the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.
 - 25. Rule 46.10.401 is amended as follows:
- 46.10.401 A CONDITION OF NEED MUST EXIST (1) Need exists when a person does not have resources or income sufficient to provide a reasonable subsistence according to prevailing assistance standards determined by the department. With respect to income, The procedure followed by the department to determine whether a need exists is to identify all sources of income, evaluate each, and relate the gross and net amounts of income to the prevailing assistance standards. Certain exclusions and disregards and exceptions regarding treatment of income are found in this chapter.
- 26. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.
 - 27. Rule 46.10.402 is amended as follows:
- 46.10.402 STANDARDS OF ASSISTANCE AND ASSISTANCE UNIT

 (1) Standards of assistance are used to determine when need exists with respect to income for any person who applies for or receives assistance. Three sets of assistance standards are used. The gross monthly income standard sets the level of gross monthly income for each size assistance unit that cannot be exceeded if the assistance unit is to be or continue to be income eligible for AFDC. The net monthly income standard sets the level of net monthly income for each size assistance unit that cannot be exceeded if the assistance unit is to be or continue to be income eligible for AFDC. The net monthly income standards represents the requirements that the ef individual or group of individuals needs for basic subsistence (food, clothing, shelter, and other essentials). The benefit standard sets the level of net monthly income

for each size assistance unit that cannot be exceeded if the assistance unit is to receive or continue to receive an AFDC grant. However, if the grant amount is for less than ten dollars (\$10), no payment check will be issued. The benefit standard represents the amount of money an individual or group of individuals receives for basic subsistence other than food (clothing, shelter, and other essentials). Assistance standards are implemented uniformly throughout the state, and are applied to applicants and recipients on the basis of assistance units. ance units.

- (2) An assistance unit is composed of an individual, or the persons whose needs are met by the grant amount, in the assistance budget, who form a family group, all of whom meet the requirements for AFDC. A separate grant amount budget shall be computed for each assistance unit regardless of the number of units in a household. Each assistance unit is entitled to a grant amount based on the full basis requirements of benefit standard for an assistance unit of its size even if other assistance units live in the same household.
- The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.
 - 29. Rule 46.10.403 is amended as follows:
- 46.10.403 TABLES OF ASSISTANCE STANDARDS (1) The table of assistance standards contains the requirements of individuals or families according to the number of persons, the type of living arrangement, and whether shelter is or is not included.
- (a) Basie Requirements Adults ineluded έn assistance unit-
- assistance unit.

 (1) The tables of assistance standards contain the income and grant limits for assistance units according to the number of persons, the type of living arrangement, and whether shelter is or is not included.

 (2) Monthly income as defined in ARM 46.10.505 is tested against the gross monthly income standard and, after specified exclusions and disregards, the net monthly income standard. These tests are applied using income reasonably expected to exist in the benefit month; however, if income is reported or discovered after the month of receipt, this income must be accounted for by applying the gross monthly income test retroactively in the second month after receipt. Monthly income is to be compared to the full standard for the size assistance unit even though the grant may only cover part of the month. If this monthly income exceeds the standard, the assistance unit is not eligible for any part of the benefit month. The assistance unit may be further ineligible as provided in ARM 46.10.403(3). provided in ARM 46.10.403(3).

(a) Gross monthly income standards to be used when adults are included in the assistance unit are compared with gross monthly income defined in ARM 46.10.505.

GROSS MONTHLY INCOME STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of	With	Without
Persons	Shelter	Shelter
in	Obligation	Obligation
Household	Per Month	Per Month
123145678890 1112 112 145 16	\$\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\	\$\frac{128}{206}\$ \frac{280}{280}\$ \tag{364}{4322}\$ \tag{486}\$ \tag{536}\$ \tag{588}\$ \tag{640}\$ \tag{692}\$ \tag{744}\$ \tag{796}\$ \tag{848}\$ \tag{900}\$ \tag{952}\$ \tag{1,004}

(b) Gross monthly income standards to be used when no adults are included in the assistance unit are compared with gross monthly income defined in ARM 46.10.505.

No. of Children in Household	Amount Per Month
123456789001123456	\$\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\

(c) Net monthly income standards to be used when adults are included in the assistance unit are compared with net monthly income defined in ARM 46.10.505.

No. Of	With	Without
Persons	shelter	Shelter
in	obligation	Obligation
Household	Per Month	Per Month
12345678901123456 111234567	\$ 236 311 370 473 559 629 696 764 830 897 964 1,098 1,098 1,165 1,232 1,299	\$ 85 137 186 242 287 323 356 391 426 461 496 531 566 601 636 671

(d) Net monthly income standards to be used when no adults are included in the assistance unit are compared with net monthly income defined in ARM 46.10.505.

