

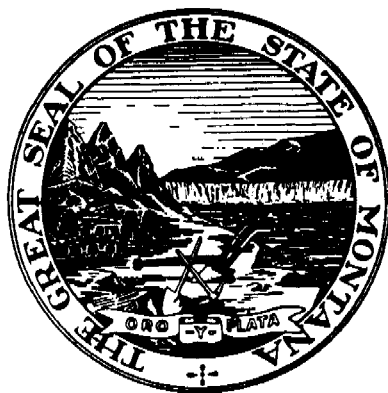
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**RESERVE**

# **MONTANA ADMINISTRATIVE REGISTER**

**STATE LAW LIBRARY  
AUG 26 1982  
OF MONTANA**

**1982 ISSUE NO. 16  
AUGUST 26, 1982  
PAGES 1565-1618**



# MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 16

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are inserted at the back of each register.

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16-8/26/82

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BEFORE THE TEACHERS' RETIREMENT BOARD  
OF THE STATE OF MONTANA

|                              |   |                    |
|------------------------------|---|--------------------|
| In the matter of the         | ) | NOTICE OF PROPOSED |
| ADOPTION OF A RULE           | ) | ADOPTION OF A RULE |
| specifying which employment  | ) | Creditable Service |
| in private schools qualifies | ) | For Private School |
| for creditable service       | ) | Employment         |
| in the Teachers'             | ) |                    |
| Retirement System            | ) | NO PUBLIC HEARING  |
|                              | ) | CONTEMPLATED       |

TO: All Interested Persons.

1. On October 29, 1982, the Teachers' Retirement Board proposes to adopt a rule specifying which employment in private schools qualifies for creditable service in the Teachers' Retirement System under Section 19-4-408, MCA.

2. The proposed rule provides as follows:

RULE 1 CREDITABLE SERVICE FOR EMPLOYMENT IN PRIVATE EDUCATIONAL INSTITUTIONS. (1) A member may apply for creditable service for employment in a private elementary, secondary, or postsecondary educational institution if the institution is an organized and existing institution which is established, operated, and primarily supported by a non-governmental agency and which makes a business of instructing children of school age in the required study and for the full time required under the laws of the state in which the institution operates.

(2) An institution shall be deemed to be a private elementary or secondary educational institution if it meets the following requirements:

- (a) has a governing authority;
- (b) can show that it provides instructions in the program prescribed by the board of public education of the state in which it operates;
- (c) instructs children of the compulsory attendance age as required by the law of the state in which the institution operates; and
- (d) is not operated in a private home.

(3) The employment record of the teacher applying for private school credit must be verified by either the governing authority or authorized person responsible for maintaining the records of the institution on a form prescribed by the teachers' retirement board.

3. This rule is proposed to remedy a problem which is not explicitly covered in existing statutes or rules. Section 19-4-408, MCA, enacted by the 47th Montana Legislature, provided that teachers in the public retirement system can apply for creditable service for employment in a private elementary, secondary, or postsecondary educational institution. There are no guidelines as to what types of private teaching experience

qualify. This rule will clarify what types of private teaching experience qualify according to the Teachers' Retirement Board's understanding of the legislative intent of Section 19-4-408, MCA.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to Mr. F. Robert Johnson, Administrator, Teachers' Retirement Division, Department of Administration, 1500 6th Avenue, Helena, MT 59601, no later than October 8, 1982.

5. 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 Mr. F. Robert Johnson at the above address, no later than September 15, 1982.

6. 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 more than 25.

7. The authority of the Board to make the proposed rule is based on Sections 19-4-201, and 19-4-204, MCA, and the rules implement Section 19-4-408, MCA.

TEACHERS' RETIREMENT BOARD  
Dr. Harold Wenaas,  
CHAIRMAN

BY

*Harold Wenaas*

Certified to the Secretary of State, August 11, 1982

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

|                           |   |                         |
|---------------------------|---|-------------------------|
| In the matter of the      | ) | NOTICE OF PROPOSED      |
| repeal of rules 4.10.301  | ) | REPEAL OF ARM 4.10.301  |
| through 4.10.310, Aquatic | ) | THROUGH 4.10.310        |
| Herbicides                | ) | NO HEARING CONTEMPLATED |

TO: All Interested Persons.

1. On September 25, 1982 the Department of Agriculture proposes to repeal ARM 4.10.301 through ARM 4.10.310, appearing as Sub Chapter 3 of Title 4, Chapter 10, Aquatic Herbicide Rules, pages 4-227.1 - 4-230.


2. The rules are proposed for repeal as they have been replaced by new set of rules noticed for adoption in Issue No. 6, MAR 1982 at p. 515.

3. Interested persons may present their data, views or arguments concerning the proposed repeal in writing to the Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620 no later than September 23, 1982.

4. 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 a written request for a hearing and submit this request along with any written comments he has to Department of Agriculture, Agriculture/Livestock Building, Capitol Station, Helena, Montana 59620 no later than September 23, 1982.

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

6. The authority of the Department to make the proposed repeal is based on Sec. 80-8-105 MCA.

  
W. Gordon McOmber, Director  
Montana Department of Agriculture

Certified to the Secretary of State August 16, 1982

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF PROPOSED AMENDMENT  
of Rule 10.55.108 Alternative ) OF RULE 10.55.108  
Standards ) ALTERNATIVE STANDARDS  
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 27, 1982, the Board of Public Education proposes to amend rule 10.55.108 which specifies alternative standards.

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

10.55.108 ALTERNATIVE STANDARDS. (1) Any school or district may apply to the board of public education through the office of public instruction for permission to use an alternate for any standard, section of standards or the entire set of standards excluding those standards that would affect certification policies or requirements. To do so, the school district should indicate the educational goals for values that the current standard should provide students, then how the alternate being applied for would provide the same or improved goals or values. Permission to use an approved alternate would be granted for one year and renewable if the one-year pilot is evaluated to be workable and educationally sound by both the school or school district and the board of public education.

AUTH: 20-7-101 IMP: 20-7-101

3. The board of public education is proposing this amendment because the change would bring the rule into alignment with state law.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Allen D. Gunderson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, 59620 no later than September 24, 1982.

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 Allen D. Gunderson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than September 24, 1982.

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 sub-division or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later

date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 100 persons based on 1,000 school administrators in the state of Montana.

7. The authority of the agency to make the proposed amendment is based on section 20-7-101, MCA, and the rule implements section 20-7-101, MCA.

  
ALLEN D. GUNDERSON, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

By 

Certified to the Secretary of State August 16, 1982.



BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF PROPOSED AMENDMENT  
of Rule 10.55.204 Principal ) OF RULE 10.55.204 PRINCIPAL  
NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 27, 1982, the Board of Public Education proposes to amend rule 10.55.204 which specifies standards for administration and supervision, specifically principals.

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

10.55.204 PRINCIPAL. (1) The principal shall be certified in accordance with state statutes and with the policies of the board of public education.

(2) Requirements for the services of principals are determined by enrollments of schools or school districts.

(a) Any school with an enrollment of fewer than 150 students and not under the supervision of a district superintendent shall provide for supervision at a minimum average of two days per teacher per year either through the office of the county superintendent. ~~or through the shared services of elementary principals, subject area consultants and/or curriculum consultants.~~

(b) In any school district with a combined elementary and secondary enrollment of more than 50 but less than 150 students and where the superintendent shall devote half-time to ~~administration and supervision. in both schools.~~

(c) through (g) remain the same.

AUTH: 20-7-101

IMP: 20-4-403

3. The board of public education is proposing this amendment to clarify the language for better understanding.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Allen D. Gunderson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, 59620 no later than September 24, 1982.

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 Allen D. Gunderson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than September 24, 1982.

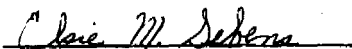
6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment; from the Administrative Code Committee of

the legislature; from a governmental sub-division or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 100 persons based on 1,000 school administrators in the state of Montana.

7. The authority of the agency to make the proposed amendment is based on section 20-7-101, MCA, and the rule implements section 20-4-403, MCA.

  
ALLEN D. GUNDERSON, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

By



Certified to the Secretary of State August 16, 1982.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

|                                  |                                |
|----------------------------------|--------------------------------|
| In the matter of the amendment ) | NOTICE OF PROPOSED AMENDMENT   |
| of Rules 10.55.402, 10.55.403, ) | OF RULES 10.55.402, 10.55.403, |
| and 10.55.404 relating to the )  | and 10.55.404 relating to the  |
| basic instructional program )    | basic instructional program    |
|                                  | NO PUBLIC HEARING CONTEMPLATED |

TO: All Interested Persons

1. On September 27, 1982, the Board of Public Education proposes to amend rules 10.55.402, 10.55.403, and 10.55.404 relating to the basic instructional program and library media services.

2. The rules as proposed to be amended provide as follows:

10.55.402 BASIC INSTRUCTIONAL PROGRAM: HIGH SCHOOL, JUNIOR HIGH, MIDDLE SCHOOL AND GRADES 7 and 8 BUDGETED AT HIGH SCHOOL RATES (1) Each district shall have in writing and on file a process of program evaluation. Self-review of each program shall occur at least once every ten years, using the Northwest Association evaluation program or evaluative material of the district's using school's choice.

(2) A high school shall require a minimum of 16 units for graduation including ninth grade units; however, at its discretion, ~~a board of trustees~~ the governing authority may require additional units of credit for graduation. A unit of credit shall be given for satisfactory completion of a full unit course. At the discretion of the local administrator, fractional credit may be given for partial completion of a course.

(3) A unit of credit is defined as the equivalent of at least 225 minutes per week for subjects without laboratory work and 250 minutes per week for subjects that require laboratory work. Passage time between classes may be counted toward the standard school day.

