MONTANA ADMINISTRATIVE REGISTER

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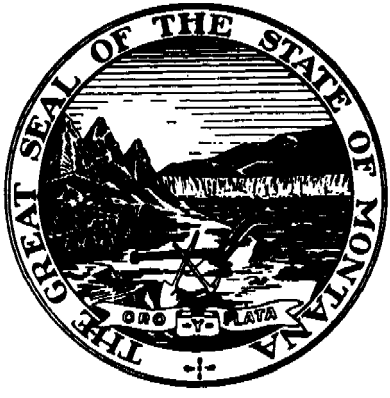

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 10

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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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NOTICE SECTION

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF NURSING HOME ADMINISTRATORS

In the matter of the proposed amendments of 8.34.414 concerning examinations, 8.34.416 concerning the continuing education requirements,, and 8.34.418 concerning the fee schedule) NOTICE OF PROPOSED AMENDMENTS OF ARM 8.34.414 EXAMINATIONS, 8.34.416 CONTINUING EDUCATION, 8.34.418 FEE SCHEDULE NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 25, 1983, the Board of Nursing Home Administrators proposes to amend the above stated rules.

2. The proposed amendment of 8.34.414 will amend subsection (4)(a) and delete subsections (4)(b) and (c) and will read as follows: (new matter underlined, deleted matter interlined)

"8.34.414 EXAMINATION (1) ...

(4)...

(a) at least ~~an Associate Degree or its equivalent, in hospital or nursing home administration~~ 2 years of formal education beyond the high school level or have an associate degree from a recognized institution of higher learning and 2 years of recent administrative experience in a nursing home or hospital, subject to board approval. (Effective date July 15, 1983). However, effective January 1, 1986, a BA or BS Degree will be required.

~~(b) presenting evidence satisfactory to the board of sufficient education, training or experience in the foregoing fields to administer, supervise and manage a long term care facility; and~~

~~(c) four of the last six years as an administrator or assistant in a licensed health care facility.~~

(5)..."

3. The board is proposing the amendment as Montana licensees are being refused reciprocity because of low standards in Montana. Our surrounding states, (i.e., Colorado, Idaho, Iowa, Kansas, Minnesota, Nebraska, North Dakota, South Dakota, and Washington) are requiring either 2 years college related courses, associate degrees or baccalaureate degrees for licensure in their states. In addition, the board feels they must increase the standards for Montana to be comparable to the standards of our surrounding states not only for reciprocity, but to ensure quality care for Montana residents. The authority of the board to make the proposed amendment is based on section 37-9-201, MCA and implements sections 37-9-202, 203, and 301, MCA.

4. The proposed amendment of 8.34.416 amends subsection (3)(b) and will read as follows: (new matter underlined, deleted matter interlined)

"8.34.416 CONTINUING EDUCATION (1)...

(3) ...

(b) Any excess or surplus hours earned in excess of

25 hours ~~the last 3 months of~~ in a calendar year may be carried over into the succeeding year, but shall be limited to 25 hours."

5. The board is proposing the amendment because granting credit of hours in excess of 25, regardless of the time of year they are accrued, and not limiting the surplus hours to the last 3 months of the year, will enable the licensees to be more selective in their choice of education and allow them to choose those courses applicable to their particular needs. The authority of the board to make the proposed amendment is based on section 37-9-201, MCA and implements sections 37-9-203, and 305, MCA.

6. The proposed amendment of 8.34.418 amends subsections (1), (2), and (6) and will read as follows: (new matter underlined, deleted matter interlined)

"8.34.418 FEE SCHEDULE (1) In accordance with the provisions of Title 37, Chapter 9, MCA each person applying for active license, inactive registration, reciprocity or temporary permit shall pay an application fee of ~~$25~~ $70, which is not refundable.

(2) Each person granted a license as a nursing home administrator shall pay an original license fee of $50 if granted after the May exam and ~~$100~~ $75 if granted after the November exam. The licenses granted at the May exam expire as of December 31 unless renewed. The licenses granted at the November exam remain in effect until December 31 of the following year and then must be renewed.

(3) ...

(6) Each person applying for renewal of an active nursing home administrators license shall pay ~~$100~~ $75 annually on or before December 31 of each year.

(7) ..."

7. The board is proposing the amendments as the license fee was increased from $60 to $100 originally to allow the board adequate funding for providing continuing education courses for the licensees. However, they have found that a sufficient number of quality programs are offered throughout the state and are available to licensees from other providers, thereby eliminating the need for the board to provide continuing education or to continue the renewal fee at $100.00. The board is proposing the increase in the application fee to cover the cost of the examination from the National Association of Examining Boards and the review of the application. The cost of the examination has increased from $25.00 to $45.00. The authority of the board to make the proposed change is based on sections 37-1-134 and 37-9-201, MCA and implements sections 37-1-134 and 37-9-3-4, MCA.

8. Interested persons may submit their data, views or arguments concerning the proposed amendments in writing to the Board of Nursing Home Administrators, 1424 9th Avenue, Helena, Montana 59620-0407, no later than June 23, 1983.

9. If a person who is directly affected by the proposed amendments wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to the Board of Nursing Home Administrators, 1424 9th Avenue, Helena, Montana 59620-0407, no later than June 23, 1983.

10. If the board receives requests for a public hearing on the proposed amendments from either 10% or 25, whichever is less, of those persons who are directly affected by the proposed amendments; 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.

11. The authority and implementing sections are listed after each proposed change.

BOARD OF NURSING HOME
ADMINISTRATORS
VERA GERKE, CHAIRMAN

BY: _____
ROBERT WOOD, ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 16, 1983.

DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the proposed adoption of rules for grants to counties for District Court assistance	NOTICE OF PROPOSED ADOPTION OF RULES FOR STATE GRANTS TO COUNTIES FOR DISTRICT COURT ASSISTANCE

NO PUBLIC HEARING COMTEMPLATED

TO: All Interested Persons:

1. On July 15, 1983, the Department of Commerce proposes to adopt rules to govern the issuance of grants to counties relating to district court assistance pursuant to the authority granted in Senate Bill 19, Chapter 254, Laws of Montana, 1983.

2. The proposed rules to not replace or modify any section currently found in the Administrative Rules of Montana and will read as follows:

"Rule I. DEFINITIONS In the context of the following rules, the following definition applies:

(a) "Revenues" mean those revenues deposited in the district court fund, specifically the following: light motor vehicle fees as provided in Section 61-3-509, MCA; state motor vehicle reimbursement as provided in Section 61-3-536 (5), MCA; corporation license tax as provided in Section 15-31-702 (2), MCA; penalty and interest on delinquent taxes as provided in section 15-16-102, MCA, Op. of AG, Vol. 11, p. 42; sale or lease of tax deed lands as provided in Section 7-8-2306 (1), (3), MCA; custom combine permit fees as provided in Section 15-24-301, MCA; and, lease fees for county property not acquired by tax deed as provided in section 7-8-2232, MCA." (Auth: 7-6-1352, MCA and Sec. 1, Ch. 254, L. 1983; Imp. Sec. 1, Ch. 254, L. 1983.)

"Rule II. GRANTING OF EXTENSION OF TIME FOR SUBMISSION OF APPLICATION FORM Applications for district court grants shall be made on the form provided by the department and shall be postmarked no later than July 20 of each calendar year unless the county submits, in writing, a request for extension of time within which to submit the request. Such requests for extension must be submitted to the department no later than July 13, and the department may grant an extension of no longer than 7 days upon adequate showing that factors exist which are beyond the control of the county which prohibit it from making its application in a timely fashion. Approval of extension shall be made in writing to the county applying, and the period of extension will commence on July 20." (Auth: Sec. 1, Ch. 254, L. 1983, Imp: Sec. 1, Ch. 254, L. 1983.)

"Rule III. FORM AND TIMING OF GRANT AWARD NOTIFICATION All grant award notifications shall be made in writing to the county officer or officers who submitted the grant application. Notification of grant awards shall be made as soon as practical after the receipt of all grant

applications submitted to the department and the calculation of awards based on actual funds available." (Auth. Sec. 1, Ch. 254, L. 1983; Imp: Sec. 1, Ch. 254, L. 1983 and Sec. 7-6-1352, MCA.)

Rule IV. PROCEDURE FOR ADJUSTING GRANT AWARDS FOLLOWING AUDITS (1) If an audit of the county receiving such a grant award as stated herein determines that the county has received funds in excess of those for which it is eligible, the department shall notify the county, in writing, stating the amount of the excess and requiring repayment of such excess. All excess funds so requested shall be remitted to the department within 30 days of receipt of the request for repayment.

(2) In the case where there have been funds remitted to the department which constitute excess funds returned by the counties, the department will periodically redistribute any repaid excess amounts to eligible counties, provided, however, that all repaid excesses must be redistributed by the department by June 30 of the year following the grant award." (Auth. Sec. 1, Ch. 254, L. 1983; Imp: Sec. 1, Ch. 254, L. 1983.)

3. The department proposes to adopt the rules in order to establish the manner in which district court grants are made, the manner in which the notification is given or extensions granted and the manner in which excess grant funds are dealt with. The purpose of the rules is to implement Senate Bill 19, Chapter 254, Laws of 1983.

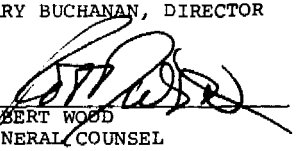
4. Interested persons may submit their data, views or arguments concerning the proposed rules by submitting the same, in writing, to George Pendergast, 805 North Main, Helena, Montana, 59620, no later than June 29, 1983.

5. If a person who is directly affected by the proposed rules wishes to present his data, views or arguments concerning the rules orally or in writing at a public hearing, he must make a written request for a hearing and submit the request along with any written comments he has to George Pendergast, 805 North Main, Helena, Montana, 59620, no later than June 29, 1983.

6. If the agency receives requests for a public hearing on the proposed rules from either 10% or 25, whichever is less, of the persons directly affected by the rules, 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. Because the rule is directly applicable to Montana counties, a hearing will be held upon the request of any county.

7. The authority and implementing sections are listed after each proposed rule.

DEPARTMENT OF COMMERCE
GARY BUCHANAN, DIRECTOR

BY: 
ROBERT WOOD
GENERAL COUNSEL

Certified to the Secretary of State, May 16, 1983.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of proposed amendment of rule 10.6.122, concerning appellate procedure and notice of appeal for cases of school controversy	)	NOTICE OF PROPOSED AMENDMENT OF RULE 10.6.122, APPELLATE PROCEDURE--NOTICE OF APPEAL--FILING
	)	NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons:

1. On June 25, 1983, the Superintendent of Public Instruction proposes to amend Rule 10.6.122, concerning appellate procedure and notice of appeal for cases of school controversy.

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

10.6.122 APPELLATE PROCEDURE - NOTICE OF APPEAL - FILING (1) An appeal shall be taken by filing a notice of appeal with the state superintendent of public instruction and a copy of such notice of appeal with the county superintendent. Failure of any party to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal but is grounds for such action as the state superintendent deems appropriate, which may include dismissal of the appeal.

(2) All references to state superintendent for purposes of special education cases shall mean the impartial hearing officer at the state education agency level.

(3) The impartial hearing officer shall conduct a review of a hearing which resulted in an appeal of the decision of the county superintendent.

(4) List of impartial hearing officers. The superintendent of public instruction shall keep a list of persons who serve as hearing officers.

(5) Selection of hearing officer for administrative appeal.

(a) Upon receiving a copy of the notice of appeal, the superintendent of public instruction shall mail to each party a list of five proposed hearing officers together with their qualifications.

(b) A party shall have seven days to study the list, cross off any two names objected to, number the remaining names in order of preference, and return the list to the superintendent of public instruction. Requests for more information about proposed hearing officers must be directed to the superintendent of public instruction.

(c) If, despite efforts to arrive at a mutually agreeable choice, the parties cannot agree upon a hearing officer, the superintendent of public instruction will make the appointment.

(d) Notwithstanding the foregoing provisions, the parties may mutually select the hearing officer.

(6) Disqualification.

(a) A hearing may not be reviewed by a person who is an employee of a school district or other public agency involved in the education or care of the child, or who has a personal or professional interest or reason which would conflict with his or her objectivity in the conduct or review of the hearing.

(b) A person who otherwise is qualified to conduct or review a hearing under paragraph (a) of this subsection is not an employee solely because he or she is paid by contract by the public agency to serve as a hearing officer.

3. The rule is proposed to be amended because under federal law the State Superintendent of Public Instruction cannot act as the hearing officer in cases of controversy concerning special education.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Rick Bartos, Staff Attorney, Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620, no later than June 23, 1983.

5. If a person who is directly affected by the proposed amendment wishes to express 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 to Rick Bartos, Staff Attorney, Office of Public Instruction, Room 106, State Capitol, Helena, Montana 59620 by no later than June 23, 1983.

6. If the agency receives requests for a public hearing on the proposed amendment from either 10% or 25, whichever is less, of those persons who will be directly affected by the proposed amendment; from the Administrative Code Committee of the legislature; from a governmental agency or subdivision; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 1,500 based on approximately 150,000 public school students.

7. The authority of the board to make the proposed amendment is based on section 20-3-107(3) MCA and implements the same.

ED ARGENBRIGHT
State Superintendent
of Public Instruction

By: Maynard Olson
Deputy Superintendent

Certified to the Secretary of State, May 16, 1983.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 10.57.207 Correspondence, Extension and Inservice Credits, Rule 10.57.208 Reinstatement, and Rule 10.57.402 Class 2 Standard Teaching Certificate	) NOTICE OF PROPOSED AMENDMENTS OF RULES 10.57.207, 10.57.208 and 10.57,402 relating to Teacher Certification) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On September 1, 1983 the Board of Public Education proposes to amend rules 10.57.207, 10.57.208, and 10.57.402 relating to Teacher Certification.

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

10.57.207 CORRESPONDENCE, EXTENSION AND INSERVICE CREDITS

(1) through (3) remains the same.