NET MONTHLY INCOME STANDARDS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. of Children in Household	Amount Per Month
1 2 3 4 5 6 7 8 9 0 11 12 13 14 15 15 15 15 15 15 15 15 15 15 15 15 15	\$ 70 114 169 223 279 335 392 449 506 563 620 677 734 791 848 905

(3) When net monthly income exceeds the net monthly income standard the assistance unit is ineligible for the number of months equal to the amount of the net monthly income divided by the net monthly income standard. The remainder which results from this computation will be treated as if it were income received and available in the first month following the period of ineligibility.

ing the period of ineligibility.

(a) If net monthly income in excess of the net monthly income standard is discovered after the month of receipt, the ineligibility period may begin with the month of discovery provided that the recipient has a history of consistent cooperation in reporting monthly income. If the recipient has not been consistent in reporting income, the period of ineligibility period of ineligible and the recipient has not been consistent in reporting income, the period of ineligible and the recipient has not been consistent in reporting income, the period of ineligible and the recipient has not been consistent in reporting income, the period of ineligible and the recipient has not been consistent in reporting income, the period of ineligible and the recipient has not been consistent in reporting income, the period of ineligible and the recipient has not been consistent in reporting income, the period of ineligible and the recipient has not been consistent in reporting income.

gibility begins with the month that the excess income is received and a recovery of overpayment will be initiated.

(b) If net monthly income in excess of the net monthly income standard is caused by a regular and periodic extra paycheck from a recurring income source, assistance will be suspended rather than terminated when ineligibility would be for only one benefit month.

(4) Physicistance unit receives the full amount of the

(4) An assistance unit receives the full amount of the benefit standard less net monthly income which is prorated if eligibility is for less than a full month. From this amount recoveries will be taken for prior overpayments.

(a) Benefit standards to be used when adults are included in the assistance unit are compared with net monthly income defined in APM 46 10 505 <u>(4)</u>

income defined in ARM 46.10.505.

BUDGET TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

BENEFIT STANDARDS TO BE USED WHEN ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. Of	With	With	Without	Without
Persons	Shelter	Shelter	Shelter	Shelter
in	Obligation	Obligation	Obligation	Obligation
Household	Per Month	Per Day	Per Month	Per Day
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	\$ 177 234 278 356 420 473 523 574 624 674 724 774 824 874 924 974	\$ 5.90 7.80 9.27 11.87 14.00 15.77 17.43 19.13 20.80 22.47 24.13 25.80 27.47 29.13 30.80 32.47	\$ 64 103 140 182 216 243 268 294 320 346 372 398 424 450 476 502	\$ 2.13 3.43 4.67 6.07 7.20 8.10 8.93 9.80 10.67 11.53 12.40 13.27 14.13 15.00 15.87

- (b) Basic Requirements No adults included in the assistance unit-
- (b) Benefit standards to be used when no adults are included in the assistance unit are compared with net monthly income defined in ARM 46.10.505.

BUDGET-TO-BE-UGED-WHEN-NO-ADULTG-ARE-INGLUDED IN-THE-AGGIGTANCE-UNIT

BENEFIT STANDARDS TO BE USED WHEN NO ADULTS ARE INCLUDED IN THE ASSISTANCE UNIT

No. of Children in Household	Grant Amount Per Month	Grant Amount Per Day
1	\$ 53	\$ 1.77
2 3	.86	2.87
3	127	4.23
4 5	168	5.60
5	209	6.97
6	252	8.40
7	295	9.83
. 8	338	11.27
9	381	12.70
10	424	14.13
11	467	15.57
12	510	
		17.00
13	553	18.43
14	596	19.87
15	639	21.30
16	682	22.73

The per-day column in both tables is to be used to compute basic requirements for part of a month. Example - A household of four with shelter obligation eligible for 10 days in a month = $$11.87 \times 10 = 110.70 or \$119.00. The total is rounded up to the nearest dellar beginning with 25¢ and over-

- 30. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.
 - 31. Rule 46.10.404 is amended as follows:

46.10.404 SPECIAL NEEDS, TITLE IV-A DAY CARE FOR RECIPIENTS WORKING, IN TRAINING OR IN NEED OF PROTECTIVE SERVICES Unless otherwise provided, in addition to the basic AFDC grant, day care payment will be provided for children of recipients who are working, attending employment-

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related training, or in need of protective services. AFDC recipients who attend WIN training shall be referred for WIN-related day care. AFDC recipients who are employed shall testing net monthly income and when determining grant amount as provided in ARM 46.10.512. Be referred to Title IV-A for payment of day care services. Special Needs IV-A Bay Gare is available for AFDC children who require child protective services day care-

Limitations to <u>Title IV-A</u> special needs day care:

(a) Title IV-A day care payments are made for children of parents who are AFDC recipients werking or in training on a full- or part-time basis. Training includes is, but is not limited to: vocational-technical schools, business colleges, junior colleges, universities university students, or special classes which may be classified as "employment-related training." Students who are working to support their education are included under this rule.