(4) The following is a list of alternative procedures for earning credit. They are acceptable equivalents to the basic definition of a unit of credit. Such units of credit taken with the approval of the accredited Montana high school in which the student was then enrolled and appearing on the student's official transcript, must be accepted in any Montana high school.

(a) Satisfactory completion of the content of a course in a period of time either shorter or longer than that normally required. Criteria for successful completion shall be developed as a guide for teachers, students and parents in assuring quantity and quality of performance, regardless of time involved.

(b) ~~In accordance with the policies of the local board of trustees,~~ Credit earned in summer classes. This credit may be applied toward graduation requirements if the summer classes are

taught by properly ~~certified~~ contracted teachers. ~~This credit and it shall be prorated in accordance with the policies of the local board of trustees governing authority.~~

(c) Satisfactory completion of special courses in such programs as job corps, upward bound and armed forces schools. Credit given for satisfactory completion of such courses shall be in accordance with policies of the ~~local board of trustees governing authority.~~

(d) Satisfactory completion of unconventional programs such as work study, cooperative work experience, college level courses taken in high schools and others. Work study and work experience programs shall be coordinated with the supervision of a certified contracted teacher of the school.

~~(e) In accordance with the policies of the local board of trustees, a regularly enrolled student may apply toward graduation Credits earned through the National University Extension Association or earned through one of the schools approved by the National Home Study Council. This credit may be applied toward graduation if the student is regularly enrolled and if the credits are issued in accordance with the policies of the local governing authority.~~

(5) Course requirements for graduation are:

(a) Language arts: 4 units

(b) American history: 1 unit

(c) American government:  $\frac{1}{2}$  unit. A 2-unit course in American history and American democracy, which includes a study of government, may be used to meet the American history and government requirements.

(d) Mathematics: 2 units.

(e) Laboratory science: 1 unit.

(f) Health and physical education: 1 unit. A school must offer at least a two-year program of physical education and specific instruction in health, the content to be adjusted to provide for earning one unit of credit during the two year period. Students must take health and physical education for two years. Participating in interscholastic athletics cannot be utilized to meet this requirement.

(g) The governing authority shall require the development and implementation of processes to assist staff members in assessing the educational needs of each student. ~~Local boards of trustees~~ Each governing authority may waive specific course requirements based on individual student needs and performance levels. Waiver requests also shall be considered with respect to age, maturity, interests and aspirations of the students and shall be in consultation with parents or guardians.

(6) Units of credit earned in any Montana high school accredited by the board of public education shall be accepted in all Montana high schools.

(7) In accordance with the policies of the ~~local board of trustees~~ governing authority, students may be graduated from high school with less than four years enrollment.

(8) and (9) remain the same.

(10) A unit is defined as the equivalent of at least 225 minutes per week in non-laboratory courses and 250 minutes per week in courses that require laboratory work. Units in grade 9 shall be equivalent to units of credit for high school graduation requirements. Passage time between classes may be counted toward the standard school day.

AUTH: 20-7-101 IMP: 20-7-111

10.55.403 BASIC INSTRUCTIONAL PROGRAM: ELEMENTARY

(1) (a) through (i) remains the same as recently adopted.

(2) Basic instructional course material or textbooks in the fundamental skill areas of language arts, mathematics, science and social studies must be reviewed by ~~school-district-~~ ~~personnel~~ authorities at intervals not exceeding five years. All instructional materials must be sequential and, in addition, must be compatible with previous and future offerings.

AUTH: 20-7-101 IMP: 20-7-111

10.55.404 LIBRARY MEDIA SERVICES, K-12 (1) All schools shall have a centralized catalog of all the instructional media in the school, exclusive of textbooks. This collection shall include all the print and nonprint materials as well as supporting audiovisual equipment and shall be accessible to students and teachers.

(2) Each school district shall have written policies regarding the selection, use and evaluation of materials and services and procedures for handling challenged materials. The selection and use of specific items of material, with the advice of the staff, are the responsibility of the local school board.

(3) High school, junior high school, middle school and 7th and 8th grade funded at high school rates; full-time or part-time librarian shall have a teaching certificate with a library endorsement, and the library shall be housed in a central location.

(a) through (d) and (4) through (9) remain the same.

AUTH: 20-7-101 IMP: 20-7-202

3. The board of public education is proposing these amendments to clarify the language for better understanding.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Allen D. Gunderson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, 59620 no later than September 24, 1982.

5. If a person who is directly affected by the proposed amendments 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 Allen D. Gunderson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than September 24, 1982.

6. If the agency receives requests for a public hearing on the proposed amendments 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 sub-division or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 100 persons based on 1,000 school administrators in the state of Montana.

7. The authority of the agency to make the proposed amendments is based on section 20-7-101, MCA, and the rules implement sections 20-7-111 and 20-7-202, MCA.

  
ALLEN D. GUNDERSON, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

By 

Certified to the Secretary of State August 16, 1982 .

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

|                                 |                              |
|---------------------------------|------------------------------|
| In the matter of the adoption ) | NOTICE OF PUBLIC HEARING     |
| of Rule I Basic Instructional ) | ON ADOPTION OF RULE I        |
| Program: Special Education )    | BASIC INSTRUCTIONAL PROGRAM: |
|                                 | SPECIAL EDUCATION            |

TO: All Interested Persons

1. On September 20, 1982 at 11:00 a.m. to 12:00 p.m. a public hearing will be held in the Board of Regents Conference Room, 33 South Last Chance Gulch, Helena, Montana, to consider the adoption of a rule relating to the basic instructional program for special education.

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

3. The rule as proposed provides as follows:

Rule I BASIC INSTRUCTIONAL PROGRAM: SPECIAL EDUCATION

(1) General

(a) Handicapped children are provided opportunities to become confident, dignified and self-sufficient members of society.

(b) To the maximum extent possible, and when appropriate handicapped children are educated with non-handicapped in the district in which they live.

(c) A child receives special education only when documentation shows that the child cannot be appropriately educated in the regular program.

(d) A current individualized education program is prepared for each student receiving special education and/or related services.

(2) Itinerant and Resource Room Services

(a) Direct services are provided to students with handicaps who are enrolled in the regular education program for more than 50% of the school day.

(b) Ongoing consultation and communication are provided by the itinerant and resource personnel to the student's regular teacher(s).

(3) Self-Contained Instruction

(a) Direct services are provided to students enrolled in special education for more than 50 percent of the school day.

(b) Students in self-contained placement participate with regular students to the maximum extent appropriate.

(c) Each student who has successfully completed an identified educational program must receive a diploma. The official transcript will indicate the specific courses taken and level of achievement.


4. The board of public education is proposing this rule so as to include the special education regulations in the regular school accreditation standards.

5. Interested persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Allen D. Gunderson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, 59601, no later than September 27, 1982.

6. Harriett Meloy, Member of the Board of Public Education, and Hidde Van Duym, Assistant to the Board of Public Education, 33 South Last Chance Gulch, Helena, Montana have been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed amendment is based on section 20-7-101, MCA, and the rule implements section 20-7-402, MCA.

  
ALLEN D. GUNDERSON, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

By 

Certified to the Secretary of State August 16, 1982.



BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

|                                   |                                |
|-----------------------------------|--------------------------------|
| In the matter of the amendment )  | NOTICE OF PROPOSED AMENDMENT   |
| of Rule 10.58.303 Professional )  | OF RULES 10.58.303 and         |
| Requirements and Rule 10.58.508 ) | 10.58.508 relating to          |
| Elementary )                      | teacher education program      |
| )                                 | standards                      |
| )                                 | NO PUBLIC HEARING CONTEMPLATED |

TO: All Interested Persons

1. On September 27, 1982, the Board of Public Education proposes to amend rules 10.58.303 and 10.58.508 which specify teacher education program standards relating to reading.

2. The rules as proposed to be amended provide as follows:

10.58.303 PROFESSIONAL EDUCATION

(1) (a) through (b) (i) through (vi) remain the same.

(vii) ability to teach reading and writing skills appropriate to the level of the student and to the content of the subject:

(A) Knowledge and use of the diagnostic techniques used to teach reading and writing in the content areas;

(B) Knowledge of criteria used in the selection of instructional materials and the application of the instructional techniques used to teach reading and writing for the content areas;

(C) Knowledge of and ability to integrate study skills instruction into the content areas;

(D) Ability to provide opportunities for the practical application of reading and writing in the content areas;

The rest of the rule remains the same.

AUTH: 20-2-114 IMP: 20-2-121

10.58.508 ELEMENTARY For the prospective teacher the program shall:

(1) provide knowledge of child growth and development and of the social, emotional, physical and health characteristics and needs of children;

(2) include studies and experiences in the sociological and the behavioral sciences which emphasize the relation of children to their environment;

(3) provide for the development of instructional competence in the teaching methods and the use of materials to promote the effective pupil use of the language art skills: of reading, writing, speaking, and listening;

(a) reading to include but not be restricted to competencies in the following areas:

(i) Knowledge of and the ability to apply techniques for teaching the basic reading skills in the areas of vocabulary development, comprehension, word attack and study skills.

(ii) Knowledge of the scope and sequence of an elementary reading curriculum;

(iii) Knowledge of and ability to use formal and informal assessment techniques to assist in diagnosis and prescription of individual needs;

(iv) Knowledge of a variety of reading instructional approaches and the ability to apply them to meet individual learning needs;

(v) Knowledge of and ability to use criteria to evaluate and select appropriate reading instructional materials.

The rest of the rule remains the same.

AUTH: 20-2-114

IMP: 20-2-121

3. The board of public education is proposing these amendments to further clarify these portions of the teacher education standards that relate to elementary and to all teachers in response to input from the field on the importance of reading.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Allen D. Gunderson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana, 59620 no later than September 24, 1982.

5. If a person who is directly affected by the proposed amendments 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 Allen D. Gunderson, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than September 24, 1982.

6. If the agency receives requests for a public hearing on the proposed amendments 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 sub-division or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 100 persons based on 1,000 school administrators in the state of Montana.