(4) Credits for renewal or reinstatement of a teaching certificate must supplement, strengthen and update the teacher's basic preparation. Such credits should be those that:

(a) Would be approved by an accredited college as part of a teacher preparation program, or;

(b) The college would allow on a new area of endorsement, or;

(c) Include new developments in education which were not part of the teacher's original preparation (i.e., computer assisted instruction, mainstreaming, gifted and talented), or;

(d) Be a result of an approved equivalency program as per 10.57.206.

(5) Courses previously taken may not be taken again for renewal purposes unless specifically approved. Requests for approval must be in writing with appropriate justification.

AUTH: 20-4-102 IMP: 20-4-103

10.57.208 REINSTATEMENT

(1) through (4) remains the same.

(5) Credits for renewal or reinstatement of a teaching certificate must supplement, strengthen and update the teacher's basic preparation. Such credits should be those that:

(a) Would be approved by an accredited college as part of a teacher preparation program, or;

(b) The college would allow on a new area of endorsement, or;

(c) Include new developments in education which were not part of the teacher's original preparation (i.e., computer assisted instruction, mainstreaming, gifted and talented), or;

(d) Be a result of an approved equivalency program as per 10.57.206.

(6) Courses previously taken may not be taken again for renewal purposes unless specifically approved. Requests for approval must be in writing with appropriate justification.

AUTH: 20-4-102 IMP: 20-4-103 and 20-4-106

10.57.402 CLASS 2 STANDARD TEACHING CERTIFICATE

(1) through (8) remains the same.

(9) Credits for renewal or reinstatement of a teaching certificate must supplement, strengthen and update the teacher's basic preparation. Such credits should be those that:

(a) Would be approved by an accredited college as part of a teacher preparation program, or;

(b) The college would allow on a new area of endorsement, or;

(c) Include new developments in education which were not part of the teacher's original preparation (i.e., computer assisted instruction, mainstreaming, gifted and talented), or;

(d) Be a result of an approved equivalency program as per 10.57.206.

(10) Courses previously taken may not be taken again for renewal purposes unless specifically approved. Requests for approval must be in writing with appropriate justification.

AUTH: 20-4-102 IMP: 20-4-106 and 20-4-108

3. The Board of Public Education is proposing these rules because the present policy allows teachers to be recertified by taking any college course regardless of whether or not it is related to their teaching assignment. The change in this policy will result in credit which is applicable for recertification will need to be consistent with the assignment of the teacher.

4. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to Harriett Meloy, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than June 23, 1983.

5. If a person who is directly affected by the proposed rules wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Harriett Meloy, Chairman, Board of Public Education, 33 South Last Chance Gulch, Helena, Montana 59620 no later than June 23, 1983.

6. If the agency receives requests for a public hearing on the proposed rules from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed rules; 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 2,000 persons based on approximately 20,000 teachers in the state of Montana.

7. The authority of the agency to adopt the proposed rules is based on section 20-4-102, MCA, and the rules implement section 20-4-103, 20-4-106, and 20-4-108, MCA.

Harriett C. Meloy

HARRIETT C. MELOY, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By Nicholas Law Dyn

Certified to the Secretary of State May 12, 1983.

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

In the matter of the amendment of rules 16.28.701, definitions; 16.28.702, requirements for unconditional enrollment; 16.28.703, documentation of immunization status required of those enrolling for the first time prior to August 1, 1980; 16.28.704, documentation required of those enrolling for the first time after July 31, 1980, for the 1980-1981 school year; 16.28.705, documentation required of persons enrolling for the first time after July 31, 1981; 16.28.706, requirements for conditional enrollment; 16.28.707, medical exemptions; 16.28.708, religious or personal exemption; and 16.28.714, non-compliance report	NOTICE OF PROPOSED AMENDMENT OF ARM 16.28.701, 16.28.702, 16.28.703, 16.28.704, 16.28.705, 16.28.706, 16.28.707, 16.28.708, and 16.28.714 (School Immunization) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 27, 1983, the department proposes to amend ARM 16.28.701, containing definitions; 16.28.702, setting requirements for unconditional enrollment; 16.28.703, defining the kind of documentation of immunization status required of those enrolling for the first time prior to August 1, 1980; 16.28.704, defining the kind of documentation required of those enrolling for the first time after July 31, 1980, for the 1980-1981 school year; 16.28.705, defining the kind of documentation required of persons enrolling for the first time after July 31, 1981; 16.28.706, setting requirements for conditional enrollment; 16.28.707, stating requirements for a medical exemption from immunization; 16.28.708, setting requirements for religious or personal exemptions from immunization; and 16.28.714, setting requirements for a non-compliance report from schools.

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

16.28.701 DEFINITIONS The following definitions apply throughout this sub-chapter:

(1) "Adequate documentation" means that documentation required by ARM 16.28.703, 16.28.704 or 16.28.705, depending upon the school year in question.

(2) "Department" means the department of health and environmental sciences.

(3) "~~Enrolling~~ Commencing attendance for the first time" means the first occasion a student ~~is entered upon the rolls of~~ attends any Montana school, and does not include transfers from one Montana school to another.

(4) - (9) Same as existing rule.

AUTHORITY: Sec. 20-5-407 MCA
IMPLEMENTING: Sec. 20-5-402 MCA

16.28.702 REQUIREMENTS FOR UNCONDITIONAL ~~ENROLLMENT~~ ATTENDANCE

(1) In order to ~~unconditionally enroll~~ allow a person to unconditionally attend a school as a pupil, a that school must receive adequate documentation that immunizations were performed on the schedule and with the agents noted below:

(a) DTP, DT, or Td vaccine must be administered as follows:

(i) For a child aged less than 7 years, four or more doses of diphtheria and tetanus toxoids and pertussis vaccine (DTP) and/or diphtheria/tetanus (DT) toxoids must be administered, at least one dose of which must be given after the fourth birthday unless (iii) below applies;

(ii) For a person 7 years old or older who has not completed the above requirement, any combination of three doses of either DTP, DT, or Td is acceptable, at least one dose of which must be given after the fourth birthday unless (iii) below applies;

(iii) A person ~~enrolled~~ commencing attendance for the first time prior to August 1, 1980, need not have received a dose after his fourth birthday;

(iv) Pertussis vaccine is not required for a person seven years of age or older.

(b) Polio vaccine must be administered as three or more doses of live, oral, trivalent poliomyelitis vaccine, at least one dose of which must be given after the fourth birthday unless the person receiving the vaccine ~~was enrolled~~ commenced attendance for the first time prior to August 1, 1980.

(c) Measles vaccine must be administered as one dose of live, attenuated measles (rubeola) vaccine, given after the first birthday, with the exception that a person certified by a physician as having had measles disease is not required to receive measles vaccine. A person receiving measles vaccine prior to one year of age or prior to 1968 must be revaccinated, unless, in the latter case, it can be documented that the vaccine, if administered between 1966 and 1968, was a live virus vaccine.

(d) Rubella vaccine must be administered as one dose of live rubella vaccine given after the first birthday, with the exception that a female who has reached age 12 is exempted

from the rubella vaccine requirement.

(2) In order to ~~unconditionally enroll~~ allow a person to unconditionally attend a school as a pupil, a that school must receive adequate documentation of the following dates for each disease noted:

(a) For DTP, DT, Td, and polio, -- the month and year the last dose was administered, unless the person ~~was enrolled~~ commenced attendance prior to August 1, 1980, in which case only the year is necessary.

(b) For rubella -- the month and year administered, unless the person ~~was enrolled~~ commenced attendance prior to August 1, 1980, in which case only the year is necessary.

(c) For measles (rubeola), -- the month, day, and year the vaccination was administered, or if measles disease was contracted, the month, day, and year of diagnosis, except if the person ~~was enrolled~~ commenced attendance prior to August 1, 1980, only the month and year are necessary.

(3) A person who transfers to a Montana school has 30 calendar days after commencement of attendance at the school to which he or she transfers to produce the documentation of immunization status required by this rule.

(4) If a person transfers into a Montana school from out-of-state, he or she must provide the same documentation as required above for a person who ~~enrolled~~ commenced attendance prior to August 1, 1980.

AUTHORITY: Sec. 20-5-407 MCA
IMPLEMENTING Sec. 20-5-403, 20-5-406 MCA

16.28.703 DOCUMENTATION OF IMMUNIZATION STATUS OF PERSONS ~~ENROLLING~~ COMMENCING ATTENDANCE FOR THE FIRST TIME PRIOR TO AUGUST 1, 1980

(1) Immunization data must be kept on the department's cumulative health record form (SDH & ES-1, Revised 2/78; due to typographical error, the form may be labeled SDH & EX-1,), the department's certificate of immunization form, or an equivalent form documenting the same immunization information.

(2) If the documentation has not been provided to the school on one of the forms referred to in subsection (1) above, immunization information must be transferred onto one of those forms from one or more of the types of documentation listed below and the form must be signed by the person performing the transfer, by November 15, 1980, or, if ~~enrollment occurs~~ attendance commences later than November 1, 1980, within 15 days after ~~enrollment~~ it commences:

(a) - (h) Same as existing rule.

AUTHORITY: Sec. 20-5-407 MCA
IMPLEMENTING: Sec. 20-5-406 MCA

16.28.704 DOCUMENTATION OF IMMUNIZATION STATUS OF PERSONS ~~ENROLLING~~ COMMENCING ATTENDANCE FOR THE FIRST TIME AFTER JULY 31, 1980, ~~FOR~~ DURING THE 1980-1981 SCHOOL YEAR

(1) Immunization data must be kept on the department's certificate of immunization form and signed by a physician, physician's designee, local health officer, or that officer's designees, if the data is submitted to the school on that form.

(2) If the documentation has not been provided to the school on a certificate of immunization form:

(a) immunization data must be transferred onto that form from one or more of the other types of documentation listed in subsection (3) below by November 15, 1980, or if ~~enrollment occurs~~ attendance commences later than November 1, 1980, within 15 days after ~~enrollment,~~ it commences, and

(b) the certificate of immunization must be signed by the person transferring the information, rather than a physician, physician's designee, local health officer, or that officer's designee.

(3) Immunization data may be transferred onto the certificate of immunization form from one or more of the types of documentation listed below:

(a) - (i) Same as existing rule.

AUTHORITY: Sec. 20-5-407 MCA
IMPLEMENTING: Sec. 20-5-406 MCA

16.28.705 DOCUMENTATION OF IMMUNIZATION STATUS OF PERSONS ~~ENROLLING~~ COMMENCING ATTENDANCE IN SCHOOL FOR THE FIRST TIME AFTER JULY 31, 1981

(1) Immunization data must be kept on the department's certificate of immunization form and signed by a physician, physician's designee, local health officer, or that officer's designee, if the data is submitted to the school on that form.

(2) If the documentation has not been provided to the school on the department's certificate of immunization form:

(a) immunization data must be transferred onto that form from one or more of the other types of documentation listed in subsection (3) below by November 15 of the year the pupil ~~is first enrolled,~~ commences attendance for the first time, or if attendance commences later than November 1 of that year, within 15 days after commencement of attendance; and

(b) the certificate of immunization must be signed by the person transferring the information, rather than a physician, physician's designee, local health officer, or that officer's designee.

(3) Immunization data may be transferred onto the certificate of immunization form from one or more of the types of documentation listed below:

(a) - (g) Same as existing rule.

AUTHORITY: Sec. 20-5-407 MCA
IMPLEMENTING: Sec. 20-5-406 MCA

16.28.706 REQUIREMENTS FOR CONDITIONAL ~~ENROLLMENT~~ ATTENDANCE

(1) A person may be admitted to school on a conditional basis if a physician or local health department indicates on the department's conditional ~~enrollment~~ attendance form that immunization of the person has already been initiated by receiving, at a minimum, one DTP, (or DT or Td), one polio, one measles (after the first birthday), and one rubella vaccination (unless rubella is not required because the person is a female 12 years of age or older). If a person is exempt from any of the foregoing vaccinations, the requirements of this rule apply to the remaining immunizations for which no exemption exists.

(2) Conditional ~~enrollment~~ attendance must be for a reasonable length of time consistent with the immunization schedule in subsection (4) below, in order to allow for completion of all immunization requirements, but in any case must not exceed 90 days from the date ~~of enrollment~~ attendance commences.

(3) The conditional ~~enrollment~~ attendance form provided by the department must be used to document conditional ~~enrollment~~ attendance status and must be retained in the person's school record.

(4) A person who is conditionally ~~enrolled~~ attending school qualifies for unconditional ~~enrollment~~ attendance status when he receives the following number of doses of each vaccine, and at intervals of no less than four weeks:

Number of Polio Doses Person Has Received:	Person Needs
1	2
2	1
3	0
4	0
3 or more, but none after 4th birthday (If ~~enrolled~~ commencing attendance for first time after July 31, 1980)	1

Number of DTP, DT, or Td Doses Person Has Received:	Under 7 Years of Age -- Additional DTP or DT Doses Needed:	7 Years of Age or Older -- Additional TD Doses Needed:
1	3	2*
2	2	1
3	1	0
4	0	0
3 or more, but none since 4th birthday (If ~~enrolled~~ commencing attendance for first time after July 31, 1980)	1	1

*A booster dose 8-14 months following the third dose is recommended. Td boosters are also recommended every 10 years.

(5) If the person who is attending school conditionally ~~enrolled~~ fails to complete immunization within the time period indicated in subsection (2) above, he must either claim an exemption from the immunizations not received and documented, or be excluded from school by the board of trustees, in the case of a public school, by the administrator, in the case of a private school, or by the designee of either.
AUTHORITY: Sec. 20-5-407 MCA
IMPLEMENTING: Sec. 20-5-402, 20-5-404, 20-5-408 MCA

16.28.707 MEDICAL EXEMPTION (1) A person seeking ~~enrollment in~~ to attend school is not required to have any immunizations which are medically contraindicated. A written and signed statement from any physician that an immunization is medically contraindicated will exempt a person from whatever immunization requirements of section 20-5-403, MCA, the statement indicates necessary.