(b) Title IV-A day Day care needs will be taken into consideration for eligibility determination of an applicant. If an applicant requires <u>Title IV-A special meed day care</u>, this need will be considered in addition to the AFDC grant

amount to determine eligibility.

(c) Title IV-A day Day care payment shall beadded to the AFDE grant amount. Payment may be made directly to the recipient or through a vendor or two-party payment. The recipient

must volunteer in writing to have the day care payment made through a vendor or two-party payment.

(d) Title IV-A day Bey care payment will be made paid upon evidence of need actual charge or cost includes verification from the provider of day care services. Verification includes the signature of the individual provider or the control of the contro the individual provider or his designee, the month of service, and names of children served.

(e) Day care payments shall not exceed \$154 per month, or \$7 per day, or \$3.50 per half day per child for children in

licensed day care centers.

(f) Day care payments shall not exceed \$143 per month or \$6.50 per day or \$3.25 per half day per child in registered group day care homes.

(g) Day care payments shall not exceed \$132 per month, or \$6 per day, or \$3 per half day per child in registered day

care homes.

- (h) Title IV-A Special Needs Bday Scare is available for care provided in licensed or registered day care facilities only.
 - (i) The recipient shall choose his day care provider.
- The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.

33. Rule 46.10.406 is amended as follows:

46.10.406 PROPERTY RESOURCES (1) Definitions: For pur-

poses of this rule, the following definitions apply:

(a) "Property resources" means real or personal, tangible or intangible assets owned by members of the household assistance unit.
(b) "Home" means the assistance heuseheld unit's princi-

ple residence.

(e) "Household unit" means all family members residing

to-gether for whom AFDC is sought or received-

(d) (C) "Equity value" means the market value of a property resource minus the amount of any enforceable lien, encumbrance, or security interest, reasonable sales costs, and transfer taxes.

(e) (d) "Market value" means the prevailing price that property brings when sold on a given market.

(f) (e) "Currently available property resources" means assets which any member of the household assistance unit has a legal right and reasonable practical ability to liquidate for cash market value.

General rule: In determining eligibility for AFDC, department will evaluate property resources which are currently available to an assistance a household unit requesting or receiving assistance, and will apply the limitations set out in this rule. Property resources in excess of the limitations established in this rule will disqualify the assistance household unit for AFDC assistance.

(3) "General property resources limitation": The equity value of all currently available property resources owned by "General property resources limitation": The equity members of the <u>assistance</u> household unit will be counted in the process of determining eligibility for assistance, unless such property resources are specifically excluded by this

section.

(4) "Property resources exclusions": The following property resources are specifically excluded from treatment as currently available property resources:

(a) The equity value, not to exceed \$26,000, of a home

regardless of value.

(b) The equity value, not to exceed \$26,000, for income producing property resources, if such property resources produce are turn that is reasonable for similar property resources in the community. Income from such property resources, less all costs necessarily incurred in producing the income, shall be deducted from the assistance payments.

(e) (b) One vehicle for family transportation. An additional vehicle may be excluded if equity value does not exceed \$1500. and if the vehicle is necessary for medical; educational or employment purposes. Equity in this one vehicle over \$1500 and equity in any additional vehicles must be

counted as a currently available property resource.

td) (c) Household goods, clothing, and other essential personal effects, and home produce and livesteek for family use and consumption only, and other similarly essential day-to-day items of limited value.

(e) (d) Essential tTools for the owner's trade, or equipment needed for the owner's employment, may be exempted

as essential to day-to-day living by the county director.

(f) (e) Equipment necessary for securing or producing food.