7. The authority of the agency to make the proposed amendments is based on section 20-2-114, MCA, and the rules implement section 20-2-121, MCA.

Allen D. Gunderson  
ALLEN D. GUNDERSON, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

By

Chris M. Schena

Certified to the Secretary of State

August 16, 1982

16-8/26/82

MAR Notice No. 10-3-62

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF DENTISTRY

In the matter of the proposed ) NOTICE OF PROPOSED ADOPTION  
adoption of a new rule concern-) OF A NEW RULE ON UNPROFES-  
ing unprofessional conduct ) SIONAL CONDUCT  
rules. )

NO PUBLIC HEARING CONTEMPLATED

To: All Interested Persons:

1. On September 25, 1982, the Board of Dentistry proposes to adopt a new rule concerning unprofessional conduct.

2. The rule as proposed will read as follows:

"I. PROFESSIONAL CONDUCT (1) For the purpose of implementing the provisions of section 37-4-321 (3), MCA, the board defines 'unprofessional conduct' as follows:

(a) Resorting to fraud, misrepresentation, or deception in applying for or in securing a license or in taking an examination required by Title 37, Chapter 4, MCA or Title 8, Chapter 16, A.R.M.

(b) Continuing to practice dentistry or dental hygiene when the licensee's license has been suspended, revoked or is not currently renewed.

(c) Having been convicted of an offense involving moral turpitude.

(d) Administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the Federal Food and Drug Administration or its successor, otherwise than in the course of legitimate or reputable professional practice.

(e) Disobeying the law or rules of the board.

(f) Having been convicted of violating a federal or state statute or rule regulating the possession, distribution, or use of a narcotic or hallucinatory drug, as defined by the Federal Food and Drug Administration.

(g) Failing to report the prescription of drugs to a habitual user or a drug addict within 48 hours to the county attorney, as required by the provisions of section 37-2-111, MCA.

(h) Failing to cooperate with an authorized investigation of a complaint.

(i) Being mentally and/or physically incompetent to engage in the practice for which a license has been issued.

(j) Being habitually intemperate or, habitually indulging in excessive use of narcotic drugs, alcohol or any other drug or substance to the extent that the use impairs the user's capacity, either physically or mentally.

(k) Engaging in morally deprived conduct with patients on the licensee's office premises.

(l) Failing to exercise due regard for the safety, health and welfare and life of the patient.

(m) Engaging in conduct unbecoming to the person of the licensee, when such conduct involved the use of any device, drug, medication, or material when such use is detrimental to the best interests of the public.

(n) Consistently maintaining an unsanitary office or operating under unsanitary conditions after warning from the board.

(o) Resorting to fraud, misrepresentation or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization.

(p) Willfully permitting unauthorized disclosure of information relative to patients' records.

(q) Obtaining a fee or other compensation, either directly or indirectly by the representation that a manifestly incurable disease, injury or condition of a person can be cured.

(r) Testifying in court on a contingency witness-fee basis.

(s) Conspiring to misrepresent, or willfully misrepresenting, dental conditions to increase or decrease a settlement award verdict or judgement.

(t) Employing, procuring, inducing, aiding, or abetting a person not licensed or registered as a dentist to engage in the practice of dentistry.

(u) Professional connection or association with or lending a dentist's name to another for the illegal practice of dentistry by another, or professional connection or association with any person, firm, or corporation holding itself out in any manner contrary to this chapter.

(v) Suspension or revocation of the dentist's license to practice dentistry by competent authority in any state, federal, or foreign jurisdiction."

3. The board is proposing the rule adoption to specifically define unprofessional conduct.

4. Interested persons may submit their data, views or arguments concerning the proposed adoption in writing to the Board of Dentistry, 1424 9th Avenue, Helena, Montana 59620-0407, no later than September 23, 1982.

5. If a person who is directly affected by the proposed 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 Dentistry, 1424 9th Avenue, Helena, Montana 59620-0407, no later than September 23, 1982.

6. If the board receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed 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. Ten percent of those persons directly affected is determined to be 110 based on the 1100 licensees.

7. The authority of the board to make the proposed adoption is based on section 37-4-321 (3), MCA and implements section 37-4-321 (3), MCA.

BOARD OF DENTISTRY  
ROBERT W. FRITZ, D.D.S.,  
PRESIDENT

BY:   
GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 16, 1982.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF NURSING

|                                    |                                 |
|------------------------------------|---------------------------------|
| IN THE MATTER of the proposed )    | NOTICE OF PROPOSED AMENDMENT    |
| amendment of ARM 8.32.408 con-) )  | OF ARM 8.32.408 TEMPORARY       |
| cerning temporary work permits,) ) | WORK PERMITS; PROPOSED ADOPTION |
| and proposed adoption of new ) )   | OF NEW RULES UNDER SUB-         |
| rules under sub-chapter 3 con-) )  | CHAPTER 3, SPECIALTY AREAS      |
| cerning specialty areas of ) )     | OF NURSING                      |
| nursing. )                         |                                 |

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On September 25, 1982, the Board of Nursing proposes to amend rules 8.32.408 concerning temporary work permits and proposes to adopt new rules under sub-chapter 3 concerning specialty areas of nursing.

2. The board is proposing the above changes after consideration of testimony received at a public hearing on May 27, 1982 and of other written views pertinent to the proposed rule amendments and adoptions concerning the regulation of nursing education, licensure and practice, which were noticed on pages 785 through 797, 1982 Montana Administrative Register, issue number 8. The board believes these proposed rules provide an appropriate means of ensuring the competency of those practicing in the specialty areas of nursing in Montana and of controlling the temporary work permits as intended by Title 37, Chapter 8, MCA.

3. The proposed amendment of 8.32.408 will read as follows: (new matter underlined, deleted matter interlined)

"8.32.408 TEMPORARY WORK PERMIT (1) Graduates of schools of professional nursing may accept employment in Montana as professional nurses approved professional nursing educational programs or practical nursing education programs pending the result results of the first licensing examination scheduled by the board following such graduation, provided that and for which they are eligible may accept employment in Montana as a professional or practical nurse and be granted a temporary work permit provided that:

(a) such graduate submits application has been accepted for the licensing examination on the required form together with the statutory fee of \$35.00 and meets the criteria:

(i) Application, fee and credentials have been submitted and approved by the Executive Secretary of the Montana board of nursing by the appropriate date.

(b) Such application is approved for the licensing examination as shown by the official permit issued by the board; graduate will function under the supervision of a physician, dentist, osteopath, podiatrist or registered nurse licensed in the state of Montana.

(c) Such temporary permit will not be renewable.

(2) A recent professional or practical nurse graduate candidate who has applied to write the licensing examination of another state, may accept employment as a professional nurse or practical nurse in Montana only under the following conditions, and be granted a temporary work permit provided that:

(a) such candidate has submitted an application and fee for Montana licensure by endorsement; and

(b) such candidate possesses a recent graduate permit which will be issued following as verification that the candidate has been scheduled for the appropriate licensing examination; and

(c) The license will not be issued to the candidate until at the time that the Montana board of nursing is has been notified that the candidate has passed the State Board Test Pool Examination/National Council Licensing Examination examination and a license has been issued.

(3) A registered professional nurse or licensed practical nurse who is currently licensed in another jurisdiction may be employed in Montana as a professional or practical nurse and be granted a temporary work permit provided that:

(a) such professional or practical nurse has applied for Montana licensure by endorsement and meets the Montana state board of nursing's criteria for licensure:

(i) application for endorsement, fee and credentials

have been submitted and approved by the Executive Secretary;

(ii) an affidavit signed by the intended employer has been submitted.

(b) Such professional or practical nurse will function under the supervision of a physician, dentist, osteopath, podiatrist or registered nurse licensed in the state of Montana until a license is issued.

(c) Foreign educated applicants for licensure by examination or endorsement are not eligible for a temporary work permit unless such applicant has been licensed by examination in another jurisdiction." (Authority: Sec.

37-8-202, MCA; Implement: Sec. 37-8-430, MCA)

4. The proposed new rules under sub-chapter 3 will read as follows:

"1. NURSE-MIDWIFERY PRACTICE (1) Nurse midwifery practice is the management of care of essentially normal newborns and women, antepartally, intrapartally, postpartally and/or gynecologically. This occurs within a health care system which provides for medical consultation, collaborative management, and referral and is in accord with the 'Functions, Standards and Qualifications for Nurse-Midwifery Practice' as defined by the American College of Nurse-Midwives." (Authority: Sec.

37-8-202, MCA; Implement: Sec. 37-8-202(5), MCA)

II. "EDUCATIONAL REQUIREMENTS AND OTHER QUALIFICATIONS APPLICABLE TO SPECIALTY AREAS OF NURSING" (1) Applicants for recognition in a specialty area of nursing shall possess the following educational and certification qualifications:

- (a) Before June 30, 1985--
    - (i) Successful completion of a post-basic professional nursing education program in the specialty area with the minimum length of one academic year consisting of at least four months of didactic instruction and the remainder under a preceptor; and individual certification from a board approved certifying body; or
    - (ii) A master's degree from an accredited nursing education program which prepares the nurse for a specialty role; and individual certification from a board approved certifying body.
  - (b) After June 30, 1985-- new recognitions will require:
    - (i) A minimum of a baccalaureate degree with an upper division major in nursing; successful completion of a post-basic professional nursing education program in the specialty area with the minimum length of one academic year consisting of at least four months of didactic instruction and the remainder under a preceptor; and individual certification from a board approved certifying body;
    - (ii) A master's degree from an accredited nursing education program which prepares the nurse for a specialty role; and individual certification from a board approved certifying body." (Authority: Sec. 37-8-202, MCA; Implement: Sec. 37-8-202 (5), MCA.)
5. Interested persons may submit their data, views or arguments concerning the proposed amendment and adoptions in writing to the Board of Nursing, 1424 9th Avenue, Helena, Montana 59620-0407 no later than September 23, 1982.
6. If a person who is directly affected by the proposed amendment and adoptions 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 September 23, 1982.
7. If the board receives requests for a public hearing on the proposed amendment and adoptions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed amendment and adoptions; 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. Ten percent of those

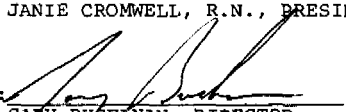


persons directly affected is determined to be 145 based on the 1450 RN and LPN licensees, who would be endorsed into the state, would be examination candidates, or specialty area persons.