(2) The statement must include:

(a) which particular immunization is contraindicated;

(b) the period of time immunization is contraindicated; and

(c) the reasons for the medical contraindication.

(3) A physician's medical exemption form may be obtained from the department to be used as documentation.

(4) The physician's written statement must be maintained by the school as part of the immunization record of the person qualifying for the exemption.
AUTHORITY: /Sec. 20-5-407 MCA
IMPLEMENTING: Sec. 20-5-405, 20-5-406 MCA

16.28.708 RELIGIOUS OR PERSONAL EXEMPTION (1) A person seeking ~~enrollment in~~ to attend school is exempt from all or part of the immunization requirements if the parent or guardian of that person, or the person himself if an adult, objects thereto in a signed, written statement indicating that the proposed immunization interferes with the free exercise of the religious or personal beliefs of the person signing the statement.

(2) The statement referred to in subsection (1) above must be made on the department's certificate of immunization form and, if exemption is desired from only a portion of the required immunizations, must indicate which immunizations the exemption covers.

(3) The statement must be kept by the school as part of the person's school record.
AUTHORITY: Sec. 20-5-407 MCA
IMPLEMENTING: Sec. 20-5-405, 20-5-406 MCA

16.28.714 REPORT OF NON-COMPLIANCE (1) If a person is excluded from school due to the failure to provide documentation of completed immunization, claim an exemption, or qualify for conditional ~~enrollment~~ attendance, the school must place in the U.S. mail notice of that fact to the following by the end of the third day following the exclusion, if the person excluded has not returned to school with the required documentation.

(a) the local health officer; and

(b) the ~~Preventive Health Services Bureau~~ Childhood Immunization Program, Health Services and Medical Facilities Division, of the department (phone: 449-4740).

Concurrent telephone notification of either or both of the above agencies is encouraged but not required.

(2) The notification must include the name of the excluded person; his or her address; the name of his or her parent(s), guardian or responsible adult; and the date of exclusion.

(3) Written documentation of that notification must be placed in the school file, if any, of the person excluded, or in a special file established for such documentation, if the person has no school file. Such documentation must include the information noted in (2) above, date of mailing, and name of the individual giving the notification.

AUTHORITY: Sec. 20-5-407 MCA
IMPLEMENTING: Sec. 20-5-408(2) MCA

3. Amendment of the above rules is necessary to conform their language to changes made by the 1983 Legislature (HB-128) to the law creating immunization requirements for public and private school pupils, those changes in essence substituting references to "commencing attendance" for "enrollment" wherever it occurs in order to avoid the confusion caused by imprecise enrollment dates varying from school to school and, in some cases, occurring after school attendance began.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendments in writing to Robert L. Solomon, Cogswell Building, Helena, MT, 59620, no later than June 27, 1983.

5. If a person who is directly affected by the proposed action wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any written comments he has to Robert L. Solomon at the above address no later than June 17, 1983.

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

association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be in excess of 25 based on the large number of pupils attending schools in Montana.

7. The authority of the department to amend the rules is based on section 20-5-407, MCA, and they implement sections 20-5-402, 20-5-403, 20-5-404, 20-5-405, 20-5-406, 20-5-407, and 20-5-408, MCA.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State May 16, 1983

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

In the matter of the amendment of rule 16.16.803, establishing a fee schedule for subdivision review	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.16.803 (Fee Schedules)

TO: All Interested Persons

1. On June 27, 1983, at 10:00 a.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rule 16.16.803.

2. The proposed amendment replaces present rule 16.16.803 found in the Administrative Rules of Montana. The proposed amendment would alter the fee schedule for review of subdivisions.

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

16.16.803 FEE SCHEDULES (1) The fees described below pertain only to review of subdivisions as mandated by Title 76, Chapter 4, Part 1, MCA. An additional fee may be requested pursuant to the Montana Environmental Policy Act (Section 75-1-101, et seq., MCA) for the preparation of an environmental impact statement.

(a) The fees in Schedule I shall be charged:

(i) Per parcel when land is divided into one or more parcels.

(ii) Per condominium living unit except, where municipal or county district water and sewer ~~is~~ are available, the fees shall be charged per sewer hookup to the municipal or county sewer, plus $10 for each unit in excess of one which is included on a single hookup.

SCHEDULE I

Fee schedule for division of land into one or more parcels, condominiums, mobile home/trailer courts, recreational camping vehicles and tourist campgrounds.

	Individual Sewerage System	Public Sewer requiring Department approval	Sewer Extension requiring Department approval	Existing Sewer Previously approved (no extensions required)
Individual Water Supply	$30	$30	$30	$30
Public Water Supply requiring Department review	$30	$30	$30	$25

~~Water extension requiring Department review~~	~~$30~~	$30	~~$30~~	$25
Existing Water Supply previously approved (no extension ~~is required~~)	$25	$25	$25	~~$20~~

	Sewage disposal provided by individual, multiple family, or public systems which are not connected to municipal or county sewer district systems	Extension of municipal or county sewer district systems requiring department approval	Existing municipal or county sewer district sewers, previously approved (no extension required)
Water supply provided by individual, multiple family, or public systems which are not connected to municipal or county water district systems	$48	$45	$40
Extension of municipal or county water district supply systems requiring review and approval	$45	$40	$30
Existing municipal or county water district system, previously approved (no extension required)	$40	$30	$20

(b) The fee shall be $5 per vehicle parcel for recreational camping vehicles and tourist campgrounds where no water or sewer hookups are provided.

4. The Department is proposing this amendment to the rule because House Bill 118, passed by the 1983 Legislature, increased the maximum amount from $30 to $48 which may be charged, per parcel, for subdivision review to cover the cost of that review, allowing and necessitating a revision in the fee schedule to adequately cover the cost of review, which was impossible with the existing fee schedule. The fee categories

are substantially the same, but are rephrased and consolidated for clarity and simplicity. The special condominium fee in (1)(a)(ii) is amended to clarify where the sewer hookup referred to occurs, thereby preventing the full fee from being charged for each condominium unit, which review costs could not justify, while adding a supplemental $10 per unit (in excess of one) fee which does correlate with the cost of environmental review. Finally, (1)(a)(ii) is amended to clarify that it applies only when the condominium attaches to a publicly-owned water system, as well as sewer, in view of the fact that review is substantially more complicated if the water system is not available.

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, Cogswell Building, Capitol Complex, Helena, Montana, 59620, no later than June 27, 1983.

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

7. The authority of the Department to make the proposed amendment is based on section 76-4-105, MCA, and the rule implements sections 76-4-105 and 76-4-128, MCA.

Peter J. Drynan, M.D.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State May 16, 1983

BEFORE THE DEPARTMENT OF HIGHWAYS
OF THE STATE OF MONTANA

In the matter of the amendment of Rules 18.5.102, 18.5.103, 18.5.104, 18.5.105; the repeal of Rules 18.5.107, 18.5.108, 18.5.109, 18.5.110, 18.5.111; and the adoption of two rules relating to approach standards for Montana highways.	))))))))))	NOTICE OF PROPOSED AMENDMENT OF RULES 18.5.102, 18.5.103, 18.5.104, 18.5.105; REPEAL OF RULES 18.5.107, 18.5.108, 18.5.109, 18.5.110, 18.5.111; AND THE ADOPTION OF TWO RULES RELATING TO APPROACH STANDARDS FOR MONTANA HIGHWAYS. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 28, 1983, the Department of Highways proposes to amend rules 18.5.102, 18.5.103, 18.5.104, 18.5.105; to repeal rules 18.5.107, 18.5.108, 18.5.109, 18.5.110, 18.5.111; and to adopt two rules to revise the approach standards for Montana highways.

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

18.5.102 GENERAL POLICY (1) The efficiency and safety of a modern highway are directly related to the amount and character of roadside interference, most of which is caused by vehicles moving to and from businesses, residences, farms and other developments along the highway. Uncontrolled approaches to a highway will soon nullify carefully planned safety and maintenance features, resulting in early obsolescense of the highway. It is, therefore, necessary to establish regulations controlling highway access.

(2) Frontage property owners have certain rights of access to the highway consistent with their needs, and the highway user has a right of safety, and freedom of movement. The purpose of this policy is to establish driveway approach standards which will tend to reconcile and satisfy the needs and rights of both the property owner and the highway user.

(3) All new approaches constructed by any person, by the Department of Highways, or by any other governmental unit shall require an approach permit.

~~(3)~~ (4) If a highway construction or reconstruction project is undertaken which requires the replacement or adjustment of existing access to abutting property, the access facility will be constructed or reconstructed to

these standards and in accordance with Right-of-Way agreements. The cost of the work will normally be chargeable to the project.

(5) If it is determined by the Department that an existing approach which has been destroyed, removed or relocated during the construction or reconstruction of a section of highway is to be replaced, the approach shall be replaced or reconstructed by the Department to a design consistent with these regulations and in accordance with right-of-way agreements. The cost of work will normally be chargeable to the project.

~~(4)~~ (6) If a need for access develops subsequent to the initiation of construction or reconstruction work on a highway, the abutting property owner or user must follow the procedure outlined in this manual and the cost of the work will be distributed as indicated herein.

~~(5)~~ (7) Except on limited access projects, future ~~Future~~ changes in the use of property abutting a state highway, such as a change from residential to public use or a change in the type of operation may require changes in the number, design or location of the initially permitted approaches. The property owner then shall obtain a new permit from the Department.

AUTH: 60-2-201, MCA IMP: 60-2-201, MCA

18.5.103 DEFINITIONS (1) "Approach" means that section of the highway right-of-way between the outside edge of shoulder and the right-of-way line which is designed as a highway for the movement of vehicles between the highway and the abutting property.

(2) "Approach flare or radii" means the angle or curve radius connecting the approach to the outside edge of the highway shoulder.

(3) "Approach transition" means the area from the edge of an urban approach sloped to match the curb and border area elevations.

~~(3)~~ (4) "Approach angle" means the angle between the highway centerline and the extended approach centerline measured in a clockwise direction from the highway centerline.

~~(4)~~ (5) "Approach width" means the width of the approach excluding flares or transitions measured at right angles to approach centerline.

(6) "Border area" means the area between the outside edge of shoulder or curbline and the right-of-way line.

~~(5)~~ (7) "Corner clearance" (At an intersecting street or highway) means the distance, measured along the outside edge of shoulder or curb line, between the end of intersecting curb radius, edge of pavement of the intersecting highway, or frontage boundary line and the extension of the nearest approach edge, including flares or

radii.

~~(6)~~ (8) "Department" means the Montana Department of Highways.

~~(7)~~ (9) "Distance between approaches" means the distance measured along the curb line or outside edge of shoulder between the extensions of the near edges of adjacent approaches, excluding flares.

(10) "Flare tangent distance" or "transition tangent distance" means the distance measured along the curb line or outside edge of shoulder, from the extension of the approach edge to the end of the approach flare or transition.

~~(8)~~ (11) "Frontage" means the distance a separate property is contiguous to highway right-of-way measured along the curb line or outside edge of shoulder, between frontage boundary lines of the property.

~~(9)~~ (12) "Frontage boundary line" means a line perpendicular to the highway centerline that passes through the point of intersection of the property line and the highway right-of-way line.

~~(10)~~ (13) "Joint use approach" means an approach shared by two adjacent property owners for service and connection to both their properties.

~~(11)--"Lead agency" means the State agency which has primary authority for committing the State Government to a course of action with significant environmental impact.~~

~~(12)~~ (14) "Plot plan" means a sketch to show the ~~Chief, Field Maintenance Bureau~~ District Engineer the approximate location of the approach. It can show the distance from the nearest milepost or station marker. In the case of an approach in an urban area, city streets would be good ties. It should be on 8 1/2" x 13" paper and show the highway right-of-way.

~~(13)~~ (15) "Private ~~access~~ approach" means an entrance to and/or from ~~a residential dwelling for the exclusive use and benefit of those residing therein~~ a commercial, industrial or residential property.

~~(14)~~ (16) "Property line clearance" means the distance measured along the curb line or outside edge of shoulder between the frontage boundary line and the extension of the nearest edge of the approach, including flares or radii.

~~(15)~~ (17) "Public ~~access~~ approach" means an entrance to and/or from a ~~business, public establishment, or dedicated street intended for use by the general public~~ highway, street, road, alley, or other public right-of-way.

~~(16)~~ (18) "Safety zone" means the area between the outside edge of shoulder or curb line and the right-of-way.

~~(17)~~ (19) "Setback distance" means the horizontal distance measured at right angles to the highway centerline

between the right-of-way line and permanent fixtures such as gas pump islands, signs, display stands, buildings, etc. The setback distance should be adequate to provide designated parking on private property.

~~(18)~~ (20) "Sight distance" means the length of highway ahead visible to the driver. The minimum sight distance available on a highway should be sufficiently long to enable a vehicle traveling at or near the likely top speed to stop before reaching an object in its path.

~~(19)~~ (21) "State" means State of Montana Department of Highways.

(22) The words "shall", "should" and "may" are used to describe specific conditions and in order to clarify their meanings, the following definitions apply:

(a) "Shall" means a mandatory condition.

(b) "Should" means an advisory condition.

(c) "May" means a permissive condition.

AUTH: 60-2-201, MCA IMP: 60-2-201, MCA

18.5.104 INSTRUCTIONS FOR SECURING AN APPROACH PERMIT

(1) A request for a permit to construct or reconstruct any residential, commercial, industrial, public street or road approach should be made to the ~~Chief, Field Maintenance Bureau~~ District Engineer having jurisdiction over the area.

(2) The proper applicant for an approach permit is the owner of the property being served, the contract purchaser or the owner of a long-term lease with the remaining life greater than five years, or their authorized agents. (A real estate sales agent, contractor constructing a building or improvement on the property or a short-term leasee does not ordinarily have authority to agree to the conditions on an approach permit in behalf of the owner of the land.)