- Any other property resources not excluded in (4)(a) through (4)(g)(e) of this section not to exceed \$1000 \$1500 in equity value.
- The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Section 53-4-211, MCA.
 - Rule 46.10.505 is amended as follows:
- 46.10.505 UNEARNED INCOME, DEFINITIONS (1) Unearned in come means all income that is not carned income as defined in ARM 46-10-509- Unearned income includes, but is not limited to social security income benefito, veterants benefits or payments, workers compensation payments, unemployment compensation payments, and returns from capital investments with respect to which the individual is not actively engaged-

(1) "Income" means all unearned income and earned income received or expected to be received in a month by members of

an assistance unit.
(2) Unearned income shall be treated as provided in ARM

46-10-506 through 46-10-508-(2) "Unearned income"

means all income that is not earned income as defined in ARM 46.10.505(3). Unearned income includes, but is not limited to social security income benefits, veteran's benefits or payments, workers' compensation payments, unemployment compensation payments, and returns from capital investments with respect to which the individual is not actively engaged.

(a) Unearned income shall be treated as provided in ARM

- 46.10.506 through 46.10.508(1)(a).

 (3) "Earned income" means all income earned by an individual through receipt of wages, salary, commissions, tips, or any other profit from activity in which he is actively engaged.
- (a) Earned income from self-employment means the total profit from business enterprise and farming, resulting from a comparison of the gross income received with the business expenses or total cost of the production of the income. Returns from capital investments are earned income when produced as a result of the individual's own efforts, including managerial responsibilities.

Earned income shall be treated as provided in ARM

46.10.508(1)(b) and 46.10.510 through 46.10.512.

(4) "Gross monthly income" means all unearned income that is available for current use in the budget month, except for excluded unearned income as provided in ARM 46.10.506, plus all earned income that is available for current use in the budget month, including any earned income otherwise excluded in ARM 46.10.510.

excluded in ARM 46.10.510.

(a) In stepparent household cases, gross monthly income includes any income, both earned and unearned, of the parent deemed available to the stepchildren as unearned income as provided in ARM 46.10.512(2).

as provided in ARM 46.10.512(2).

(b) When applying gross monthly income to the gross monthly income standard as defined in ARM 46.10.403, the budget month is the same as the benefit month, except that when income is reported or discovered after receipt, the budget month is two months prior to the benefit month.

(5) "Net monthly income" means gross monthly income less any earned income excluded in ARM 46.10.510, plus earned income credit defined according to ARM 46.10.508(1)(b), less any earned income disregarded in ARM 46.10.512.

(a) When applying net monthly income to the net monthly income standard as defined in ARM 46.10.403, the budget month is the same as the benefit month.

(b) When applying net monthly income to the benefit

- is the same as the benefit month.

 (b) When applying net monthly income to the benefit standard as defined in ARM 46.10.403, the budget month is the same as the benefit month for the first two months of eligibility, and for the third and subsequent months of eligibility the budget month is two months prior to the benefit month.

 (6) "Budget month" means the calendar month from which the income or circumstances of the assistance unit are used to calculate income.

 (7) "Benefit month" means the calendar month for which the grant amount is issued.
- the grant amount is issued.
- 36. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Sections 53-4-231, 53-4-241 and 53-4-242, MCA.
 - Rule 46.10.506 is amended as follows: 37.
- 46.10.506 DISREGARDED UNEARNED INCOME EXCLUDED UNEARNED INCOME (1) In testing gross monthly income and net monthly income and in determining grant need and amount, ef assistance, the following unearned income shall disregarded: excluded:

(a) complementary assistance from other agencies and organizations which consists of:

(i) goods and services not included in or duplicated by the AFDC payment,

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- (ii) a supplement to AFDC payments, for a different purpose.
- (b) home produce utilized for household consumption;(c) undergraduate student loans and grants for educational purposes made or insured under any program administered

by the commissioner of education;
(d) extension of OASDI benefits for 18 to 22 year olds

who are fulltime students:

(e) the value of the food stamp coupon allotment;(f) the value of U.S. department of agriculture donated (f) foods;

(g) any benefits received under Title VII of the Nutrition Program for the Elderly of the Older Americans Act of 1965 as amended;

(h) the value of supplemental food assistance received under the Child Nutrition Act of 1966, and the special food services program for children under the National School Lunch

Act (PL 92-433 and PL 93-150);
(i) all monies awarded to Indian tribes by the Indian claims commission or court of claims shall be disregarded as authorized by PL 93-134, 92-254, 94-540, and 94-114;

(j) payments received under Title II of the aUniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(k) any contribution furnished by relatives or others

which is unavailable directly to the recipient;

 the tax exempt portions of payments made pursuant to PL 92-203, the Alaska Native Claims Settlement Act;

(m) all payments under Title I of the eElementary and sSecondary Education Act;

- (n) all weekly incentive allowances paid under PL 93-203, the Comprehensive Employment and Training Act of 1973;
- (o) incentive payments or reimbursement of training-related expenses made to WIN participants by the manpower agency;
- (p) payments for supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in service corps of the retired executives and active corps of executives, and any other program under Titles II and III of PL 93-113;

(q) payments to individual volunteers under Title I (VISTA) of PL 93-113, pursuant to section 404(g) of that law;
(r) individuals receiving supplemental security income

- shall not be considered as a member of the assistance unit unless they choose to relinquish their SSI grant.
- 38. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Sections 53-4-231, 53-4-241 and 53-4-242, MCA.