8. The implement and authority sections are listed after each proposed change.

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

BY:

  
GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 16, 1982.

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

|                                  |   |                          |
|----------------------------------|---|--------------------------|
| In the matter of the amendment   | ) | NOTICE OF PUBLIC HEARING |
| of rules 16.32.101, 16.32.103,   | ) | ON THE PROPOSED ADOPTION |
| 16.32.107, 16.32.108, 16.32.110, | ) | AND AMENDMENT OF RULES   |
| 16.32.111, 16.32.112, 16.32.114, | ) |                          |
| and 16.32.118, and the adoption  | ) |                          |
| of a NEW RULE, relating to the   | ) |                          |
| review of certificate of need    | ) |                          |
| applications for new             | ) |                          |
| institutional health services    | ) |                          |
| and facilities                   | ) | (Certificate of Need)    |

TO: All Interested Persons

1. On September 20, 1982, at 9:00 a.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rules 16.32.101, 16.32.103, 16.32.107, 16.32.108, 16.32.110, 16.32.111, 16.32.112, 16.32.114, and 16.32.118, and the adoption of a new rule, all of which relate to the review of certificate of need applications for new institutional health services and facilities.

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

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

16.32.101 DEFINITIONS For the purposes of these rules:

(1) "Batch" means those letters of intent and applications of a specified category and within a specified region of the state which are accumulated during a single batching period.

(2) "Batching period" means a period established pursuant to [RULE 1] during which letters of intent for specified categories of new institutional health services and for specified regions of the state will be accumulated, pending further processing of all letters of intent within the batch.

~~(1)~~ (3)(a) "Capital expenditure" means any purchase or transfer of money or any property of value, or any enforceable promise or agreement to purchase or to transfer money or any property of value, incurred by or on behalf of a person for any of the activities stated in 50-5-301, MCA, and includes the values of facilities and equipment obtained under donation, lease or comparable arrangements as though such items had been acquired by purchase.

(b) Capital expenditures on behalf of a health care facility include expenditures made by any person for the acquisition of medical equipment where such equipment will be used on a regular basis to provide services for inpatients of a hospital.

(c) For the purposes of this definition, provision of services on a regular basis to inpatients of a hospital does not include the provision of such services on a temporary basis in case of a natural disaster, major accident or equipment failure.

(4) "Challenge period" means a period established pursuant to [RULE 1] during which any person may apply for comparative review with an applicant whose letter of intent has been received during the preceeding batching period.

(5) "Comparative review" means a joint review of two or more certificate of need applications within a given batch which are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(2) (6) "Develop" means to undertake activities which upon completion will result in the offering of a new institutional health service, or the incurring of a financial obligation in relation to the offering of such a service.

(3) (7) "Health service" means major subdivisions, as determined by the department, within diagnostic, therapeutic or rehabilitative areas of care, including alcohol, drug abuse and mental health services, that may be provided by a health care facility. Specific treatments, tests, procedures or techniques in the provisions of care do not, by themselves, constitute a health service.

(a) "Health service" includes radiological diagnostic health services offered in, at, through, by or on behalf of a health care facility including services offered in space leased or made available to any person by a health care facility which are provided by any computed tomographic scanning equipment, except when the capital expenditure for the addition to or replacement of the same service is less than \$150,000. For the purpose of this subsection, a CT head scanner and a CT body scanner do not provide the same service and a CT fixed scanner and a CT mobile scanner do not provide the same service.

(b) "Deletion of a health service" means the elimination or reduction in scope of a health service offered in or through a health care facility.

(4) (8) "Enforceable capital expenditure commitment" means an obligation incurred by or on behalf of a health care facility when:

(a) an enforceable contract is entered into by such facility or its agent for the construction, acquisition, lease or financing of a capital asset;

(b) a formal internal commitment of funds by such a facility for a force account expenditure which constitutes a capital expenditure; or

(c) in the case of donated property, the date on which the gift vested.

(9) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical or other health services and which costs more than \$150,000.

(5) "Service area" means one of the subareas designated in Table-I-

(10) "State health plan" means the plan prepared by the department pursuant to 42 USC 300m-2(a)(2).

AUTHORITY: Sec. 50-5-103 MCA

IMPLEMENTING: Title 16, Chapter 5, Part 3 MCA

16.32.103 SUBMISSION OF APPLICATION LETTER OF INTENT

(1) At least 30 days before any person enters into a contract to acquire major medical equipment, or makes such equipment available on a regular basis to inpatients of a hospital, the person shall notify the department and the agency qualified as a health systems agency pursuant to 42 USC 300 l of the intent to acquire or make such equipment available and of the use that will be made of it. The notice must be in writing and must contain the following:

(a) All relevant information required by subsection (3) of this rule and by ARM 16.32.104.

(b) Whether it is anticipated that the equipment will be used on a regular basis for the diagnosis or treatment of inpatients of a hospital.

(c) The names and locations of any such hospital.

(d) The nature of any agreements or understandings with such hospital regarding the terms and conditions of such use including monetary or other compensation or obligations to be paid or incurred by the hospital in return for such use.

(2) At least 30 days before any person acquires or enters into a contract to acquire an existing health care facility, the person shall notify the department and the agency qualified as a health systems agency pursuant to 42 USC 300 l of the intent to acquire the facility and of the services to be offered in the facility and its bed capacity. The notice must be in writing and must contain the following:

(a) All relevant information required by subsection (3) of this rule and by ARM 16.32.104.

(b) The services currently provided by the health care facility and the present bed capacity of the facility.

(c) Any additions, deletions or changes in such services which will result from the acquisition.

(d) Any changes in bed capacity, redistribution of beds among service categories or relocation of beds from one site to another which will result from the acquisition.

(3) Except as provided in subsections (1) and (2) of this rule Any any person proposing an activity subject to review under section 50-5-301, MCA, shall submit to the department a letter of intent as a prerequisite to filing an

application for a certificate of need, except a health maintenance organization is excluded from submitting a letter of intent or application for a certificate of need for feasibility surveys or planning funded under 42 U.S.C. Sec. 246. ~~(2)~~ The letter of intent must contain the following information:

(a) a ~~brief~~ narrative summary of the proposal, including statements on whether the proposal will affect bed capacity of the facility, or changes in services;

(b) an itemized estimate of proposed capital expenditures including a proposed equipment list with a description of each item which will be purchased to implement the proposal;

(c) methods and terms of financing the proposal;

(d) effects of the proposal on the cost of patient care in the service area affected;

(e) projected dates for commencement and completion of the proposal; and

(f) the proposed geographic area to be served.

~~(3)~~ (4) Within 30 calendar days after the receipt of the letter of intent, the department shall notify, in writing, the applicant whether or not the activity proposed in the letter is subject to review under section 50-5-301, MCA. ~~If the department determines the activity is subject to review, it shall supply an application form to the applicant submitting the letter of intent. The application must be returned to the department within 90 days of receiving it. Failure to return the application form within 90 days requires the process to begin again with the filing of another letter of intent.~~

(a) For letters of intent submitted under subsection (1) of this rule, this decision will be based on a determination whether the equipment will be used to provide services on a regular basis for inpatients of a hospital or whether the equipment will be acquired from a health maintenance organization.

(b) For letters of intent submitted under subsection (2) of this rule, this decision will be based on a determination whether acquisition of the facility will result in changes in the services or bed capacity of the facility, as described in paragraphs (2)(b), (c) and (d) of this rule. Acquisition of a health care facility from a health maintenance organization will be considered a change in service.

~~(4)~~ (c) For letters of intent submitted under subsection (3) of this rule, ~~in~~ in determining whether or not a capital expenditure for equipment is over \$150,000, the department will review the list submitted by the applicant pursuant to paragraph ~~(4)~~(1) (3)(b) of this rule and will aggregate the total cost for each item of equipment obligated for or purchased within a health care facility's fiscal year for a program, service or plan.

(5) Persons who acquire major medical equipment or health care facilities but who do not file the notices of intent required by subsections (1) and (2) of this rule will be presumed to be subject to certificate of need review for the purposes of this sub-chapter.

(4) The application shall contain, at a minimum, the following information in such form as specified by the department:

- (a) Classification of applicant.
- (b) General information regarding present facility and the geographical area documented as served by the applicant.
- (c) Description of proposed project.
- (d) Personnel requirements of proposed project.
- (e) Construction aspects of the proposed project.
- (f) Justification of need of proposed project.
- (g) Financial and economic feasibility of proposed project.
- (h) Provision for cost containment of proposed project.
- (i) Equipment list including estimated cost of each item.

(5) The original and one copy of the application must be submitted to the department.

(6) Within 15 calendar days from the date that the department receives the application, the department shall determine whether or not the application is complete.

(a) If the application is determined to be complete, the department shall notify the applicant in writing that the application is accepted as complete.

(b) If the application is determined to be incomplete, the department shall notify the applicant in writing by mail of the incompleteness and of the specific information that is necessary to complete the application. Once the department receives the necessary information and determines the application is complete, the department shall notify the applicant in writing that the application is accepted as complete.

(c) An application may be changed any time prior to the department's declaration that the application is complete. Change in intent of the application or impact on the financial feasibility of the proposed project after the department's declaration requires the process to begin again with the filing of another letter of intent.