(3) A brief description of the proposed work shall be included in the request together with a plot plan and the location of the work; preferably tied to the nearest highway milepost or station marker. The name, address and telephone number of the applicant shall also be included.

(4) (a) Upon receipt of this request, the ~~Chief, Field Maintenance Bureau~~ District Engineer will arrange for a meeting with the applicant, at which time details of the proposed work will be discussed and the "Driveway Approach Application and Permit" (MTCE 112-A) completed and signed by the applicant. In cases where the ~~Chief, Field Maintenance Bureau~~ District Engineer determines that the approach will have a significant effect ~~upon the environment, and the Department is the lead agency,~~ the applicant ~~is~~ may be required to include either an Environmental Impact Statement or traffic study with the approach application.

(b) The District Engineer shall also confirm that the

requested approach will not be constructed within an existing or proposed limited access area.

(5) The ~~Field Maintenance Bureau personnel~~, District Engineer, in conjunction with the ~~Division~~ District Traffic Engineer, are is delegated authority to approve curb cuts, public and private approaches serving businesses, residences, and agricultural uses in rural and urban areas without further consultation if the traffic conditions are not congested. In congested areas, usually urban situations, the ~~Field Maintenance personnel~~ District Engineer and ~~Division~~ District Traffic Engineer can request the Manager, Traffic Unit, Helena, for further technical aid. If this is the case, the approach should be scaled onto existing plan and profile sheets showing the highway right-of-way and sent to Helena.

(6) When the appropriate approvals as outlined above have been secured, the ~~Chief, Field Maintenance Bureau~~ District Engineer will distribute approved copies of the permit as follows: original to ~~Field Maintenance Bureau~~ District Engineer to file; one copy to the applicant~~, one copy to the Manager, Traffic Unit, Helena, with plot plans showing the approved approach for Traffic Manager's information~~.

(7) The District Engineer may, at his discretion, set a time limit for building the requested approach. Failure to construct the approach within the specified time limit shall require the property owner to obtain a new approach permit.

~~(7)~~ (8) Construction work on the public right-of-way will not be allowed to commence until an approved permit has been issued as prescribed above.

~~(8) All approaches to a highway under contract and/or construction not covered by a right-of-way agreement, shall be submitted on Form MTCE 112 A to the Chief, Field Maintenance Bureau.~~

AUTH: 60-2-201, MCA IMP: 60-2-201, MCA

18.5.105 GENERAL REQUIREMENTS (1) Applications. Application for an approach permit shall be made by the owner or contract purchaser, who shall represent all of the parties interests, and such permits shall be only for the bona fide purpose of securing or changing access to his property, but not for the purpose of parking or servicing vehicles on the Department of Highways right-of-way.

(2) Private approach.

(a) Private approaches do not necessarily warrant state installed traffic control devices.

(b) The permittee shall do all construction work and pay all costs in connection with the construction of approaches and their appurtenances on the right-of-way. In areas outside the corporate limits of municipalities,

the Department may assist in establishing the flow-line grade for drainage structures and finished grades for driveway surfaces or may provide other assistance which the District Engineer agrees to perform, provided that materials are furnished at the site as required.

(3) Public approach. The permittee shall do all work and pay all costs in connection with construction of approaches and their appurtenances on the right-of-way. In areas outside the corporate limits of municipalities, the Department may assist by establishing flow-line grades for drainage structures and finished grades for driveway surfaces or may provide other assistance which the District Engineer agrees to perform.

~~(2)~~ (4) Number and arrangements of driveways. The number of approaches should be the minimum number required to adequately serve the needs of the adjacent property. Frontage of 100' or less will be limited to one approach. No more than 2 approaches will be granted to any single property tract or business establishment. Exception may be made where the frontage exceeds 500 feet or special conditions exist which may benefit the traveling public. In the case of shopping centers or large traffic generators which have 2 or more approaches, it is desirable to have only one approach on the mainline and the other approach onto the side streets.

~~(3)~~ (5) Consolidation. Where the probability exists that several adjacent approaches serving limited frontage of one or more property owners will be needed, provisions should be made to provide a frontage road on the private properties and connected to the highway only at well spaced locations. If the Department approved such a system, an approach permit shall be issued to all property owners concerned and shall state that there is an agreement that all properties shall have access to the highway via the frontage road or a joint use driveway system.

~~(4)~~ (6) Use. For other than private residential approach applications, buildings both proposed and existing and appurtenances and dimensions thereof shall be indicated on the plans, including a notation as to present use of the buildings and details of internal traffic circulation, parking and traffic signs.

~~(5)--Materials.--The-permittee-shall-furnish-all-materials-necessary-for-the-construction-of-the-entrances-and appurtenances-authorized-by-the-permit.--This-shall-include furnishing-drainage-pipe,-curb-and-gutter,-concrete-sidewalks,-top-soil-or-sod,-etc.,-where-required.--All-materials-shall-be-of-satisfactory-quality-and-shall-be-subject to-inspection-and-approval-by-the-Department.--See-also Base-and-surfacing.~~

~~(6)--Base-and-surfacing.--It-shall-be-the-responsi-~~

~~bility of the permittee to supply, place, and properly compact the approach fill and base material. All base material shall consist of sand, sand gravel, or sand and rock mixtures containing the sufficient granular fines to fill the voids between the larger gravel and stone, and to permit compaction. In areas without curb and gutter, the approach base and surfacing shall consist of an adequate depth of granular material. When deemed necessary by the Department, for maintenance or operational purposes, the property owner will be required to furnish and place bituminous surfacing. For road approaches on Primary and Secondary routes, this shall be for a desirable distance of 12 feet.~~

(7) Construction and reconstruction. ~~All new approaches shall be constructed in conformance with the applicable regulations or as approved by the Preconstruction Bureau, Traffic Unit, and the Maintenance Bureau. Any existing approach that is destroyed or removed in the construction or reconstruction of~~

(a) All new approaches not installed as part of a construction or reconstruction project shall be the responsibility of the permittee and shall be constructed in conformance with the applicable regulations or as approved by the Department.

(b) If it is determined by the Department that an existing approach which has been destroyed, removed or relocated by the construction, reconstruction or the limiting of access on a section of highway is to be replaced, the approach shall be replaced or reconstructed by the Department to a design compatible with these regulations.

(c) Provisions for the safe and efficient passage and protection of vehicles and pedestrians during the construction of the approach is very important. During the progress of the work, such barricades, signs, and other traffic control devices shall be erected and maintained by the permittee, as may be deemed necessary by the Department.

(d) No driveway, approach or other improvement constructed on the right-of-way may be relocated or its dimensions altered without a duly executed permit from the Department.

~~(8) Inspection maintenance.~~

~~(a) The Department shall inspect these installations at the time of construction and at all times thereafter, and require such changes, maintenance, and repairs as may be considered necessary to provide protection of life and property on or adjacent to the highways.~~

~~(b) The cost of changes, maintenance, and repairs of the approaches, islands, and other access driveway appurtenances on the right of way will be the responsibility of the permittee, except as provided under construction and~~

~~reconstruction herein.~~

~~(9) Changes. After construction or reconstruction of a highway project, no driveway, approach, or other improvement constructed on the right-of-way shall be relocated or its dimensions altered without a duly executed permit from the Department.~~

(8) Inspection - The Department shall inspect permittee installed approaches at the time of construction and occasionally thereafter.

(9) Maintenance

(a) With regard to permittee installed approaches, any changes, maintenance and/or repairs deemed necessary by the Department shall be the responsibility of the permittee.

(b) The Department reserves the right to make any changes, additions, repairs or relocations to any approach or its appurtenances within the highway right-of-way.

(10) Indemnification. The permittee shall hold harmless the Department and its duly appointed agents and employees against any action for personal injury or property damage sustained by reason of exercise of his permit.

(11) Limitation. These regulations shall apply on all highways under jurisdiction of the Department as defined by law.

(12) Signs. The permittee shall not be permitted to erect any private sign, either fixed or movable, on or extending over any portion of the highway right-of-way. If a marker is considered necessary to delineate an approach, it will be of the standard size, color and mounting height. See page 18-92.

AUTH: 60-2-201, MCA IMP: 60-2-201, MCA

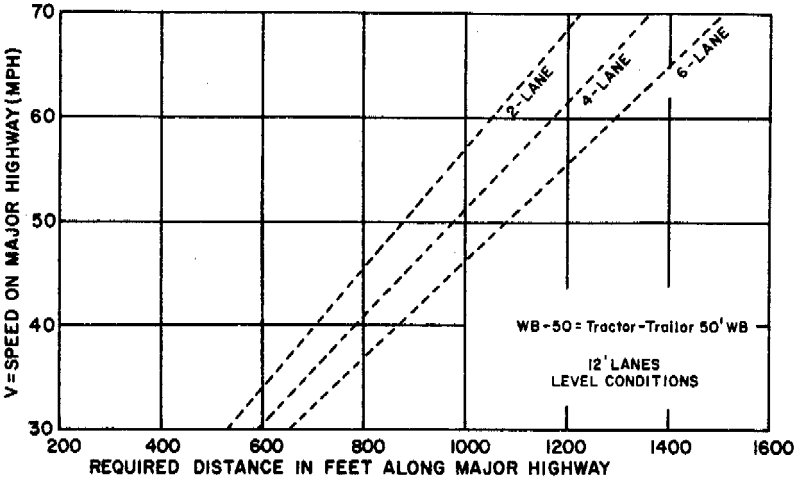
3. The rules proposed to be repealed can be found on pages 18-69 through 18-92 of the Administrative Rules of Montana.

4. The proposed rules to be adopted provide as follows:

Rule I Design Requirements

(1) Design Details

(a) The Department may authorize or require certain changes in the design limits herein when such changes are necessary to preserve the normal and safe movement of traffic or to permit reasonable access. When physical factors make it impractical to obtain reasonable access within these requirements, appropriate variations may be authorized after review of the proposed approach design by the Chief, Preconstruction Bureau. Sight distance, as controlled by the design speed of the highway, must be maintained in all cases. The following diagram illustrates required sight distances along major highways:



SIGHT DISTANCE AT INTERSECTIONS

(b) Design details should conform to the "Standard" charts or be within the "Range" charts for public approaches, right turn lanes and tapers or private approaches. These charts are available from the Department of Highways upon request.

(2) Location

(a) Location of approaches shall be selected to first provide maximum safety for highway traffic and secondly, to provide convenience for users of the driveway.

(b) All parts of entrances and exits, including the radii but not including right-turn lanes and tapers on highway right-of-way, shall be confined entirely within the permittee's property frontage.

(3) Materials - The permittee shall furnish all materials necessary for the construction of the approaches and appurtenances authorized by the permit. This shall include drainage pipe, curb and gutter, concrete sidewalks, topsoil or sod, etc., as required. All materials, including base and surfacing, shall be of satisfactory quality and shall be subject to inspection and approval by the

Department.

(4) Base and Surfacing - It shall be the responsibility of the permittee to supply, place, and properly compact the approach fill and base material. All base material shall consist of sand, sand-gravel or sand and rock mixtures containing the sufficient granular fines to fill the voids between the larger gravel and stone, and to permit compaction. In areas without curb and gutter, the approach base and surfacing shall consist of an adequate depth of granular material. When deemed necessary by the Department for maintenance or operational purposes, the property owner shall furnish and place bituminous surfacing. This surfacing should normally extend a minimum distance of 12 feet from the outside shoulder line or to the right-of-way line, whichever is less. Any distance to the right-of-way line beyond 12 feet should be gravel surfaced. Infrequently used field approaches may extend a lesser distance. A 5-foot minimum is recommended. Commercial approaches are normally required to be surfaced.

(5) Corner Clearance - Corner clearance at the intersection of a state highway with another highway or street approach shall provide for a sufficient distance from the intersection to preserve the normal and safe movement of traffic through it. If the driveway is to be located adjacent to a highway or street intersection, the following requirements shall apply:

(a) Curbed - If the intersecting highway is curbed, the end point of curvature of the driveway radius shall be a minimum distance of 20 feet from the end point of curvature of the intersecting highway radius, or a minimum distance of 10 feet inside the abutting property frontage, whichever will provide the greater distance.

(b) Uncurbed - If the intersecting highway is uncurbed, the end point of curvature of the driveway radius shall be a minimum distance of 50 feet from the edge of pavement of the intersecting highway, or a minimum distance of 10 feet inside the abutting property frontage, whichever will provide the greater distance.

(c) Signalized - At signalized intersections or those determined by the Department to have potential for signalization, the near side corner clearance shall be a minimum distance of 30 feet (curbed section) and 40 feet (uncurbed section) from the end point of the driveway radius or inside the abutting property frontage. Far side clearance should be a minimum of 20 feet.

(6) Drainage

(a) Drainage in highway ditches shall not be altered or impeded except as noted under subsection 7. When drainage structures are required, size of opening, length of pipe and other design features must be approved by the

District Engineer.

(b) All approaches shall either drain away from the traveled way or have sufficient crown to cause all drainage to run to the sides of the approach rather than drain onto the highway. Approaches shall also be constructed so as not to impair drainage within the highway right-of-way, to alter the stability of the roadway subgrade or materially to alter the drainage of the areas adjacent to the highway right-of-way. Culverts and drop inlets shall be installed where required and shall be the type and size specified by the Department. Where the border area is regraded and/or landscaped, it shall have sufficient slope, culverts and drop inlets for adequate drainage.

(7) Safety or Buffer Zone - The safety or buffer zone shall include all parts of the highway right-of-way between the curb or shoulder line and the right-of-way line along the permittee's property frontage except the areas contained in the approaches. The safety zones adjacent to an approach may be filled in provided the requirements for drainage and the following requirements are fully complied with:

(a) The filled-in area shall be sufficiently delineated with curbs, guardrails or delineators to prevent use of the area for parking or travel. Reflectorized delineators in rural areas are desirable.

(b) The filled-in area should extend from behind the sidewalks, or where no sidewalk exists, as provided in the permit. Provisions will be made by the Department to provide conformance with proposed future improvements to the existing highway section.