39. Rule 46.10.508 is amended as follows:

46.10.508 SPECIALLY TREATED INCOME (1) The types of

income listed below shall be treated as follows:

(a) Lump sum payments are considered as income on a prespective basis in the initial two menths and en retrospective basis after the first two months. After the initial two months, any sum that is retained will be considered against the property resources limitation. The following are examples of lump sum payments: social security; veteran's benefits, unemployment compensation, railroad

(e) Indian per capita payments may be considered toward

the property resources limitation.

- (d) Income from leased land, land sale, and other accrued income may be considered as income available to meet need when received, prorated over the year, or programmed for special needs, such as, but not limited to: housing and home repair, household furnishings and equipment, financial institution debts, education and/or training, recreation equipment, medical debts, bedding and elething, necessary repair or replacement of a vehicle. Programming must have the approval of the recipient, paying agent, and the county welfare department.
- (b) Earned income credit advance payments for which an individual is eligible shall be included in net monthly income whether the individual actually receives the advance payment or not. The earned income tax credit actually received and assumed to be received will be reconciled at the end of the tax year and settled as an underpayment or overpayment.
- 40. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Sections 53-4-231, 53-4-241 and 53-4-242, MCA.
 - 41. Rule 46.10.510 is amended as follows:

46.10.510 DISREGARDED EARNED INCOME EXCLUDED EARNED

INCOME (1) In testing gross monthly income no income is to be excluded and/or disregarded from earnings of assistance

unit members.

(1) (2) In determining testing net monthly income need and determining grant amount of assistance, the following earned income shall be disregarded: excluded:

(a) earned income of a full-time student who works full-time or part-time; a child under 14 years of age;
(b) earned income of a part-time student who works part-

time, but his/her earnings are not to be excluded if employ-

- ment is full-time; a child over 14 years of age who is a full-or part-time student; and
- (c) income received under Title II of CETA, "youth employment demonstration program," of PL 95-93. These programs include the youth incentive pilot projects, the youth community conservation and improvement projects, and the youth employment and training programs.
- 42. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Sections 53-4-231, 53-4-241 and 53-4-242, MCA.
 - 43. Rule 46.10.511 is amended as follows:
- 46.10.511 TREATMENT OF EARNED INCOME (1) The following are methods and treatment of earned income.
- (a) The income reasonably expected to exist during the month of application and the month immediately following the month of application shall be estimated. Any income received prior to the date of application shall not be considered.
- (b) Business expenses such as materials, labor, tools, rental equipment, supplies and utilities shall be subtracted from the gross self-employment income to arrive at gross income for disregard purposes. Personal employment expenses and work related expenses are not business expenses. Income that is paid during the budget month but earned for a period of time greater than the budget month may be averaged. The period of time for which this income is averaged is based upon the number of months that the income is intended to cover (e.g. teacher's salaries cover an entire 12 month period although they may receive a paycheck in only 9 of the 12 months). The prorated amount is the gross monthly earned income.
- 44. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Sections 53-4-231, 53-4-241 and 53-4-242, MCA.
 - 45. Rule 46.10.512 is amended as follows:
- 46.10.512 EARNED INCOME DISREGARDS (1) The fellowing disregards are applied to earned income of applicants for and recipients of AFDC7 except as provided in ARM 46-10-513+
 - (a) 630 from the gross monthly income; (b) one-third of the remainder;
- (e) the mandatory deductions as determined by the employer's tax guide tables for the maximum number of exemptions the individual is entitled under the law: Mandatory deductions are state, federal, FIGA taxes, and other deductions over which the individual has no control;

work related expenses of \$25 per month or more if (d) the need is decumented;

(e) the full cost of public transportation or 12 cents per mile if the individual's own vehicle is used to and from werk; and

(f) child care as a work expense in determining initial eligibility of an applicant. When a suitable placement is not available under Title XX, day care expenses may be allowed as

a work related expense-

a week related empense(1) When testing net monthly income and determining grant amount, the following disregards are subtracted in the order listed from earned income of each working member of the assistance unit after exclusions provided in ARM 46.10.510 and inclusion of earned income credit advance payments provided in ARM 46.10.508, except as provided in ARM 46.10.513:

(a) \$75 from each person's earned income if the person was employed 120 hours or more in the budget month; \$40 if the person was employed 20 to 119 hours in the budget month; and \$10 if the person was employed less than 20 hours in the budget month;

budget month;

(b) expenses for the care of each working person's dependent child or incapacitated adult living in the same home and receiving assistance under ARM Chapter 10, not to exceed the daily and monthly rates for day care provided in ARM 46.10.404;
(c) \$30 and one-third of the earned income not already disregarded.