(6) The department hereby adopts and incorporates by reference ARM 16.32.104 which is a department rule setting forth the format for submission of letters of intent. Copies of ARM 16.32.104 may be obtained from the Health Planning and Resource Development Bureau, Room C211, Cogswell Building, Helena, Montana 59620.

AUTHORITY: Sec. 50-5-103, MCA

IMPLEMENTING: Sec. 50-5-301, 50-5-302, MCA

(NEW RULE)

RULE 1 BATCHING PERIODS, SUBMISSION OF APPLICATIONS

(1) The following batching periods are established for all categories of service and for all regions of the state:

- (a) January 1 through January 20
- (b) May 1 through May 20
- (c) September 1 through September 20

Except as provided in subsection (5) below, letters of intent will be accepted only during these periods. Letters of intent received at other times will be assigned to the next batching period.

(2) The following challenge periods are established:  
For the batching period ending:      The challenge period is:

- |              |                             |
|--------------|-----------------------------|
| January 20   | February 1 through April 30 |
| May 20       | June 1 through August 31    |
| September 20 | October 1 through Dec. 31   |

(3) The following categories of health services will be batched: general medical-surgical, psychiatric, obstetric, pediatric, skilled nursing, and intermediate care.

(4) Except as provided in subsection (12) below, upon determination by the department that an activity described in a letter of intent is subject to certificate of need review, the letter of intent will be placed in the appropriate batch, according to its category and region of the state. On the first day of the month following the conclusion of each batching period, the department will publish notices in newspapers of general circulation in the affected areas listing the letters of intent which have been received in the batch just concluded.

(5) Persons who have not filed a letter of intent in the batch just concluded, but who wish to apply for comparative review with one or more of the applicants in that batch, must file a letter of intent during the appropriate challenge period. To qualify for comparative review, such a letter of intent must be received by the department during the challenge period and must identify the applicant(s) in the batch just concluded with which a comparative review is requested, and briefly explain why comparative review is appropriate. Letters of intent which so qualify will be included in the batch just concluded.

(6) At the conclusion of each challenge period, the department will determine which proposed projects within the batch will require comparative review, and will notify all applicants in the batch in writing of comparative review assignments. The notice of assignments will include a brief statement of reasons why comparative review was deemed necessary.

(7) Concurrently with the notices of comparative review, the department will send application forms to all applicants in the batch, and will notify all applicants of the time period, which may not be less than 30 nor more than 90 days,

within which an application must be received by the department. Failure to return the application within the time specified will require the process to begin anew with another letter of intent.

(8) No application will be accepted except after submission of a letter of intent and the issuance of the comparative review notices and application forms pursuant to subsection (7) of this rule.

(9) The application must contain, at a minimum, the following information in such form as specified by the department:

- (a) Classification of applicant.
- (b) General information regarding present facility and the geographical area documented as served by the applicant.
- (c) Description of proposed project.
- (d) Personnel requirements of proposed project.
- (e) Construction aspects of the proposed project.
- (f) Justification of need of proposed project.
- (g) Financial and economic feasibility of proposed project.
- (h) Provision for cost containment of proposed project.
- (i) Equipment list including estimated cost of each item.

(10) The original and one copy of the application must be submitted to the department.

(11) Within 15 calendar days from the date that the department receives the application, the department shall determine whether or not the application is complete.

(a) If the application is determined to be incomplete, the department shall notify the applicant in writing by mail of the incompleteness and of the specific information that is necessary to complete the application. The department shall also indicate a time, which may be no less than 15 days, within which the department must receive the additional information requested. If the information submitted is still not sufficient, the department may require additional information.

(b) If adequate information is not received within the time specified, the department may determine that the applicant has forfeited its right to comparative review for the current batching period. In such a case, the department may either process the application without comparative review according to ARM 16.32.107 or assign the application to the next appropriate batching period.

(c) An application may be changed any time prior to the department's declaration that the application is complete. Change in intent of the application or impact on the financial feasibility of the proposed project after the department's declaration requires the process to begin again with the filing of another letter of intent.

(12) Only those applications which are received and declared complete within the time periods specified in this rule are entitled to participate in comparative review procedures with other applications within the current batch.



(13) Applications which qualify for abbreviated review under ARM 16.32.114, except for those described in ARM 16.32.114(2)(f), need not be placed in a batch and may be processed immediately in accordance with ARM 16.32.114 without batching or comparative review.

AUTHORITY: Sec. 50-5-103, MCA

IMPLEMENTING: Sec. 50-5-302, MCA

16.32.107 ACCEPTANCE OF APPLICATIONS; REVIEW PROCEDURES

(1) When an application that has not been assigned for comparative review is determined to be complete, the department shall issue a notice of acceptance in accordance with subsection (4) below.

(2) When all applications within a batch that have been assigned to a particular comparative review are determined to be complete, the department shall issue notices of acceptance concurrently to all such applicants in accordance with subsection (4) below.

(1) (3) The department shall approve, approve with conditions, or deny the application, unless the applicant agrees in writing to a longer period, in writing, within 90 calendar days after a notice of acceptance of the completed application has been published in a newspaper of general circulation within the service area affected by the application. In the case of a review of a new institutional health service proposed by a health maintenance organization, the review cycle shall begin on the date the application is deemed complete by the department and shall not extend beyond 90 calendar days.

(2) (4) A notice of acceptance shall must be mailed to the applicant, an agency qualified as a health systems agency pursuant to 42 U.S.C. Sec. 3001 Health Service Act, health care facilities and health maintenance organizations located in the service area and rate review agencies in the state. Contiguous health systems agencies qualified pursuant to 42 U.S.C. Sec. 3001 will be notified if the service area borders one of the surrounding states. The notice of acceptance shall must be published in a newspaper of general circulation in the service area affected.

(3) (5) A notice of acceptance of an application shall must include:

(a) the review period schedule;  
(b) the date by which a written request for an informational hearing must be received by the department;  
(c) the manner in which notification will be provided of the time and place of an informational hearing so requested; and

(d) the manner in which the informational hearing will be conducted.

(4) An affected person may during the 90 calendar days review period request an informational hearing pursuant to ARM 16.32.108.

5. (6)(a) An agency qualified as a health systems agency pursuant to 42 U.S.C. Sec. 3001 shall must be given the opportunity to provide the department with recommendations on the application within 60 calendar days after the notice of acceptance of the completed application has been published as required by ARM 16.32.107(2) (4) unless another period of time has been agreed to, in writing, by the health systems agency and the department. Health systems agency reviews of an application by a health maintenance organization may not extend beyond 60 days.

(a) (b) If the recommendations are not received within the prescribed period of time, the department is not required to consider the recommendations.

AUTHORITY: Sec. 50-5-103 MCA

IMPLEMENTING: Sec. 50-5-302 MCA

16.32.108 INFORMATIONAL HEARING (1) During the course of the 90 day review period, an any affected person or third party payer may request an informational hearing by writing to the department.

(2) This request must be received by the department within 15 30 calendar days after the date of notification of acceptance of the completed application in the newspaper.

(3) Notice of the informational hearing shall must be given at least 20 14 calendar days prior to the informational hearing by the following means:

(a) Written notice must be sent by certified mail to the person requesting the hearing, the applicant, all other applicants assigned for comparative review with the applicant, and an agency qualified as health system agency pursuant to 42 U.S.C. Sec. 3001. Health care facilities, the Department of Social and Rehabilitation Services, rate review agencies, health maintenance organizations in the service area, and contiguous agencies qualifying as health systems agencies pursuant to 42 U.S.C. Sec. 3001 will be notified by ordinary mail.

(b) Notice to all other affected persons will be by newspaper advertisement.

(c) The notice shall must indicate:

- (i) date of the hearing;
- (ii) time of the hearing;
- (iii) location of the hearing; and

(iv) the person to send written comments to prior to the hearing if unable to attend the hearing.

(4) Whenever a hearing is requested for an application which has been assigned for comparative review, the hearing will be conducted as a joint hearing on all such applications.

(4) (5) Any person may comment during the hearing and all comments made at the hearing ~~shall~~ must be recorded and retained by the department. Any person shall have the right to be represented by counsel. Any affected person may conduct reasonable questioning of persons who make relevant factual allegations.

(6) After the announcement of a hearing under this rule, the department may determine that, because of significant opposition to the proposed activity, the imposition of ex parte prohibitions is appropriate. In such cases, until a decision is rendered, there shall be no ex parte communication between

(a) any person acting on behalf of the applicant, or any person opposed to the issuance of a certificate of need, and

(b) any person in the department who exercises any responsibility respecting the application.

AUTHORITY: Sec. 50-5-103 MCA

IMPLEMENTING: Sec. 50-5-302 MCA

16.32.110 CRITERIA AND FINDINGS (1) A certificate of need ~~shall~~ will not be issued unless the department determines there is a need for the proposed new institutional health service, and that the proposal is consistent with the state health plan. Consistency with the state health plan may be waived in emergency circumstances that pose an imminent threat to public health. Criteria listed in section 50-5-304, MCA, and the following will be considered by the department in making its decision:

(1)(a) through (c) No change from existing rule.

(2) In the case of any proposed new inpatient health care facility or inpatient health care service, the department will make each of the following determinations in writing:

(a) through (f) No change from existing rule.

(g) The findings required by subsection (1) of this rule.

(3) through (6) No change from existing rule.

AUTHORITY: Sec. 50-5-103 MCA

IMPLEMENTING: Sec. 50-5-304 MCA

16.32.111 DEPARTMENT DECISION (1) If the department fails to issue a decision within the 90 calendar days, or the longer period of time agreed upon by the applicant, a certificate of need ~~shall not be issued-~~ will not automatically issue.

(2) If the certificate of need is issued with conditions, the conditions must be directly related to the project under review, and to the criteria listed in Section 50-5-304, MCA, and ARM 16.32.110, and cannot increase the scope of the project.