(c) When physical barriers are installed within the safety zone, they shall be installed according to the appropriate Department Standard Drawing. The barrier line nearest the highway shall be on line with existing curbs, or established curb line, provided the District Engineer or his authorized representative does not require a greater distance when needed to preserve the safety and utility of the highway or provided conformance with proposed highway improvements.

(d) An attempt should be made to provide an aesthetically pleasing safety zone by grading and seeding where possible. The placing of ground cover and use of other beautification principles is desirable; however, planting trees and shrubs that may in the future restrict sight distance will not be allowed.

(8) Approach Grade

(a) The approach grade or slope of the approach shall be constructed to conform to the slope of the roadway shoulder from the edge of the traffic lane to the shoulder line and thence shall be sloped downward within the range

of .02 ft./ft. to .08 ft./ft. for a distance necessary to place the low point of the driveway approximately 8 inches below the shoulder elevation.

(b) On curbed sections of the highway, if the maximum allowable slope shown is not great enough to bring the approach to the level of the sidewalk, a depressed sidewalk may be constructed. The connection between the original sidewalk and the depressed sidewalk shall be made through a warped section, the slope of which shall not vary more than 6 percent from the longitudinal grade of the original sidewalk. All new curbs and sidewalks should be constructed to the line and grade of the existing curb or sidewalk with every effort to construct a sidewalk that is level and free of dips. The maximum gradient limits beyond the outer edge of the sidewalk shall be the same as for uncurbed approaches.

(c) Where approaches have side slopes, these slopes should be constructed at a 6:1 ratio or flatter.

(9) Setback Distance

(a) The setback distance from the right-of-way line to the nearest edge of gas pump islands, vendor stands, tanks, water hydrants and other improvements should be at least 15 feet. A greater distance is recommended in rural areas where free movement of large vehicles is anticipated.

(b) Sufficient storage area off the highway right-of-way shall be provided by the landowner to prevent the servicing, stopping and storing of vehicles on the approach and to prevent a vehicle from backing out of an approach onto the traveled way. This requirement is especially applicable to parking lots, gas stations, garages, drive-in cafes, drive-in theatres, truck terminals and other roadside businesses where a large number of vehicles enter and leave the property in a short period of time. Where necessary to prevent vehicle encroachment on the highway right-of-way, physical barriers may be installed on the right-of-way line. Such barriers are to be installed so as not to constitute a hazard to pedestrian or vehicle traffic.

(c) Poles, signs, displays, etc., which may restrict the sight distance of a vehicle entering or leaving the establishment, may not be installed between the right-of-way line and the setback line.

(10) Dedicated Streets

(a) A dedicated street or roadway is considered to be a public approach and shall comply with all applicable regulations. The only exception is that the width of the approach can be widened to match the street; however, the width of the street surface should be governed by the expected traffic volumes and not the street right-of-way width.

(b) Developers of subdivisions or housing tracts

shall obtain approval from the local unit of government having jurisdiction over the dedicated street or road. The governmental unit shall then submit the approach application to the Department.

(11) High Volume Rural Access - Those access approaches which will generate 25 or more left turning vehicle movements per peak hour entering the facility, or have the obvious potential for expansion to this level, should be designed to the shape and dimensions of Department standards for high volume approaches.

(12) Mail Box Locations - Mail boxes placed along non-controlled access highways are a potential hazard to out-of-control vehicles. This hazard should be minimized by utilizing the following guidelines:

(a) Mail boxes should be similar in size, weight, and material to boxes approved by the United States Postal Service.

(b) The supports should not be larger than 4" x 4" timber, 2" pipe or equivalent strength material.

(c) Unusual post design is discouraged. The weight of any support should not exceed 30 pounds, including the portion in the ground.

(d) If a concrete foundation is used, the top of the foundation should not project more than 4 inches above ground.

(e) No more than 3 mail boxes may be mounted on one post.

(f) Mail boxes should be mounted 38 inches vertically from edge of shoulder to bottom of the box. The lateral clearance should be a minimum of 18 inches and a maximum of 24 inches.

AUTH: 60-2-201, MCA IMP: 60-2-201, MCA

Rule II Typical Layouts - The Department of Highways will not design layouts for private property; however, typical drawings illustrating the design requirements herein are available from the Department of Highways, 2701 Prospect Avenue, Helena, MT 59620 or from any of the Department of Highways District offices upon request.

AUTH: 60-2-201, MCA IMP: 60-2-201, MCA

5. The department is proposing these amendments, repeals and adoptions because the existing rules do not conform to current highway standards for design and safety.

6. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Traffic Unit, Montana Department of Highways, 2701 Prospect Avenue, Helena, MT 59620 no later than June 27, 1983.

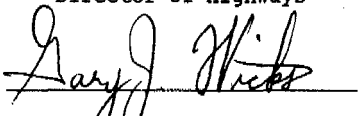
7. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request

along with any written comments he has to the above address, no later than June 27, 1983.

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

9. The authority of the agency to make the proposed amendment is based on section 60-2-201, MCA, and the rule implements section 60-2-201, MCA.

Gary J. Wicks
Director of Highways

By: 

Certified to the Secretary of State May 16, 1983

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the proposed amendments of Rule 24.11.409, concerning Fraudulent Claims for unemployment compensation	))))	NOTICE OF PROPOSED AMENDMENTS TO RULE 24.11.409 NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons:

1. On July 1, 1983, the Department of Labor and Industry proposes to amend Rule 24.11.409, concerning fraudulent claims for unemployment compensation.

2. The proposed amendments are as follows:

24.11.409 IMPOSITION OF PENALTIES (1) The phrase "false statement or representation" as set forth in Sections 39-51-3201 and 39-51-3202 MCA means ~~something more than merely an untrue or erroneous statement, rather it implies that the statement made is designedly untrue and deceitful, and made with the intention to deceive the division.~~ A statement that is made with the purpose to mislead and known by the major to be untrue.

(2) No administrative penalty may ~~under any circumstances~~ be imposed based upon a mistake or a statement not meeting the criteria as set forth in Subsection (1) herein.

~~(3) Prior to an administrative penalty being imposed, there first must be a determination based on evidence that a false statement or representation has been made and such determination will be become operative until the claimant has been given a reasonable opportunity for an ex-parte hearing for the purpose of affording said claimant an opportunity to refute the preliminary determination if, in fact, such refutation exists.~~

~~(4) Following a preliminary determination that a false statement or representation has been made, the following will apply:~~

~~(a) Criminal Action. On cases being considered for a criminal action, the claimant shall be given three working days notice by the local office by both telephone and certified mail where possible, and by certified mail alone if no telephone exists, of the time, place, and purpose of such ex-parte hearing.~~

~~(b) Administrative Action. On cases being considered for administrative penalty and overpayment only, the claimant shall be given seven working days notice by regular mail letter from the central office.~~

~~(5) Should claimant fail to appear at time and place designated for ex-parte hearing:~~

~~(a) CriminalAction. On cases being considered for criminal action, should claimant fail to appear at the time and place designated for ex-parte hearing or fail to request a continuance for good cause, the preliminary determination will become effective as oa original date of determination, that is three working days following notice to claimant (See (4)).~~

~~(b) Administrative Action. On cases being considered for administrative action, should claimant fail to respond to the notice by letter from the Supervisor of Benefits or fail to request a continuance for good cause, the preliminary determination will become effective as of original date of determination, that is seven working days following notice to claimant (See (4)).~~

~~(6) Where claimant appears at the local office and offers evidence:~~

~~(a) Criminal Action. On cases being considered for criminal action, where claimant appears at the local office and offers evidence, or submits evidence by mail or by telephone, such evidence of whatever nature, will be recorded and immediately forwarded to the Claims Investigation Section for consideration and determination. Should the Claims Investigator concur in the preliminary determination, such preliminary determination will be retroactive to the date of origin and constitute a final decision; however, should the claimant complete a form UI-404 statement, the date of determination shall then be the date such statement is completed. Should the Claims Investigator determine that substantial and convincing evidence does not exist to sustain the preliminary determination, the Claims Investigator shall forthwith set aside the preliminary determination.~~

~~(b) Administrative Action. On cases being considered for administrative action, where the claimant responds by letter, telephone, or to the local office, such evidence of whatever nature, will be recorded and immediately forwarded to the Supervisor of Benefits for consideration and determination. Should hte Supervisor of Benefits concur in the preliminary determination, such preliminary determination will be retroactive to the date of origin and constitute a final decision. Should the Supervisor of Benefits determine that substantial and convincing evidence does not exist to sustain the preliminary determination, the Supervisor of Benefits shall forthwith set aside the preliminary determination.~~

~~(7) The claimant shall be notified of the decision of the central office and if dissatisfied with such decision may appeal said decision in accordance with the Unemployment Laws of this state and the Administrative Procedure Act.~~

~~(8) Where a person has been convicted of having made a false statement or representation either by guilty plea or following trial, this division will not be required to hold an ex-parte hearing prior to imposing its administrative hearing as referred to in Rules 1 through 7 above.~~

(3) The Unemployment Insurance Claims Investigation Bureau is responsible for making preliminary investigations where violations of 39-51-3201 or 39-51-3202 are suspected.

(4) Upon completion of the preliminary investigation, the claimant shall be served with notice by mail that he is to appear in person at a Job Service Office or respond by letter to a Job Service Office within seven days of the receipt of said notice to respond to the findings of the preliminary investigation. The notice will explain that the matter may be turned over to the County Attorney for criminal prosecution. All information obtained in the preliminary investigation will be enclosed with the notice. Should claimant respond as requested, a decision will be made by the Claims Investigation Bureau whether to refer the case for criminal prosecution. Should the claimant fail to respond to the notice or fail to request a continuance for good cause, a decision whether to refer the case for criminal prosecution will be made based on the information available.

(5) Administrative penalties shall be imposed in accordance with 39-51-3201. The claimant shall be notified of the determination, and his right to appeal.

(6) Cases may be referred for criminal prosecution only if a preponderance of the evidence obtained through the preliminary investigation and the claimant's response indicate 39-51-3202 has been violated.

3. This amendment is proposed to clarify the procedure to be used in imposing administrative penalties pursuant to 39-51-3201 and in referring cases for criminal prosecution pursuant to 39-51-3202.

4. Interested parties may submit their data, views or arguments concerning the proposed rule in writing to R. Scott Currey, General Counsel, P.O. Box 1728, Helena, MT 59624, no later than June 25, 1983.

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 R. Scott Currey, General Counsel, P.O. Box 1728, Helena, MT 59624, no later than June 10, 1983.

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

7. The authority of the department to make the proposed rule is based on Section 39-51-301, MCA, and the rule implements Section 39-51-3201 and 39-51-3202, MCA.

DAVID L. HUNTER
Commissioner
Department of Labor and Industry

Certified to Secretary of State May 16, 1983

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT of Rule 42.28.302, relating to the expiration date of the special fuel user's permit.	NOTICE OF PROPOSED AMENDMENT of Rule 42.28.302, relating to the expiration date of the special fuel user's permit. NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 25, 1983, the Department proposes to amend rule 42.28.302 in order to change the expiration date of the special fuel user's permit from February 28th to December 31st.

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

42.28.302 PERMIT DETAILS (1) A special fuel user's permit is valid until ~~February 28~~ December 31 of the year ~~following the year of issuance~~ in which it was issued unless suspended or revoked for cause and in the case of reproduced copies of the permit issued by the department, only if clear and legible.

Subsection (2) remains the same.

3. The change is being proposed to eliminate problems the February 28th expiration date has been causing. The Department initially adopted the rule with the February 28th expiration date to allow additional time for the submission of required documents. Experience, however, has shown that this lag time is not necessary and that the expiration date has created administrative and tax enforcement problems. The Department believes that changing the expiration date to December 31st will eliminate those administrative problems.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to:

Ann Kenny
Department of Revenue
Legal Division
Mitchell Building
Helena, Montana 59620

no later than June 23, 1983.

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 Ann Kenny at the above address no later then June 23, 1983.

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

Legislature, from a governmental subdivision, or agency; or from an association having no less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 25.

7. The authority of the agency to make the proposed amendments is based on §15-70-104, MCA, and the rules implement §15-70-302, MCA.

Ellen Feaver

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 05/16/83

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

In the matter of the repeal of Rules 46.4.129 and 46.5.120; the adoption of rules; and the amendment of Rules 46.4.127, 46.12.502, 46.12.550, 46.12.552, 46.12.555, 46.12.556, 46.12.1101, 46.12.1102, 46.12.1103, 46.12.3603, 46.12.3804 and 46.12.3805 pertaining to the implementation of the program for home and community-based medicaid services for elderly, physically disabled and developmentally disabled persons.	)	NOTICE OF PUBLIC HEARING ON THE PROPOSED REPEAL OF RULES 46.4.129 AND 46.5.120; THE ADOPTION OF RULES; AND THE AMENDMENT OF RULES 46.4.127, 46.12.502, 46.12.550, 46.12.552, 46.12.555, 46.12.556, 46.12.1101, 46.12.1102, 46.12.1103, 46.12.3603, 46.12.3804 and 46.12.3805 PERTAINING TO THE IMPLEMENTATION OF THE PROGRAM FOR HOME AND COMMUNITY-BASED MEDICAID SERVICES FOR ELDERLY, PHYSICALLY DISABLED AND DEVELOPMENTALLY DISABLED PERSONS

TO: All Interested Persons

1. On June 16, 1983, at 9:30 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the repeal of Rules 46.4.129 and 46.5.120; the adoption of rules; and the amendment of Rules 46.4.127, 46.12.502, 46.12.550, 46.12.552, 46.12.555, 46.12.556, 46.12.1101, 46.12.1102, 46.12.1103, 46.12.3603, 46.12.3804 and 46.12.3805 pertaining to the implementation of the program for home and community-based medicaid services for elderly, physically disabled and developmentally disabled persons.