(2) In the case of stepparent households the income of the natural or adoptive parent's children is deemed to include any income of the stepparent not otherwise disregarded below, plus all of the natural or adoptive parent's income with no disregards, whether or not such income is available to the natural or adoptive parent's children.

(a) Disregard the work expense provided in ARM 46.10.512

(1)(a).

(1)(a).

(b) Disregard an amount of earned and unearned income equal to the AFDC net monthly income standard for a family consisting of the natural or adoptive parent and the stepparent and his/her children by a former marriage, if such children are claimed as dependents for federal income tax purposes and are living in the same household as the natural or adoptive parent's children.

(c) Disregard actual amounts paid by the stepparent to individuals not living in the household in which the natural or adoptive parent's children are living and claimed by the stepparent as dependents for federal income tax purposes. These amounts must be verified.

These amounts must be verified.

(d) Disregard actual payment by the stepparent of alimony or child support with respect to individuals not living in the household in which the natural or adoptive parent's children are living. These amounts must be verified.

- The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Sections 53-4-231, 53-4-241 and 53-4-242, MCA.
 - Rule 46.10.513 is amended as follows:
- 46.10.513 EARNED INCOME NOT DISREGARDED LIMITS ON DISRE-CARDS (1) Disregards of mandatory deductions, work related expenses; transportation; and child care shall be allowed. The \$30 + 1/3 disregards outlined in ARM 46-10-512 shall not be allowed as follows:

(a) to the children's natural or adoptive parents in stepparent cases when the natural or adoptive parents are not

included in the AFDS payment;

to any individual whose needs are not included in **(b)**

the AFDE payment;

(e) to new applicants (those who have not received AFDC within any of the previous four months prior to application; (d) to any person included in the AFDE payment who

reduced his/her income, or terminated or refused employment,

within the preceding 30 days without good cause;

to income from public service employment under WIN-

(e) to income from public service employment under WIN(1) The \$30 and one-third disregard provided in ARM
46.10.512(1)(c) does not apply to applicants who have not received AFDC assistance within any of the previous four months prior to application, nor to applicants or recipients after the fourth consecutive month it has been applied to the earner's earned income unless he/she has not been a recipient of AFDC assistance for 12 consecutive months.

(2) The disregards provided in ARM 46.10.512 do not apply to the earned income of the earner for the budget month when one of the following applies:

(a) the recipient failed without good cause to return the monthly report by the 8th of the month as provided in ARM

the monthly report by the 8th of the month as provided in ARM

46.10.108 (4);
(b) the applicant or recipient earner terminated his employment or reduced his earned income without good cause within the period of 30 days preceding the benefit month;

(c) the applicant or recipient earner refused without good cause to accept a bona fide employment within the period

of 30 days preceding the benefit month;

- (d) the individual voluntarily requests assistance to be terminated for the sole purpose of avoiding receiving the \$30 plus 1/3 disregard for four consecutive months.
- $48\,.$ The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Sections 53-4-231, 53-4-241 and 53-4-242, MCA.
 - 49. Rule 46.10.514 is amended as follows:

- $\underline{46.10.514\ TERMINATION\ OF\ INCOME}$ When unearned or earned income terminates, the AFDC payment shall be adjusted the \underline{second} month $\underline{immediately}$ after the income terminates.
- 50. The authority of the department to amend the rule is based on Section 53-4-212, MCA, and the rule implements Sections 53-4-231, 53-4-241 and 53-4-242, MCA.

Dated this <u>28</u> day of October, 1981.

John D. LaFaver, Director Department of Social and Rehabilitation Services

Certified to the Secretary of State October 28 , 1981.

DECLARATORY RULING OFFICE OF THE SECRETARY OF STATE

IN THE MATTER of The Request of)		
CAROLE BRASS For a Declaratory)		
Ruling Concerning the Legal)	DECLARATORY	RULING
Filing Date for a Statutory)		
Initiative as Set Forth in)		
Section 13-27-104, MCA.)		