(3) The decision of the department must be based on the record and contained in ~~through~~ written findings of fact and conclusions of law, and ~~shall~~ must be mailed to the applicant, all other applicants assigned for comparative review with the applicant, and any agency qualified as a health systems agency pursuant to 42 U.S.C. Sec. 3001 and ~~shall~~ must be made available, upon request, to ~~other~~ others for cost. ~~When~~ Whenever the department's decision involves new institutional health services proposed by a health maintenance organization, or the department's decision to deny a certificate of need is based on its findings with respect to provision of health services to minorities and medically underserved populations, the department shall send copies of the department's written findings and decision to Region VIII office of the Department of Health, ~~Education and Welfare~~ and Human Services at the time the applicant is notified of the department's decision.

(4) If the department's decision is not consistent with the Montana Health Systems Plan, or the Montana Annual Implementation Plan, ~~or the Montana State Health Plan~~ or does not concur with the recommendations of an agency qualified as a health systems agency pursuant to 42 U.S.C. Sec. 3001 the department shall submit a written detailed statement of the reasons for the inconsistency to the agency qualifying as a health systems agency pursuant to 42 U.S.C. Sec. 3001.

AUTHORITY: Sec. 50-5-103 MCA

IMPLEMENTING: Sec. 50-5-302, 50-5-304 MCA

16.32.112 APPEAL PROCEDURES (1) The applicant or an agency qualified as the health systems agency pursuant to 42 U.S.C. Sec. 3001 may request a reconsideration hearing before the department. Any other affected person or third party payer may request a reconsideration hearing only for "good cause".

(1)(a) through (f) No change from existing rule.

(2) through (4) No change from existing rule.

AUTHORITY: Sec. 50-5-103, MCA

IMPLEMENTING: Sec. 50-5-306, MCA

16.32.114 ABBREVIATED REVIEW (1) If the application does not significantly impact cost or utilization of health care, the department may conduct an abbreviated review of the project.

(2) The following activities may qualify for an abbreviated review:

(a) Decrease in bed capacity of a health care facility which will not have an adverse impact on the delivery of health care in the service area.

(b) Decrease in services provided by a health care facility which will not have an adverse impact on the delivery of health care in the service area.

(c) Equipment replacement which would not expand the health care service offered by the health care facility.

(d) Alterations or improvements of a health care facility which are necessary to bring the facility into compliance with federal or state licensure or certification requirements, federal or state fire and life safety requirements, or local building codes, or to eliminate or prevent imminent safety hazards. This does not include expansion or replacement of buildings.

(e) Licensure change from one category of nursing care to another.

(f) Expansion of a geographic service area of a home health agency providing it does not expand into an existing home health service area, nor into an area into which another applicant in the same batch has proposed to expand.

(g) Six month extension of a certificate of need, pursuant to Section 50-5-305, MCA.

(3) The applicant must file a letter of intent with the department requesting an abbreviated review of the proposal with justification for the request.

(4) Within 15 calendar days of receipt of the letter of intent, the department shall decide whether the application ~~shall be considered~~ is eligible for an abbreviated review. If the department decides that additional information is necessary to make its decision, the department shall notify the applicant in writing of the specific information necessary to make its decision.

(5) If it is determined that abbreviated review is not appropriate, the letter of intent will be placed in the appropriate batch, corresponding to the date of receipt of the letter of intent, and processed in accordance with [RULE 1].

(6) Upon acceptance of an application for abbreviated review, the department shall issue a notice of acceptance in accordance with ARM 16.32.107(4) and (5). If a request for an informational hearing is received within the time specified in the notice, the abbreviated review schedule will be terminated and the review of the application will continue in accordance with the normal review procedures.

~~(5)~~ (7) If the department determines there is a need for the project, and after taking into consideration recommendations from the agency qualified as a health systems agency pursuant to 42 U.S.C. Sec. 3001, and if no requests for a hearing have been received, the department shall issue its decision within 25 calendar days from the date ~~the application is deemed complete by the department, of publication of the notice of acceptance issued under paragraph (6), above.~~

(8) Projects or portions of projects which qualify for abbreviated review under subsection (2)(d) of this rule must

be approved if the department determines that the health care facility for which the expenditures are proposed is needed, and that the expenditures are consistent with the state health plan.

(6) (9) The department's decision must be sent by certified mail to the applicant and the agency qualified as the health systems agency pursuant to 42 U.S.C. Sec. 3001. All other affected persons ~~shall~~ must be notified by newspaper advertisement.

AUTHORITY: Sec. 50-5-103 MCA

IMPLEMENTING: Sec. 50-5-302 MCA

16.32.118 DURATION OF CERTIFICATE (1) The duration of the certificate of need ~~shall be~~ is 12 months, unless the provision of section 50-5-305(1), MCA, has been met or unless the applicant has submitted to the department a request in writing for an extension of 6 months based on good cause at least 30 calendar days before the expiration date of the certificate of need. The request ~~shall~~ must be accompanied by an affidavit signed by the requestor verifying all information is true and correct. After following the procedures set forth in ARM 16.32.114, 16.32.108, 16.32.111(3) and (4), and 16.32.112, the The department will make its decision regarding the extension request and notify the applicant by certified mail, ~~within 15 calendar days after receiving the request.~~ An extension of a certificate of need ~~shall~~ may not exceed 6 months.

(a) "Good cause" for this rule ~~shall include but not be includes but is not~~ limited to, emergency situations which prevent the recipient of the certificate of need from obtaining necessary financing, commencing construction, or implementing a new service.

AUTHORITY: Sec. 50-5-103, MCA

IMPLEMENTING: Sec. 50-5-305, MCA

4. The Department is proposing these amendments and the new rule in order to achieve compliance with the federal certificate of need regulations at 42 CFR 123.401 et seq. Compliance with these federal regulations is necessary for continued receipt of federal funds for the department's certificate of need program. Specific comments on individual rules follow:

16.32.101 Definition of "batch", "batching period", "challenge period" and "comparative review" are added to reflect the provisions of [NEW RULE I].

The definitions of "capital expenditure on behalf of a health care facility" and of "major medical equipment" are added to allow review of acquisitions of major medical equipment which will be used for inpatients of hospitals, as required by 42 CFR 123.404(a)(4).

The definition of "health service" is revised to correspond to the federal definition (42 CFR 123.401).

An obsolete reference to Table I (service areas) is deleted.

16.32.103 Subsections (1) and (2) establish procedures for review of acquisitions of major medical equipment and health care facilities, as required by 42 CFR 123.404(a)(4) and (5).

Subsections (4)(a) and (b) set forth the criteria for determining whether such acquisitions are subject to CON review.

Former subsections (4) through (6) are deleted as their material reappears in [NEW RULE I].

[NEW RULE I] This rule establishes a procedure for "batching" of applications to coordinate review of similar or competing proposals, as required by 42 CFR 123.410(a)(1). Other than the establishment of batching periods and the coordination of review of proposals within a batch, the review procedures are essentially the same as in the existing rule ARM 16.32.103.

16.32.107 Minor changes are introduced to reflect the new batching and comparative review procedures.

Subsection (4) is deleted as it is redundant. (See 16.32.108)

16.32.108 Minor changes are made to reflect the new batching and comparative review procedures. In addition, provisions are added guaranteeing the right of persons to be represented by counsel and to conduct reasonable questioning at informational hearings, as required by 42 CFR 123.410(a)(8)(ii). Ex parte prohibitions are added, as required by 42 CFR 123.410(a)(9). The ex parte provisions proposed here do not fully comply with the federal regulations, which require ex parte prohibitions always to apply when an informational hearing is held. The department feels that continued communication with an applicant is essential throughout the review process. Therefore, we propose to impose ex parte prohibitions only where there is substantial opposition to a proposal.

16.32.110 Language is added to require specifically that the Department's CON decisions be consistent with the State Health Plan, as required by 42 CFR 123.403(d), and that findings will be in writing, as required by 42 CFR 123.410(6) and 413.

16.32.111 See comment for ARM 16.32.110. Also, reference to the Department of Health, Education and Welfare is changed to Health and Human Services, and a provision added to notify HHS when a CON is denied because of lack of service to minorities and medically underserved populations, as required by 42 CFR 123.413(d).

16.32.112 Designations of persons who may request hearings is revised, to comply with the federal definition of "affected persons" (42 CFR 123.401). (See also 16.32.108(1)) Note: Montana's statute makes the appeal to the board available only to the applicant and the qualified health systems agency. This varies from the federal requirement that the board appeal be available to any affected person. However, such persons are still entitled to judicial review.

16.32.114 Language is added to paragraph (4)(d) and a new paragraph (8) is added for consistency with 42 CFR 123.407 relating to required approvals of certain categories of applications.

A new paragraph (4)(g) is added to provide formal review procedures for requests for extensions of a CON, as required by 42 CFR 123.410(a)(18). (Also, see 16.32.118)

Paragraph (6) is inserted to reflect current practice, which is required by 75-5-302, MCA.

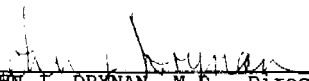
Other language is added to reflect the new batching procedures.

Minor changes in style and grammar are also made throughout these rules.

5. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Robert L. Solomon, Room B101, Cogswell Building, Capitol Complex, Helena, Montana, 59620, no later than September 28, 1982.

6. Robert L. Solomon, Cogswell Building, Helena, MT, has been designated to preside over and conduct the hearing.

7. The authority of the Department to make the proposed rules is based on section 50-5-103, MCA, and the rules implement sections 50-5-301, 50-5-302, and 50-5-304, MCA.