2. Rule 46.4.129 proposed to be repealed can be found on page 46-125 of the Administrative Rules of Montana.

The authority of the department to repeal the rule is based on 53-5-205, MCA.

Rule 46.5.120 proposed to be repealed can be found on page 46-214 of the Administrative Rules of Montana.

The authority of the department to repeal the rule is based on 53-5-205, MCA.

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

RULE I FOOD DISTRIBUTION RATIOS (1) The division shall distribute all food, cash or a combination of food and cash received from the United States department of agriculture

through area agencies to nutrition service providers based on each provider's proportion of the total number of meals served in the state under the Older Americans Act.

The authority of the department to adopt the rule is based on 53-2-201, MCA and HB 424, Ch. 516, L. 1983 and implements 53-2-201, MCA and HB 424, Ch. 516, L. 1983.

RULE II NUTRITION SERVICES, ELIGIBILITY (1) Eligibility for congregate nutrition services will be determined as follows:

(a) a person will be considered for eligibility if a member of one of the following categories:

(i) a person aged 60 years or older;

(ii) the spouse of a person aged 60 years or older regardless of that spouse's age;

(iii) a handicapped or disabled non-elderly person residing in a housing facility occupied primarily by elderly persons and at which congregate nutrition services are provided; or

(iv) a person providing volunteer services to a congregate nutrition service provider during meal hours.

(b) a nutrition provider, in accordance with the criteria in subsection (a) and standard procedures adopted by the provider to govern enrollment in the services, will determine who will be recipients of that provider's services.

The authority of the department to adopt the rule is based on 53-2-201, MCA and HB 424, Ch. 516, L. 1983 and implements 53-2-201, MCA and HB 424, Ch. 516, L. 1983.

RULE III NUTRITION SERVICES, DEFINITIONS (1) "Congregate meals" means those meals served in a group setting at a selected site that has the seating and dining furniture necessary for service of meals family style, restaurant style or cafeteria style.

(2) "Home delivered meals" means those meals transported from a preparation site to persons in their residences and is inclusive of those programs commonly known as meals on wheels.

(3) "Nutrition service provider" means a non-profit corporation or public agency providing, on a regular basis, congregate or home delivered meals to elderly or other adult persons who, due to age, handicaps, etc., are unable to provide themselves with regular meals.

The authority of the department to adopt the rule is based on 53-2-201, MCA and HB 424, Ch. 516, L. 1983 and implements 53-2-201, MCA and HB 424, Ch. 516, L. 1983.

RULE IV NUTRITION SERVICES, FOOD REQUIREMENTS (1) The nutrition service provider shall ensure that:

(a) procedures are used which preserve nutritional value and food safety in the purchase and preparation of food and delivery of meals;

(b) appropriate food containers and necessary utensils are used for blind and handicapped persons;

(c) no food prepared or canned in the home way may be used in meals provided by providers. Only commercially processed, canned food may be used;

(d) hot transported food be at 140° F or above from time of final food preparation to completion of serving;

(e) cold food be maintained at 45° F or below from time of initial service to completion of service; and

(f) all food transported to sites is considered "leftover", except unopened pre-packaged food, and food remaining at the meal site or main food preparation center be thrown away.

(2) Vitamins and/or mineral supplements shall not be provided by the nutrition service provider.

(3) Each meal served by the service provider shall contain at least one-third of the current recommended dietary allowance as established by the food and nutrition board of the national academy of sciences, national research council.

The authority of the department to adopt the rule is based on 53-2-201, MCA and HB 424, Ch. 516, L. 1983 and implements 53-2-201, MCA and HB 424, Ch. 516, L. 1983.

RULE V NUTRITION SERVICES, GENERAL PROVIDER REQUIREMENTS

(1) A nutrition service provider shall:

(a) accept and use any United States department of agriculture food made available to it;

(b) assure arrangement for the appropriate transportation, storage and use of the food;

(c) assist older persons to take advantage of benefits available to them under the food stamp program;

(d) coordinate its activities with agencies responsible for administering the food stamp program;

(e) comply with all state and local sanitation and safety regulations applicable to food preparation, delivery, and serving; and

(f) provide persons with nutrition education information that promotes improved food selection, better eating habits and other health and nutrition related practices.

(2) If a nutrition service provider receives United States department of agriculture cash, the cash shall be spent only for buying food.

(3) Special meals for any persons who have health, religious or ethnic dietary needs shall be provided by the nutrition service provider unless the department exempts the provider from this requirement. Such exemption may be

granted only when the foods and skills to provide a special diet are unavailable to the provider.

The authority of the department to adopt the rule is based on 53-2-201, MCA and HB 424, Ch. 516, L. 1983 and implements 53-2-201, MCA and HB 424, Ch. 516, L. 1983.

RULE VI CONGREGATE NUTRITION SERVICES, PROVIDER REQUIREMENTS (1) The nutrition service provider shall provide:

(a) a hot or other appropriate meal in a congregate setting at least once a day, five or more days a week;

(b) services as close as possible to the majority of eligible older persons;

(c) preference to community facilities when locating a congregate site;

(d) to all staff working in the preparation of food, supervision by a person who will ensure the application of hygiene techniques and practices in food handling preparation and service;

(e) training by qualified personnel in sanitation, food preparation, and portion control for all paid and volunteer staff who prepare, handle and serve food;

(f) at least semi-annual review of the menus used and when the menus are completely changed by a registered dietician, to assure that compliance with subsection (3) of RULE IV is met. It is recommended that a cycle menu be used to assure such compliance;

(g) that development and analysis of menus be the responsibility of a qualified dietician/nutritionist; and

(h) that menus and menu analyses be maintained for audit purposes on file for three (3) years.

The authority of the department to adopt the rule is based on 53-2-201, MCA and HB 424, Ch. 516, L. 1983 and implements 53-2-201, MCA and HB 424, Ch. 516, L. 1983.

RULE VII HOME DELIVERED NUTRITION SERVICES, PROVIDER REQUIREMENTS (1) Nutrition service providers who provide home delivered meals shall:

(a) provide for home delivered meals at least once a day, five or more days a week;

(b) provide meals with a satisfactory storage life;

(c) with the consent of the older person, or his representative, bring to the attention of appropriate officials for follow-up, conditions or circumstances which place the older person or the household in imminent danger;

(d) where feasible and appropriate, make arrangements for the availability of meals to older persons in weather-related emergencies;

(e) make at least a quarterly written evaluation of each recipient in order to re-evaluate the need for the continuation of home delivered meals; and

(f) provide a standard procedure for assessing the recipient's need for other in-home services beyond the meal.

The authority of the department to adopt the rule is based on 53-2-201, MCA and HB 424, Ch. 516, L. 1983 and implements 53-2-201, MCA and HB 424, Ch. 516, L. 1983.

RULE VIII HOME ATTENDANT SERVICES, DEFINITION (1) Home attendant services consist of general household activities performed by a home attendant. Such services are provided to a person who is unable to manage his home or care for himself or others in the home or when another who is regularly responsible for these activities on behalf of that person is absent.

The authority of the department to adopt the rule is based on 53-2-201, MCA and implements 53-2-201, MCA.

RULE IX HOME ATTENDANT SERVICES, ELIGIBILITY (1) In order to be considered by the department for receipt of home attendant services, a person must be eligible for one of the following categories of service:

(a) aid to families and dependent children (AFDC);

(b) supplemental security income (SSI);

(c) medicaid;

(d) child protective services; or

(e) adult protective services.

(2) Home attendant services will be provided as follows:

(a) at the discretion of the department to persons in the categories listed in subsections (1)(a) through (1)(c) who are determined through a professional evaluation to be in need of those services and for whom there are direct care staff available to provide those services.

(b) to persons in subsections (1)(d) and (1)(e) for whom the services are a documented part of a child or adult protective services case plan developed by a community services division social worker.

(3) Home attendant services are available only to a person in their home.

(4) Receipt of home attendant services by any person must be consented to by the person or their guardian.

The authority of the department to adopt the rule is based on 53-2-201, MCA and implements 53-2-201, MCA.

RULE X HOME ATTENDANT SERVICES, SERVICES AVAILABLE (1) Home attendant services may include but are not limited to:

(a) household management services;
(b) health supportive services;
(c) social restorative services;
(d) teaching services; and
(e) personal care attendant services.

(2) Household management services consist of assistance with those activities necessary for maintaining and operating a home and may include assisting the recipient in finding and relocating in other housing.

(3) Health supportive services consist of assistance with those activities necessary to meet a person's health care needs.

(4) Social restorative services consist of assistance which will further a person's involvement with activities and other persons.

(5) Teaching services consist of activities which will improve a person's or family skills in household management, self care, social functioning, and child care activities.

(6) Personal care attendant services consist of health oriented tasks which include basic personal hygiene and grooming (bathing, dressing, shaving), assistance with toileting, assistance with self-administered medications, assistance with food, nutrition, diet (including the preparation of meals if incidental to medical need), and accompanying the patient to obtain medical diagnosis or treatment.

The authority of the department to adopt the rule is based on 53-2-201, MCA and implements 53-2-201, MCA.

RULE XI TERMINATION OF HOME ATTENDANT SERVICES (1) The recipient may request that home attendant services be discontinued or may request a change of home attendant. The social worker must act on this request.

(2) The department may, in its discretion and in accordance with these rules, terminate home attendant services to a recipient.

(a) The social worker must inform the recipient both in person and in writing of the decision to discontinue services and the reasons.

The authority of the department to adopt the rule is based on 53-2-201, MCA and implements 53-2-201, MCA.

RULE XII HOME AND COMMUNITY-BASED SERVICES PROGRAM, IMPLEMENTATION SCHEDULE (1) The United States department of health and human services (HHS) has granted the department the authority to provide medicaid services under a home and

community-based services waiver for a period of three years with an effective date of July 1, 1983.

(2) As approved by the secretary of HHS, implementation of the home and community-based services program will be as follows:

(a) No sooner than July 1, 1983:

(i) for elderly persons and physically handicapped persons, Missoula County will be served.

(ii) for developmentally disabled persons, SRS Region I and V, and Lewis and Clark County in SRS Region IV, will be served.

(b) No sooner than October 1, 1983:

(i) for elderly persons and physically handicapped persons, Yellowstone County will be served.

(ii) for developmentally disabled persons, SRS Region III, will be served.

(c) No sooner than January 1, 1984:

(i) for elderly persons and physically handicapped persons, Lewis and Clark County, Gallatin County, Cascade County, Custer County, and Richland County will be served.

(ii) for developmentally disabled persons, SRS Regions II and IV will be served.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XIII LIMITING ENROLLMENT ON BASIS OF AVAILABLE FUNDS (1) For FY 84, enrollment in the home and community-based program at any point in time is limited to 360 elderly persons, 50 physically disabled persons, and 100 developmentally disabled persons. For FY 85, enrollment in the program at any point in time is limited to 360 elderly persons, 50 physically disabled persons, and 150 developmentally disabled persons. Enrollment will be on a first-come-first-served basis.

(2) The department may reduce the number of persons to be served under the program below the numbers specified in (1) on the basis of available funds.

(3) When reducing the number of persons to be served under the program, the department may:

(a) reduce the number of medicaid individuals to be served by a case management team;

(b) postpone implementation in a particular service area or region;

(c) waive implementation in particular service areas or regions;

(d) eliminate services that may be provided in the home and community-based service programs; or

(e) eliminate one or more categories of the persons to be served.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XIV INDIVIDUALS WHO MAY BE SERVED (1) Under the home and community-based services program, services may be provided to those persons who meet all of the following requirements:

(a) are elderly, physically disabled or developmentally disabled;

(i) "elderly" means a person 65 years of age or older.

(ii) "physically disabled" means a person whose ability to function independently in family or community, or whose ability to engage or continue in employment is so limited by the severity of his physical or mental disability that it has been determined that independent living and rehabilitation services are required in order to enable achievement of a greater level of independence in functioning in family or community or engaging or continuing in employment.

(iii) "developmentally disabled" means a person who is suffering from disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded persons if the disability originated before the person attained age 18, has continued or can be expected to continue indefinitely, and constitutes a substantial handicap of such persons.

(b) are medicaid eligible;

(c) are under the direction and care of a physician, who has prescribed long term care for the person;

(d) require the level of care of an SNF, ICF or ICF/MR, as determined by the preadmission screening as provided for in Rules LIX, LX, and LXI;

(e) reside in the service areas specified in Rule XII;

(f) do not reside in a hospital or long term care facility as defined in 50-5-101(20), MCA; and

(g) have needs that can be met through the home and community-based services program at a cost not to exceed the maximum amount allowed in accordance with Rule XXII.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XV HOME AND COMMUNITY-BASED SERVICES, DEFINED (1) The following services may be provided under the home and community-based services program:

(a) case management services, as defined in Rule XVII;

(b) homemaker services, as defined in Rule XXV;

(c) personal care attendant services, as defined in Rule XXVIII;
(d) adult day services, as defined in Rule XXXI;
(e) habilitation services, as defined in Rule XXXV;
(f) respite care services, as defined in Rule XXXVIII;
(g) medical alert and monitoring systems, as defined in Rule L;
(h) nutrition services, as defined in Rule LVI;
(i) environmental modifications/adaptive equipment, as defined in Rule L;
(j) transportation services, as defined in Rule LIII;
(k) outpatient physical therapy services, as defined in Rule XLIV;
(l) outpatient occupational therapy services, as defined in Rule XLI; and
(m) speech pathology and audiology services, as defined in Rule XLVII.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XVI GENERAL REQUIREMENTS (1) Home and community-based services will be provided only by or through providers under contract with the department or with contracts approved by the department.
(2) All providers of service shall meet the requirements contained in ARM 46.12.301 through 46.12.308.
(3) Services may be provided only when indicated in an individual plan of care as defined in Rules XX or XXI.
(4) All facilities providing services must meet all applicable fire and safety standards in order to receive reimbursement under the home and community-based services program.
(5) All providers must have and implement such fiscal and personnel management policies as the department directs.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XVII CASE MANAGEMENT SERVICES, DEFINITION (1) For developmentally disabled persons, case management services consist of:
(a) developing individual plans of care as defined in Rule XXI;
(b) monitoring and managing such plans of care;
(c) establishing and arranging relationships with service providers under contract with the department;
(d) maximizing the recipient's efficient use of services and community resources, including mobilizing and using

"natural helping networks" such as family members, church members and friends; and

(e) facilitating interaction among people working with the recipient.