On October 2, 1981, the Secretary of State received a written request for declaratory ruling from Carole Brass of Butte, Montana. Ms. Brass has inquired whether July 9, 1982 is the legal filing date for statutory initiatives. As described in the written request for ruling, Ms. Brass contends that the specific time for filing is provided in the constitution as three months prior to the election at which the measure will be voted on. She has indicated the proper date to be August 2, 1982.

STATEMENT OF MATTERS OFFICIALLY NOTICED.

- 1. Article III, Section 4(2), Montana State Constitution:

 "Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts and the total number of signers must be at least five percent of the total qualified electors of the state. Petitions shall be filed with the secretary of state at least three months prior to the election at which the measure will be voted upon." (emphasis supplied)
- 2. Section 13-27-104, Montana Code Annotated: "Time for filing. Unless a specific time for filing is provided in the constitution, all petitions filed with the secretary of state, certified as provided by law, must be received before 5 p.m. of the second Friday of the fourth month prior to the election at which they are to be voted upon by the people." (emphasis supplied)
- The date for the 1982 General Election, pursuant to Section 13-1-104(1), MCA, is
 November 2, 1982. Therefore, the second Friday of the fourth month prior to November 2nd, is July 9, 1982.

RULING.

The Secretary of State is of the opinion that the wording of the constitution gives the legislature a choice of providing a specific date for filing statutory initiatives. The statement "at least three months prior" does not preclude the legislature from adding a more specific deadline. This they have done with the language "before 5 p.m. of the second Friday of the fourth month prior". This statutory deadline clearly satisfies the Constitutional requirement.

The Secretary of State is also of the opinion that it was the intention of the legislature to provide the specific date for filing all petitions by the establishment of Section 13-27-104, MCA, $\overline{\ln}$ 1977.

Based on the preceding discussion and information contained in the request for ruling, the Secretary of State HEREBY RULES that July 9, 1982 as defined and applied in Section 13-27-104, MCA, is the proper and legal date for statutory initiatives to be filed with the Secretary of State.

im Maltermire Secretary of State

Dated this 22nd day of October, 1981.

MUNICIPAL HOUSING AUTHORITY - Power to act beyond territorial jurisdiction;

MUNICIPAL HOUSING AUTHORITY - Power to enter interlocal agreements;

INTERGOVERNMENTAL COOPERATION - Power of municipal and county housing authorities to enter interlocal agreements;

OPINIONS OF ATTORNEY GENERAL - 38 OF. ATT'Y GEN. NO. 75 (1980), 39 OP. ATT'Y GEN. NO. 4 (1981);

MONTANA CODE ANNOTATED - 2-9-101, 7-15-2111, 7-15-2112, 7-15-4402, 7-15-4413, 7-15-4415, 19-1-102, 76-5-103, Title 7, Chapter 11, Part 1.

- HELD: 1. An independent board composed of the commissioners of the Missoula Housing Authority may not utilize the powers and facilities of the Authority to administer the Section 8 rent subsidy program beyond the jurisdictional boundaries of the Authority.
 - The Missoula Housing Authority may not enter into an interlocal agreement with Ravalli and Mineral counties to administer the Section 8 rent subsidy programs beyond the jurisdictional boundaries of the Authority.
 - 3. The Missoula Housing Authority may administer the Section 8 rent subsidy program outside the jurisdictional boundaries of the Authority only through a cooperative agreement with other housing authorities under section 7-15-4415, MCA.
 - A municipal housing authority is a public agency which may enter into interlocal agreements.

15 October 1981

Jim Nugent, Esq. City Attorney 201 W. Spruce Street Missoula, Montana 59801

Dear Mr. Nugent:

You have requested my opinion on the following questions:

- May the City of Missoula create an additional public housing board as a separate entity from the Missoula Housing Authority which would represent the region comprising Missoula, Mineral and Ravalli counties, consisting of the same commissioners as the Missoula Housing Authority and with access to Missoula Housing Authority services for a fee?
- 2. May the Missoula Housing Authority, the Mineral County Board of Commissioners and Ravalli County Board of Commissioners enter into an interlocal agreement whereby they could jointly apply to administer the Section 8 Rent Supplement Program in their region with the understanding that the Missoula Housing Authority could administer the rent supplement contracts in Mineral and Ravalli counties?
- 3. If Mineral and Ravalli counties created housing authorities, could those respective housing authorities then enter into an agreement pursuant to section 7-15-4415, MCA, to apply for and have the Missoula Housing Authority administer the section 8 rent supplement contracts for the entire region?