  
JOHN J. DRYNAN, M.D., Director

By:   
JOHN W. BARTLETT, Deputy Director

Certified to the Secretary of State August 16, 1982

16-8/26/82

MAR Notice No. 16-2-235




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


|                                    |                     |
|------------------------------------|---------------------|
| In the matter of the amendment )   | NOTICE OF CHANGE OF |
| of rules 16.20.618, 16.20.619, )   | HEARING DATE        |
| 16.20.620, 16.20.621, 16.20.622, ) | AND EXTENSION OF    |
| 16.20.623, 16.20.624, and )        | COMMENT PERIOD      |
| 16.20.631 relating to surface )    |                     |
| water quality standards )          | (Water Quality)     |

TO: All Interested Persons

The notice of proposed agency action published on pages 1375 - 1378 of the Montana Administrative Register on July 15, 1982, is amended as follows:

1. The date of the public hearing on the proposed amendments is changed from September 10, 1982 to September 17, 1982.
2. The period for submission of written comments is extended to September 17, 1982.
3. All other information in the original notice remains the same.

  
JOHN F. MCGREGOR, M.D., Chairman

By   
JOHN W. BARTLETT, Deputy Director  
Department of Health and  
Environmental Sciences

Certified to the Secretary of State August 16, 1982

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

|                                  |   |                     |
|----------------------------------|---|---------------------|
| In the matter of the adoption    | ) | NOTICE OF CHANGE OF |
| of Rules I through V relating to | ) | HEARING DATE        |
| non-degradation procedures for   | ) | AND EXTENSION OF    |
| high quality waters              | ) | COMMENT PERIOD      |
|                                  |   | (Water Quality)     |

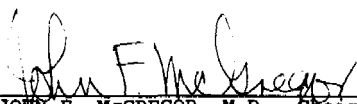
To: All Interested Persons

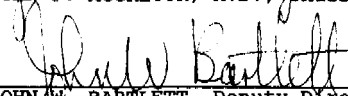
The notice of proposed agency action published on pages 1453 - 1459 of the Montana Administrative Register on July 29, 1982 is amended as follows:

1. The date of the public hearing on the proposed rules is changed from September 10, 1982 to September 17, 1982.

2. The period for submission of written comments is extended to September 17, 1982.

3. All other information in the original notice remains the same.

  
JOHN F. MCGREGOR, M.D., Chairman

By   
JOHN W. BARTLETT, Deputy Director  
Department of Health and  
Environmental Sciences

Certified to the Secretary of State August 16, 1982

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF NURSING

In the matter of the amendments ) NOTICE OF AMENDMENT OF ARM  
of ARM 8.32.401 concerning gen- ) 8.32.401 GENERAL REQUIREMENTS  
eral requirements for licensure; ) FOR LICENSURE; 8.32.402 LI-  
8.32.402 concerning licensure by ) CENSURE BY EXAMINATION; 8.32.  
examination; 8.32.404 concerning ) 404 RE-EXAMINATION - PRACTICAL  
re-exams; 8.32.408 concerning ) NURSE; 8.32.412 INACTIVE STATUS;  
temporary permits; 8.32.412 con- ) ADOPTION OF A NEW RULE 8.32.415  
cerning inactive status; adop- ) DEFINITIONS; ADOPTION OF SUB-  
tion of a new rule concerning ) CHAPTER 3, SPECIALTY AREAS  
definitions; adoption of a sub- ) OF NURSING, rules 8.32.301,  
chapter 3 concerning specialty ) 303, 304, and 306; ADOPTION  
areas of nursing; adoption of ) OF SUB-CHAPTER 5, DISCIPLINARY  
sub-chapter 5 concerning disci- ) ACTIONS, rules 8.32.501, through  
plinary actions; transfer and ) 8.32.507; TRANSFER AND AMEND-  
amendment of rule ARM 8.32.414 ) MENT of 8.32.414 to sub-chapter  
to sub-chapter 8, approval of ) 8, new rule number to be 8.32.  
schools and adoption of new ) 802; and ADOPTION OF SUB-CHAPTER  
rules under the same sub-chapter ) 8, APPROVAL OF SCHOOLS, rules  
8.32.801 and 8.32.803

TO: All Interested Persons:

1. On April 29, 1982, the Board of Nursing published a notice of public hearing on the above entitled changes at pages 785 through 797, 1982 Montana Administrative Register, issue number 8.

2. The public hearing was held on May 27, 1982 in the downstairs conference room of the Department of Commerce, 1424 9th Avenue, Helena, Montana. Of the approximate 40 persons in attendance at the hearing, oral comments were received from three interested persons representing the registered and practical nursing professional associations and interest groups.

Written comments in support of the amendments were received from four interested persons. The following oral and written comments were received:

COMMENT: The procedure found in rule 8.32.402(4) requiring candidates for the licensing examination submit an application form and fees to both the Montana Board of Nursing and the National Council of State Boards of Nursing appears to be duplicative and the necessity of applying to both agencies is questionable.

RESPONSE: An applicant who wishes to become licensed by examination submits the appropriate application for licensure by examination and fee to the Montana Board of Nursing. In addition, the National Council of State Boards of Nursing, owners of the National licensing examination, has established a Direct Application System which requires all examination applicants to submit the NCLEX examination application directly to the National Council. The Direct Application System has been established by the Council to provide for a central processing

of all applicants and to facilitate interstate endorsement.

COMMENT: Candidates who pass or fail the licensing examinations should receive the actual numerical score on the examination and not just pass or fail. Proposed rule states candidates who pass or fail receive the results of the examination.

RESPONSE: Candidates who have written a licensing examination for registered nursing or practical nursing are provided the results in the form of both pass/fail and the earned numerical score.

COMMENT: Suggest the temporary work permit requirement of having a prospective employer submit an affidavit of intended employment for a registered or practical nurse desiring licensure by endorsement also be made a requirement prior to issuing a temporary work permit to the new graduate from Montana schools.

RESPONSE: The intent of the employer affidavit is to verify the registered or practical nurse applying for licensure by endorsement and desiring a temporary work permit holds a current entitlement to practice nursing in another state or jurisdiction.

COMMENT: Subsection (1) (c) of Section 8.32.400 Temporary Work Permit, states the permit is non-renewable but nowhere in the article is there a stated length of duration of validity of the permit.

RESPONSE: The stated duration of a Temporary Work Permit is addressed in the statutes regulating nursing.

COMMENT: It would be difficult to provide the kind of supervision as outlined in the proposed definition of supervision. It would appear small hospitals would be prohibited from hiring new graduates because of the duty assignments and responsibilities to work independently in small hospitals.

RESPONSE: Section 37-8-403, MCA provides the board shall adopt such rules as are necessary to limit the practice of persons issued temporary work permits. Such rules shall include a provision that such practice be supervised by a physician, dentist, osteopath, podiatrist or registered nurse until a license is issued.

COMMENT: Under the proposed rules concerning the definition of nurse midwifery practice "...antipartially, intrapartially, post partially and gynecologically ..." should read "...of an antepartal, intrapartal, post partal, and/or gynecological nature..."

RESPONSE: As found in the proposed rules the definition of nurse midwifery practice is that definition accepted by the American College of Nurse-Midwives. The terms antipartially, intrapartially, post partially and gynecologically have been corrected to read antepartially, intrapartially, postpartially and/or gynecologically.

COMMENT: A number of comments and suggestions were received concerning the educational requirements and other

qualifications applicable to the specialty areas of nursing. Particular concerns were expressed in relation to the proposed year of practice in a specialty area requirements, the proposed time frames for implementation and the grandfathering issue.

RESPONSE: The comments are well-founded and the rule has been modified to reflect the suggested changes and re-noticed in the notice section of the register.

COMMENT: Suggested avenues to be kept open for recognition of specialty areas in practical nursing.

RESPONSE: Authority of the board to define the educational requirements and other qualifications applicable to specialty areas of nursing is limited to specialty areas of registered professional nursing.

COMMENT: Recommend amending section 2(a) of the rule concerning "Application For Initial School Approval" by inserting the words "and utilization" between the words "manpower" and "studies".

RESPONSE: The board is of the opinion the statement "nursing manpower studies" is sufficiently broad in scope that utilization of personnel would appropriately be a component of a manpower study.

3. For the reasons stated in the notice of proposed changes and based on the comments at the hearing, the board is amending rules 8.32.401, 8.32.402, 8.32.404, 8.32.412, 8.32.1002, adopting the new rule on definitions 8.32.415; adopting sub-chapter 3, rules 8.32.301, 303, 304, and 306 noticed as rules I, III, IV and VI; adopting sub-chapter 5, rules 8.32.501 through 8.32.507 noticed as rules I through VII, proposed rule VIII under sub-chapter 5 will not be adopted based upon the Administrative Code Committee's concern that the rule might be an unnecessary duplication of the language contained in Section 2-4-631, MCA. The board is transferring 8.32.414 to sub-chapter 8 and amending it as proposed; and adopting the new rules under sub-chapter 8 as proposed. The board is renoticing the amendment of 8.32.408 temporary work permit and proposed rules II and V under sub-chapter 3 in the notice section of this register.

No other comments or testimony were received.

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

BY: 

GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, August 16, 1982.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF THE AMENDMENT  
of rule 10.58.30, Professional ) OF RULE 10.58.30  
Education ) PROFESSIONAL EDUCATION

TO: All Interested Persons

1. On May 27, 1982 the Board of Public Education published notice of a proposed amendment of rule 10.58.303, providing minimum exposure to the field of computer technology to all teachers, at page 1074-1075 of the Montana Administrative Register, issue number 10.
2. The agency has amended the rule as proposed.
3. No comments or testimony were received.

In the matter of the amendment ) NOTICE OF THE AMENDMENT  
of rule 10.55.403 Basic ) OF RULE 10.55.403 BASIC  
Instructional Program. ) INSTRUCTIONAL PROGRAM:  
Elementary ) ELEMENTARY

TO: All Interested Persons

1. On May 27, 1982 the Board of Public Education published notice of a proposed amendment of rule 10.55.403, basic instructional program elementary, providing the number of recesses in a standard school day, at page 1076-1077 of the Montana Administrative Register, issue number 10.
2. The agency has amended the rule as proposed.
3. No comments or testimony were received.