(2) For elderly persons and physically disabled persons, case management services consist of:

(a) developing individual plans of care as defined in Rule XX with the recipient's and attending physician's involvement;

(b) monitoring and managing individual plans of care;

(c) establishing and arranging relationships with service providers and community resources through subcontracts and formal agreements;

(d) maximizing the recipient's efficient use of services and community resources, including mobilizing and using "natural helping networks" such as family members, church members and friends;

(e) facilitating interaction among people working with the recipient; and

(f) acting as billing provider for all subcontracts.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XVIII CASE MANAGEMENT SERVICES, REQUIREMENTS

(1) Case management services may be provided only by department personnel or by providers under contract with the department.

(2) For developmentally disabled persons, the case manager must:

(a) meet the requirements for certification of a qualified mental retardation professional as contained in Rule LXII;

(b) function in a manner which is administratively separate from providers under contract for direct service; and

(c) serve a maximum caseload of 40 persons.

(3) For elderly and physically disabled persons, the case management team must:

(a) consist of a half-time clerical person, a registered nurse licensed to practice in the state of Montana, and a medical social worker for elderly persons or an independent living counselor for physically disabled persons;

(b) function in a manner which is administratively separate from providers of direct services; and

(c) serve a maximum caseload of 60 persons.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XIX CASE MANAGEMENT SERVICES, REIMBURSEMENT

(1) For developmentally disabled persons, case management services provided by department employees shall not be reimbursed; case management services provided by a case manager under contract with the department shall be reimbursed based on a negotiated rate. The negotiated rate shall be based on:

(a) historical costs in the service area for similar services for similar recipients; or

(b) reasonable costs based on specific recipient needs if no historical basis is available.

(2) For elderly persons and physically disabled persons, case management services provided by a case management team shall be reimbursed based on a negotiated per diem rate not to exceed 10 percent of the statewide average per diem rate for skilled nursing and intermediate care facilities, plus an incentive payment.

(a) The negotiated per diem rate shall be based on:

(i) historical costs exclusive of capital expenditures in the service area for similar services for similar clients; or

(ii) reasonable costs exclusive of capital expenditures based on specific recipient needs if no historical basis is available.

(b) The incentive payment shall be allowed in accordance with the following:

(i) To be eligible for the incentive payment, the case management team must contain costs, through prudent development of plans of care, within the following limits:

(A) total payments for home health services, as defined in ARM 46.12.550, to recipients covered under the contract with the case management team may not exceed 10 percent of the total cost of nursing home care for those recipients had they been served in a skilled nursing or intermediate care facility; and

(B) total payments under subcontracts for home and community-based services other than case management services may not exceed 50 percent of the total cost of nursing home care for those recipients had they been served in skilled nursing or intermediate care facilities.

(ii) The amount of the incentive payment will be as negotiated with the case management team and may not exceed the difference between 50 percent of the total cost of nursing home care for recipients covered under the contract had they been served in skilled nursing or intermediate care facilities and the total payments made under subcontracts for home and community-based services other than case management services.

(c) Contracts shall be issued on the basis of submitted bids that do not exceed the reimbursement limits specified in this rule and that meet all other applicable state and federal statutes and regulations.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XX INDIVIDUAL PLANS OF CARE FOR ELDERLY AND PHYSICALLY DISABLED PERSONS (1) An individual plan of care for elderly or physically disabled persons is a written plan of treatment developed on the basis of an assessment and determination of the status and needs of a recipient.

(2) The individual plan of care shall be developed prior to the recipient's entry into home and community-based services and be formally reviewed and approved by the department. The plan must be revised and approved at intervals not to exceed 90 days from the initial or previously reviewed individual plan of care.

(3) Each individual plan of care shall be developed by the case management team.

(4) The case management team in developing the plan of care shall consult with the recipient or the recipient's representative and with the recipient's attending physician. The case management team may also consult family members, relatives, psychologists, medical personnel and other consultants.

(5) Each individual plan of care shall include at least the following:

(a) diagnosis, symptoms, complaints and complications indicating the need for home and community-based services;

(b) a description of the recipient's functional level;

(c) objectives;

(d) any orders for:

(i) medication;

(ii) treatments;

(iii) restorative and rehabilitative services;

(iv) activities;

(v) therapies;

(vi) social services;

(vii) diet; and

(viii) other special procedures recommended for the health and safety of the recipient to meet the objectives of the plan of care.

(e) the specific services to be provided, the frequency of the services, and the type of provider to provide them;

(f) the projected costs of each service; and

(g) names and signatures of all persons who have participated in developing the individual plan of care (including the recipient, unless the recipient's inability to participate is documented) which will verify participation, agreement with the individual plan of care, and acknowledgement of the confidential nature of the information presented and discussed.

(6) The case management team shall provide a copy of the individual plan to the recipient.

(7) Individual plan of care approval will be based on:
(a) completeness of plan;
(b) consistency of plan with preadmission screening data; and
(c) feasibility of service provision, including cost-effectiveness of plan as provided for in Rule XXII.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XXI INDIVIDUAL PLANS OF CARE FOR DEVELOPMENTALLY DISABLED PERSONS (1) Individual plans of care for developmentally disabled persons must conform with ARM 46.8.105, with the following additions:
(a) The recipient's attending physician must certify in writing that the specific services prescribed in the individual plan of care are in keeping with the medical needs of the recipient.
(b) The individual plan of care must include a description of each service to be provided, the frequency of those services, and the type of provider.
(c) The individual plan of care must include the projected costs of each service.
(d) The individual plan of care must include documentation:
(i) of the need for the level of care of an SNF, ICF or ICF/MR;
(ii) of the feasibility of the individual plan of care;
(iii) of the consistency of the individual plan of care with the assessment;
(iv) of informed consent; the recipient has been informed of the feasible alternatives under the waiver and permitted to choose among them; and
(v) that the recipient has been informed of the procedural protection of a fair hearing.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XXII COST OF PLAN OF CARE AS REASON FOR DENYING SERVICES (1) Home and community-based services will be denied to a recipient if the cost of such services, when adjusted to include the equivalent of room and board costs, would exceed the cost of institutional care for the recipient. This determination will be made by the department before the plan of care has been approved.
(a) The cost of home and community-based services will include the cost of all services to be provided to the recipient, including those services which are to be paid from

sources other than medicaid (for example, from sources such as Title XX of the Social Security Act or Title III of the Older Americans Act). Service needs which are to be met by family members or volunteer organizations, however, will be excluded from the cost comparison. Assistance which is meant to meet the room and board needs of the recipient (for example, SSI payments and food stamps) will also be excluded from the comparison. Services which are excluded from a nursing home's per diem rate at ARM 46.12.1205(2) will also be excluded in any comparison of costs.

(b) Costs shall be determined as follows:

(i) For ICF and SNF levels of care, payment rates projected in accordance with ARM 46.12.1204 for one year for the facilities in the state are multiplied by the number of medicaid patient days for the previous year for each facility. This is divided by the number of medicaid patient days throughout the state. An equivalent of room and board costs, $285 per month, is subtracted from this weighted average. This figure is the ceiling against which annualized projected costs under the plan of care are compared.

(c) For the ICF/MR level of care, a statewide average projected per diem will be derived, using the previous year's utilization rates for each facility. This weighted average will be adjusted by subtracting $285 per month. This adjusted figure is the ceiling against which annualized projected costs under the plan of care are compared.

(d) The cost comparison shall be made on the basis of annualized costs.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XXIII INFORMING BENEFICIARY OF CHOICE (1) If a person is determined by the department to require the level of care provided in a SNF, ICF or ICF/MR, the person or his representative will be informed of the feasible alternatives, if any, available under the medicaid waiver and will be permitted to choose among them. An institutional alternative will be included as a choice.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XXIV NOTICE AND FAIR HEARING (1) The department will provide written notice to applicants for and recipients of home and community-based services when the following determinations are made by the department concerning their status pertaining to:

(a) financial eligibility;

(b) level of care;

(c) feasibility and/or cost-effectiveness of home and community-based services to the recipient;

(d) services to be made available to the recipient under a plan of care for home and community-based services; and

(e) termination of recipient's eligibility for home and community-based services.

(2) The department will provide a recipient of home and community-based services with notice 10 days before termination of services due to a determination of ineligibility.

(3) The department will provide the "to be terminated" recipients of home and community-based services notice 30 days before any termination of home and community-based services which is due to the financial exigencies of the program. Such terminations will be made in accordance to Rule XIII.

(4) An individual may request a fair hearing for any final determinations as listed in subsections (1)(a) through (e) made by the department which he is dissatisfied with.

(5) Fair hearings will be conducted as provided for in ARM 46.2.201 et. seq.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XXV HOMEMAKER SERVICES, DEFINITIONS (1) Homemaker services consist of general household activities performed by a home attendant. Such services are provided to a person who is unable to manage his home or care for himself or others in the home, or when another who is regularly responsible for these activities is absent. These services may consist of:

(a) household management services as defined in Rule X; and

(b) health supportive services, social restorative services and teaching services as defined in Rule X.

(2) Homemaker services will be provided only in a person's place of residence.

(a) Place of residence includes an individual's own home or a foster home. Place of residence does not include a hospital or a long term care facility as defined in 50-5-101(20), MCA.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XXVI HOMEMAKER SERVICES, REQUIREMENTS (1) Homemaker services will be provided only after homemaker services provided through department employees or through programs

funded with state and federal funds other than medicaid have been exhausted.

(2) Homemaker services may be provided only by a provider that:

(a) is an organized community program; and

(b) provides training for and supervision of the home attendant.

(3) Home attendants must be:

(a) physically and mentally able to perform the duties required;

(b) able to work under supervision;

(c) trained in home management and care of disabled and elderly persons; and

(d) literate and able to follow written orders.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XXVII HOMEMAKER SERVICES, REIMBURSEMENT (1) Reimbursement for homemaker services shall be the lowest of the following:

(a) the amount paid through Title XX funded programs;

(b) the amount paid through programs funded under Title III of the Older Americans Act;

(c) the provider's usual and customary charges (billed charges), or rates negotiated by the department or its designee.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XXVIII PERSONAL CARE ATTENDANT SERVICES, DEFINITION (1) Personal care attendant services mean medically oriented tasks provided in a person's place of residence which include basic personal hygiene and grooming (bathing, dressing, showering), assistance with toileting, assistance with self-administered medications, assistance with food, nutrition, diet (including the preparation of meals if incidental to medical need), and accompanying the recipient to obtain medical diagnosis or treatment.

(2) Personal care attendant services in a recipient's place of residence may include homemaker services as defined in Rule XXV.

(3) Place of residence includes a person's own home, foster home or a community home for the developmentally disabled, except that personal care attendant services may not include homemaker services when the person resides in a community home for the developmentally disabled. Place of

residence does not include a hospital or long term care facility as defined in 50-5-101(20), MCA.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XXIX PERSONAL CARE ATTENDANT SERVICES, REQUIREMENTS (1) The requirements for personal care attendant services are as found in ARM 46.12.556, except that when a personal care attendant also provides homemaker services the attendant must also be trained in home management.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XXX PERSONAL CARE ATTENDANT SERVICES, REIMBURSEMENT (1) Reimbursement for personal care attendant services shall be as provided in ARM 46.12.557, even when personal care attendant services includes the provision of homemaker services.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XXXI ADULT DAY CARE SERVICES, DEFINITIONS (1) Adult day care services include provision for health, social and habilitation needs of a person that are offered under the home and community-based services program in settings outside the person's place of residence for periods of four or more hours daily but do not include residential overnight services.

(a) Sheltered employment and similar forms of direct training for employment of persons are not adult day care services for the purposes of the home and community-based services program and therefore will not be funded under medicaid.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XXXII ADULT DAY CARE SERVICES, REQUIREMENTS (1) To be eligible to receive reimbursement under the home and community-based services program the adult day care provider must meet:

(a) for developmentally disabled persons, the minimum standards as provided for in ARM 46.8.110;

(b) for physically disabled persons, the minimum standards as provided for in ARM 46.6.603 or 46.8.110; and

(c) for elderly persons, the minimum standards as provided for in Rule XXXIV.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XXXIII ADULT DAY CARE SERVICES, REIMBURSEMENT

(1) Reimbursement for adult day services shall be the lowest of the following:

(a) the provider's usual and customary charges (billed charges); or

(b) rates negotiated with providers by the department or its designee.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XXXIV ADULT DAY CARE SERVICES, PROGRAM CRITERIA

(1) The program criteria for adult day care for elderly persons are as follows:

(a) Basic service requirements of all adult day care programs are:

(i) a safe and comfortable environment;

(ii) scheduled leisure time activities;

(iii) rest periods;

(iv) self-care training;

(v) emergency medical arrangements; and

(vi) contact by the provider with the home situation.

(b) Additional services that may be offered in adult day programs are:

(i) family counseling;

(ii) legal services;

(iii) personal care services, baths and nail cutting (only when center is attached to a licensed nursing home or hospital facility);

(iv) health maintenance services;

(v) health education; and

(vi) special diets.

(2) The facility requirements are as follows:

(a) Space and hours of operation criteria are:

(i) two rooms for group activities;

(ii) a quiet place for resting (can be one of the above rooms);

(iii) office space;

(iv) storage space;

(v) separate kitchen (if meals are prepared); and

(vi) adequate lavatory facilities.

(b) The location of the adult day service should be in an area close to the residences of the majority of participants.

(c) The hours of operation of an adult day care facility will be governed by the needs of the group served but should include at least 4 or more hours of service.