39 OP. ATT'Y GEN. NO. 4 (1981) held that while municipal housing authorites may administer federal Section 8 housing programs, their authority to do so is generally limited to the area within the city limits and within a ten-mile radius of the city. See §§7-15-4413 and 7-15-4453, MCA. No statutory authority exists for the arrangements set forth in your first two questions. In both cases the authority or its facilities would serve areas outside of the authority's territorial jurisdiction. Under the reasoning of 39 OP. ATM'Y GEN. NO. 4 (1981), these arrangements are beyond the authority's power.

Your third inquiry involves the application of section 7-15-4415, which provides:

<u>Cooperation</u> <u>between housing authorities</u>. Any two or more housing authorities may join or cooperate with one another in the exercise of any or all of the powers conferred on such housing authorities for the purpose of financing, planning, undertaking, constructing, or operating a housing project or projects located within the area of operation of any one or more of such housing authorities.

This section creates a narrow exception to the ten-mile radius jurisdictional limit recognized in 39 OP. ATT'Y GEN. NO. 4 (1981). Section 7-15-2112(2), MCA, incorporates by reference for county housing authorities the powers of municipal housing authorities. Section 7-15-2111, MCA, allows a county housing authority to operate within the boundaries of a municipality if the governing body of the municipality consents. Under these two statutes, it is theoretically possible for the counties in the region to establish county housing authorities with the power to administer the Section 8 program on a county-wide basis. I note in passing that your question omits mention of Missoula County, although that county would have to create a housing authority as well for the proposed program to extend to the entire three-county region. If county housing authorities are established, section 7-15-4415, MCA, would allow the Missoula municipal housing authority to contract with the three county housing authorities to administer the Section 8 program.

One mechanism for implementing a cooperative agreement under section 7-15-4415, MCA, is the "Interlocal Cooperation Act," Title 7, Chapter 11, Part 1, MCA. Under the "Interlocal Cooperation Act":

Any one or more public agencies may contract with any one or more other public agencies to perform any administrative service, activity, or undertaking which any of said public agencies entering into the contract is authorized by law to perform.

§7-11-104, MCA. The purpose of these agreements is to allow "public agencies" to "make the most efficient use of their powers...." §7-11-102, MCA. Such an agreement may be used in the situation outlined by your request.

Section 7-11-103, MCA defines "public agencies" to include "political subdivisions." Montana statutes vary the

definition of "political subdivision" according to the context in which the term is used. For example, in the provisions relating to flood plain management, "political subdivision" is defined as "any incorporated city or town or any county organized and having authority to adopt and enforce land use regulations." §76-5-103(15), MCA. The statutory scheme is such that a broader definition is not necessary. The term is more broadly defined when used in the context of inclusion of employees of political subdivisions in the Social Security program:

The term "political subdivision" includes an instrumentality of the state, of one or more of its political subdivisions...including leagues or associations thereof.... The term includes special districts or authorities created by the legislature or local governments such as but not limited to school districts, housing authorities,

§19-1-102(4), MCA. The statutory provisions pertaining to interlocal agreements do not include a definition of "political subdivision." However, since the purpose of the interlocal agreement is to allow "political subdivisions" to provide services more efficiently, to the ultimate benefit of the taxpayers and citizens of Montana, a broad definition of the term is clearly appropriate. As "public corporations," see section 7-15-4402(1), MCA, housing authorities are explicitly recognized as being within the definition of "political subdivisions" in at least two other contexts. See §§2-9-101(1)(e), MCA (tort claims), and 19-1-102(4), MCA (Social Security). It is my opinion that housing authorities are within the definition of the term "political subdivision" for interlocal agreement purposes as well. You should bear in mind, however, that since section 7-15-4415, MCA, does not require co-operative housing authorities to enter an interlocal agreement, it cannot be presumed that that mechanism was intended as the exclusive means of achieving such cooperation. 38 OP. ATT'Y GEN. NO. 75 (1980).

THEREFORE, IT IS MY OPINION:

 An independent board composed of the commissioners of the Missoula Housing Authority may not utilize the powers and facilities of the Authority to administer the Section 8 rent subsidy program beyond the jurisdictional boundaries of the Authority.

- The Missoula Housing Authority may not enter into an interlocal agreement with Ravalli and Mineral counties to administer the Section 8 rent subsidy programs beyond the jurisdictional boundaries of the Authority.
- 3. The Missoula Housing Authority may administer the Section 8 rent subsidy program outside the jurisdictional boundaries of the Authority only through a cooperative agreement with other housing authorities under section 7-15-4415, MCA.
- A municipal housing authority is a public agency which may enter into interlocal agreements.

Attorney General