In the matter of the amendment ) NOTICE OF THE AMENDMENT  
of rule 10.57.501 School ) OF RULE 10.57.501 SCHOOL  
Psychologists, Social Workers, ) PSYCHOLOGISTS, SOCIAL  
Nurses and Speech and Hearing ) WORKERS, NURSES AND SPEECH  
Therapists ) AND HEARING THERAPISTS

TO: All Interested Persons

1. On June 17, 1982 the Board of Public Education published notice of a proposed amendment of rule 10.57.501 specifying certification requirements for school psychologists, at page 1152 of the Montana Administrative Register, issue number 11.
2. The agency has amended the rule as proposed.
3. No comments or testimony were received.

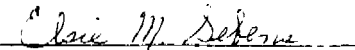
In the matter of the        ) NOTICE OF THE ADOPTION OF  
adoption of Rule I        ) RULE 10.58.707 SCHOOL,  
concerning professional    ) PSYCHOLOGISTS  
program for school        )  
psychologists             )

TO: All Interested Persons

1. On June 17, 1982 the Board of Public Education published notice of a proposed adoption of rule 10.58.707 regarding the professional program for school psychologists, at page 1155 of the Montana Administrative Register, issue number 11.

2. The agency has amended the rule as proposed.
3. No comments or testimony were received.

  
ALLEN D. GUNDERSON, CHAIRMAN  
BOARD OF PUBLIC EDUCATION

By 

Certified to the Secretary of State August 16, 1982 .

VOLUME NO. 39

OPINION NO. 68

HEALTH SERVICE CORPORATIONS - Duties of State Auditor;  
LEGISLATIVE BILLS - Function of statement of intent;  
LEGISLATIVE BILLS - Statement of intent versus substantive statutes;  
LEGISLATURE - Legislative bills, statement of intent;  
LEGISLATURE - Legislative History Act;  
STATE AUDITOR - Duties regarding health service corporations;  
STATEMENT OF INTENT - Legislative enactments;  
MONTANA CONSTITUTION - Article V, section 2;  
MONTANA CODE ANNOTATED - Sections 5-4-402 to 5-4-404, 33-30-105, 33-30-204.

HELD: The conditions contained in that statement of intent attached to 1981 Mont. Laws, ch. 452, do not relieve the State Auditor from the obligation to implement the substantive provisions of the legislation.

6 August 1982

E. V. "Sonny" Omholt  
State Auditor  
Room 270, Mitchell Building  
Helena, Montana 59620

Dear Mr. Omholt:

You have requested my opinion concerning the responsibility of your office to implement the provisions of 1981 Mont. Laws, ch. 452. Chapter 452, introduced as House Bill 385, was enacted to generally revise the laws relating to health service corporations, to increase the annual report fees to 50 cents for each member and to require the State Auditor to conduct a performance audit of each health service corporation at least once every four years. The bill was accompanied by a statement of intent. The statement provided that it was the intent of the Legislature to collect the increased fees only if an additional employee and an enhanced appropriation were authorized. You have stated that in your opinion the Auditor's Office did not receive the additional appropriation to cover the expenses of implementing the bill and thus your question is whether you must comply with the provisions of the legislation.

1981 Mont. Laws, ch. 452, made several substantive changes in the laws relating to health service corporations.



Section 33-30-204(1)(g), MCA, was amended to raise the filing fee for an annual report for each individual or family unit covered by the health service corporation from 20 cents to 50 cents. Another major provision of chapter 452 was an amendment to section 33-30-105, MCA, to provide the following requirements for a performance audit.

(2) In addition to the examination authorized in subsection (1), at least once every 4 years, the commissioner shall conduct an examination of each health service corporation to determine if the corporation is fulfilling its contractual obligations by prompt satisfaction of claims at the highest monetary level consistent with reasonable dues or fees, and that the corporation's management exercises appropriate fiscal controls, operations, and personnel policies to assure that efficient and economic administration restrains overhead costs for the benefit of its members.

The provisions of chapter 452 are clear and unambiguous. A cardinal principle of statutory construction is that the intent of the Legislature must first be determined from the plain meaning of the words used, and if interpretation of the statute can be so determined, courts may go no further to apply other means of interpretation. Keller v. Smith, 170 Mont. 399, 533 P.2d 1002 (1976). When the language of a statute is plain and unambiguous, the language speaks for itself. Dunphy v. Anaconda Co., 151 Mont. 76, 438 P.2d 660 (1968).

In this instance the language of the statute is very clear. The fees have been raised to 50 cents and the Auditor is required to conduct an audit at least once every four years. However, the bill was accompanied by the following statement of intent.

A statement of intent is required for House Bill 385 to explain the purpose of the legislature in approving the increase in the fee for filing of annual report by health service corporations. This bill raises the fee for each individual or family unit covered, from 20 cents to 50 cents, to finance the performance audits required on each health service corporation at least once every 4 years and to carry out other duties imposed on the Insurance Department. The Insurance Department

estimates it will require one additional FTE plus a necessary appropriation to cover additional related costs such as actuarial fees, travel expenses, office space, benefits and office equipment for the FTE. The intention of the legislature is to collect the increase in the fee only if the additional FTE and appropriation are authorized.

As often happens, there is a question as to whether sufficient funds were allocated to implement the legislation. You have asserted that the Legislature failed to appropriate sufficient funds to implement chapter 452.

However, there is support in the legislative history for the position that the Legislature found that the Auditor's budget was adequate to cover additional costs imposed by the bill. See Minutes of Free Joint Conference Committee to House Bill 500, p. 5, April 4, 1981. In any event, the answer to your question can be resolved by an examination of the role of a statement of intent.

The statement of intent is a relatively new legislative tool. The source of the statement is the Legislative History Act, which was enacted by the Legislature in 1977. The act is presently codified in Title 5, chapter 4, part 4, Montana Code Annotated. There are no Supreme Court cases that have interpreted the meaning of the statement of intent. However, the act itself, section 5-4-402, MCA, provides:

The legislature finds that it must accept the ultimate responsibility for the increase in the discretionary authority of state executive branch agencies, as evidenced by proliferating rules, forms, orders, and licensing proceedings before state agencies. The purpose of this Legislative History Act is to assure that statutes henceforth enacted to grant additional discretionary authority to state agencies are accompanied by a clear indication of the legislature's intent as to how such discretion is to be exercised and the legislature's purpose for delegating the authority. [Emphasis added.]

Section 5-4-404, MCA, then provides:

The legislature by its joint rules shall provide a procedure by which a statement of legislative intent shall be included with each bill containing a delegation of authority and may be included with all bills. A statement of intent shall be placed before each component of the legislature which sequentially considers the subject bill and may be amended in the same manner as the bill. [Emphasis added.]

Section 5-4-403, MCA, defines "delegation of authority" as a statutory authorization to adopt rules or license an activity regulated by statute. These provisions of the Legislative History Act support my conclusion that the role of the statement of intent is not substantive. In other words the statement of intent is not law, but merely serves as a guide to executive branch agencies regarding the implementation of administrative rules or regulations.

The state constitution requires laws to be enacted by bills. Mont. Const. art. V, § 2(1). The statement of intent is not a bill but an addendum to a bill. The statement of intent, like a joint resolution, does not have the force and effect of substantive statutes. See State ex rel. Peyton v. Cunningham, 39 Mont. 197, 103 P. 497 (1919); Gildroy v. Anderson, 162 Mont. 26, 507 P.2d 1069 (1973). It is not codified with state statutes. As the Legislature's rules imply, the statement of intent is merely used to provide guidance to an agency in adopting administrative rules under authority delegated by the Legislature. See Ch. 11, Joint Rules, Rules of the Montana Legislature, 47th Legislature (1981).

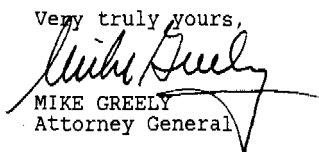
There is nothing in the statement of intent that would alter the standard rule for determining legislative intent based upon the plain meaning of the words used in the statute. The provisions of chapter 452 are clear and unambiguous and must be followed by the executive branch of state government.

THEREFORE, IT IS MY OPINION:

The conditions contained in that statement of intent attached to 1981 Mont. Laws, ch. 452, do not relieve

the State Auditor from the obligation to implement the substantive provisions of the legislation.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Mike Greely", is written over the typed name and title. The signature is fluid and extends to the right, crossing under the word "General".

MIKE GREELY  
Attorney General

NOTICE OF FUNCTIONS OF ADMINISTRATIVE CODE COMMITTEE

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

The Committee welcomes comments from the public and invites members of the public to appear before it or to send it written statements in order to bring to the Committee's attention any difficulties with existing or proposed rules. The address is Room 128, Montana State Capitol, Helena, Montana 59620.

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

Definition: Administrative Rules of Montana (ARM) is a loose-leaf 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          | 1. Consult General Index, Montana Code Annotated to determine department or board associated with subject matter or statute number.           |
| Department                    | 2. Refer to Chapter Table of Contents, Title 1 through 46, page i, Volume 1, ARM, to determine title number of department's or board's rules. |
|                               | 3. Locate volume and title.                                                                                                                   |
| Subject Matter and Title      | 4. Refer to topical index, end of title, to locate rule number and catchphrase.                                                               |
| Title Number and Department   | 5. Refer to table of contents, page 1 of title. Locate page number of chapter.                                                                |
| Title Number and Chapter      | 6. Go to table of contents of Chapter, locate 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                   | 8. 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 Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 1982. This table includes those rules adopted during the period July 1, 1982 through September 30, 1982, 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 June 30, 1982, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 1982 Montana Administrative Registers.

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