(3) Staffing criteria are:

(a) a salaried director;

(b) another salaried staff person to help and relieve the director;

(c) in adult day care programs with more than 10 clients, there must be a salaried person, in addition to the director, for each ten clients;

(d) volunteers must not replace required salaried staff; and

(e) staff must be trained in basic first aid techniques.

(4) Records:

(a) Participant's records should include:

(i) a face sheet with basic personal information such as name, address and next of kin;

(ii) a physician's statement on specific needs and limitations of the person;

(iii) a written plan for emergency medical treatment, including the names of the attending physician, an alternative physician, ambulance and hospital services;

(iv) record of any accident or illness;

(v) attendance records; and

(vi) home situation information.

(b) Staff records should include:

(i) face sheet;

(ii) attendance;

(iii) job assignment; and

(iv) record of accidents.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XXXV HABILITATION SERVICES, DEFINITION (1) Habilitation is defined as intervention designed to assist in the development of a person's skills or the reduction of behavior which interferes with the person's development. These skills are determined by the individual habilitation planning team as appropriate in relation to the person's current developmental level and needs in accordance with the principle of normalization.

(2) Habilitation services for developmentally disabled persons will be delivered in the following settings:

(a) adult community homes;

(b) children's community homes; and

(c) natural and foster homes.

(3) Habilitation services for physically disabled persons will be delivered in the following settings:

(a) natural and foster homes.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XXXVI HABILITATION SERVICES, REQUIREMENTS (1) All providers of habilitation services for developmentally disabled persons will meet the requirements as provided for in ARM 46.8.110.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XXXVII HABILITATION SERVICES, REIMBURSEMENT (1) Reimbursement for habilitation services will be based upon a negotiated rate established through a contract. This rate will be based on:

(a) historical costs in the service area for similar services for similar clients; or

(b) reasonable costs based upon specific recipient needs if no historical basis is available.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XXXVIII RESPITE CARE, DEFINITION (1) Respite care means care provided to a recipient in need of supportive care so as to relieve those persons normally caring for the recipient from that responsibility.

(2) Respite care may be provided only on a short-term or temporary basis, such as part of a day, weekends or vacation periods.

(3) Respite care may be provided in a recipient's place of residence or through placement of the recipient in a skilled nursing facility, an intermediate care facility or an intermediate care facility for the mentally retarded.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XXXIX RESPITE CARE, REQUIREMENTS (1) A skilled nursing facility, an intermediate care facility, or an intermediate care facility for the mentally retarded which provides respite care to a recipient of the home and com-

munity-based services program must meet the requirements of ARM 46.12.1101(1)(a).

(2) Persons who provide respite care to a recipient of home and community-based services must be determined by the case manager or case management team to be:

(a) physically and mentally qualified to provide this service to the recipient; and

(b) aware of emergency assistance systems.

(3) Persons who provide respite care to a recipient of home and community-based services may be required by the case manager or case management team to have the following when the recipient's needs so warrant:

(a) knowledge of the physical and mental conditions of the recipient;

(b) knowledge of common medications and related conditions of the recipient; and

(c) capability to administer basic first aid.

(4) Respite care available to a recipient is limited to 25 days in a calendar year. Additional respite care must be authorized by the department.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XL RESPITE CARE, REIMBURSEMENT (1) Respite care provided by a skilled nursing facility, an intermediate care facility or an intermediate care facility for the mentally retarded shall be reimbursed at the rate as established for that facility in accordance with ARM 46.12.1204.

(2) Respite care provided by an individual provider shall be reimbursed at the lowest of the following:

(a) the amount paid through Title XX, Title V or other federal, state or county funded programs;

(b) the provider's usual and customary charges (billed charges); or

(c) rates negotiated with providers by the department or its designee.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XLI OUTPATIENT OCCUPATIONAL THERAPY SERVICES, DEFINITION (1) Outpatient occupational therapy services is defined as provided for in ARM 46.12.545, with the following addition:

(a) Occupational therapy services may be provided for habilitative purposes to disabled persons.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XLII OUTPATIENT OCCUPATIONAL THERAPY SERVICES, REQUIREMENTS (1) Requirements for outpatient occupational therapy services are as provided for in ARM 46.12.546.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XLIII OUTPATIENT OCCUPATIONAL THERAPY SERVICES, REIMBURSEMENT (1) Reimbursement for outpatient occupational therapy services is as provided for in ARM 46.12.547.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XLIV OUTPATIENT PHYSICAL THERAPY SERVICES, DEFINITION (1) Outpatient physical therapy services is defined as provided for in ARM 46.12.525, with the following additions:

(a) Outpatient physical therapy services may be provided for habilitative purposes to disabled persons.

(b) Physical therapists may provide treatment training programs that are designed to:

(i) preserve and improve abilities for independent function, such as range of motion, strength, tolerance, coordination and activities of daily living; and

(ii) prevent, insofar as possible, irreducible or progressive disabilities through means such as the use of orthotic prosthetic appliances, assistive and adaptive devices, positioning, behavior adaptations and sensory stimulation.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XLV OUTPATIENT PHYSICAL THERAPY SERVICES, REQUIREMENTS (1) Requirements for outpatient physical therapy services are as provided for in ARM 46.12.526.

(2) A physical therapy assistant, student or aide may assist in the practice of physical therapy under direct supervision of the licensed physical therapist who is responsible for and participates in the patient's treatment program.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XLVI OUTPATIENT PHYSICAL THERAPY SERVICES, REIMBURSEMENT (1) Reimbursement for outpatient physical therapy services is as provided for in ARM 46.12.527.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XLVII SPEECH PATHOLOGY AND AUDIOLOGY SERVICES, DEFINITION (1) Speech pathology and audiology services is as defined in ARM 46.12.530 and 46.12.535, with the following additions:

(a) Speech pathology services may be provided to disabled recipients for habilitative purposes.

(b) Speech pathology and audiology services may include:

(i) screening and evaluation of recipients with respect to speech and hearing functions;

(ii) comprehensive audiological assessment of recipients, as indicated by screening results, that include tests of puretone air and bone conduction, speech audiometry, and other procedures, as necessary, and the assessment of the use of visual cues;

(iii) assessments of the use of amplification;

(iv) provision for procurement, maintenance and replacement of hearing aids, as specified by a qualified audiologist;

(v) comprehensive speech and language evaluation of recipients, as indicated by screening results, including appraisal of articulation, voice, rhythm and language;

(vi) participation in the continuing interdisciplinary evaluation of individual recipients for purposes of beginning, monitoring and following up on individualized habilitation programs; and

(vii) treatment services as an extension of the evaluation process, that include:

(A) direct counseling with recipients;

(B) consultation with appropriate persons involved with the recipient for speech improvement and speech education activities; and

(C) work with appropriate recipients to develop specialized programs for developing communication skills in comprehension, including speech, reading, auditory training, hearing aid utilization and skills in expression, including improvement in articulation, voice, rhythm and language.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XLVIII SPEECH PATHOLOGY AND AUDIOLOGY SERVICES, REQUIREMENTS (1) Requirements for speech pathology and audiology services are as provided for in ARM 46.12.531 and ARM 46.12.536.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE XLIX SPEECH PATHOLOGY AND AUDIOLOGY SERVICES, REIMBURSEMENT (1) Reimbursement for speech pathology and audiology services is as provided for in ARM 46.12.532 and ARM 46.12.537.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE L MEDICAL ALERT AND MONITORING/ENVIRONMENTAL MODIFICATIONS, DEFINITION (1) Medical alert and monitoring/environmental modifications services are designed to provide the recipient with accessibility and safety in the home environment so as to maintain or improve the ability of the recipient to remain in the home.

(2) Services may include installation of wheelchair ramps, grab-bars and medical alert systems.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE LI MEDICAL ALERT AND MONITORING/ENVIRONMENTAL MODIFICATIONS, REQUIREMENTS (1) Any medical alert device must be:

(a) underwriters laboratory approved; and

(b) connected with a local emergency response system operated by a hospital, home health agency or physician.

(2) All environmental modifications must meet the specifications set by the american national standards institute in 1980.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE LII MEDICAL ALERT AND MONITORING/ENVIRONMENTAL MODIFICATIONS, REIMBURSEMENT (1) Reimbursement for medical alert and monitoring/environmental modifications shall be the lowest of the following:

(a) the provider's usual and customary charges (billed charges); or

(b) rates negotiated with providers by case management teams.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE LIII TRANSPORTATION SERVICES, DEFINITION (1) Transportation means travel furnished by common carrier or private vehicles to persons for social, medical and other reasons defined as necessary in the individual plan of care.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE LIV TRANSPORTATION SERVICES, REQUIREMENTS (1) Transportation services will be provided only after volunteer transportation services, or transportation services funded by public programs other than medicaid, have been exhausted.

(2) A common carrier must provide proof of:

(a) a valid Montana driver's license;

(b) appropriate automobile insurance ($100,000 per person, bodily injury; $500,000 per accident, bodily injury; $100,000 property damage, per accident);

(c) assurance of vehicle compliance with all applicable federal, state and local laws and regulations; and

(d) written accident and road emergency procedures, as provided by the department, in vehicle.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE LV TRANSPORTATION SERVICES, REIMBURSEMENT (1) Reimbursement for transportation shall be the lowest of the following:

(a) the amount specified in ARM 46.12.1005;

(b) the amount paid through Title XX, Title III of the Older Americans Act, or other federal, state or county funded programs;

(c) the provider's usual and customary charges (billed charges); or

(d) rates negotiated with providers by the department or its designee.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE LVI NUTRITION SERVICES, DEFINITION (1) Nutrition services means congregate meals and home delivered meals as defined in Rule III and is inclusive of programs commonly known as meals on wheels.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE LVII NUTRITION SERVICES, REQUIREMENTS (1) Nutrition services requirements are as provided in Rules IV, V, VI and VII.

(2) Home delivered meals may be provided only on weekends, except that week day meals may be provided on week days when prior authorized by the department.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE LVIII NUTRITION SERVICES, REIMBURSEMENT (1) Reimbursement for nutrition services shall be the lowest of the following:

(a) the amount paid through Title XX, Title III of the Older Americans Act, or other federal, state or county funded programs;

(b) the provider's usual and customary charges (billed charges); or

(c) rates negotiated with providers by the department or its designee.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE LIX PRE-ADMISSION SCREENING (1) Definitions as used in this rule:

(a) "Medicaid recipient" means a person who is currently medicaid eligible or who has applied for medicaid.

(b) "Preadmission screening" means a medical, psychological and social evaluation of a medicaid recipient which yields a level of care determination by the preadmission screening team. For all recipients, the medical component of the evaluation will be accomplished through the use of the Tennessee patient assessment form. For elderly persons and physically disabled persons, the psychological/social component of the evaluation will be accomplished through the use of the geriatric functional rating scale. For developmentally disabled persons, the psychological/social component of the evaluation will be accomplished through the use of the indi-

vidual behavior assessment or other tool approved by the department.

(c) "Preadmission screening team" means an interdisciplinary group of professionals who are qualified as approved by the department to assess the recipient's medical, psychological and social needs in order to determine the level of care required by the recipient. The team includes at least a licensed registered nurse, a person qualified to assess the social and psychological needs of the recipients and a physician advisor. When developmentally disabled persons undergo preadmission screening, the team also includes a qualified mental retardation professional. When physically disabled persons undergo preadmission screening, the physician advisor must be a physiatrist if the recipient's condition requires such expertise.

(2) A medicaid recipient must undergo preadmission screening and must be determined by the preadmission screening team to require the level of care of a skilled nursing facility (SNF), an intermediate care facility (ICF), or an intermediate care facility for the mentally retarded (ICF/MR) before medicaid payment for placement in a SNF, ICF, or ICF/MR or for placement through the home and community-based services program will be authorized.

(a) Criteria for level of care in preadmission screenings are as found in Rule LXI.

(b) If the person is medicaid eligible prior to admission to a SNF, ICF, or ICF/MR, preadmission screening must be done prior to admission.

(c) If the person applies for medicaid while a resident of a SNF, ICF, or ICF/MR, preadmission screening must be done prior to initial medicaid payment.

(d) Private pay (non-medicaid) persons may volunteer for preadmission screening.

(3) Referrals for preadmission screening may be made by:

(a) hospital medical social workers;

(b) the recipient's family;

(c) the recipient's attending physician; and

(d) other interested parties.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE LX RE-EVALUATIONS (1) For persons identified as requiring the level of care of an SNF or ICF, and who enroll in the home and community-based services program, a re-evaluation will take place every 90 days. The process will be as contained in Rule LIX.

(2) For persons identified as requiring the level of care of an ICF/MR, and who enroll in the home and community-

based services program, a re-evaluation will take place every 6 months.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE LXI LEVEL OF CARE CRITERIA (1) Definitions as used in this rule:

(a) "Medical status" means the medical condition of the recipient as determined by objective medical criteria. A recipient may be medically unstable, deteriorating, critical or terminal.

(b) "Management minutes" mean the amount of direct nursing time, including licensed nursing time, required by the recipient, as determined by the department or its designee. Direct nursing time, as used in determining management minutes, does not include nursing administrative time, special demands, and other activities or tasks not directly related to the medical care of the recipient.

(c) "Problems" means functional impairments, including those involving walking, bathing, grooming, dressing, toileting, transferring, feeding, bladder incontinence, bowel incontinence, special sense impairments (such as speech or hearing), mental and behavioral dysfunctions.

(d) "Specified skilled services" means the following 20 skilled services:

(i) special skin care;
(ii) decubitus care;
(iii) IV (intravenous);
(iv) oxygen therapy;
(v) tracheotomy care;
(vi) special colostomy and ileostomy care;
(vii) intake and output;
(viii) sterile dressing;
(ix) suctioning;
(x) drug regulation;
(xi) multiple injections;
(xii) irrigation/special catheter care;
(xiii) inhalation therapy;
(xiv) behavior observation;
(xv) patient/family education;
(xvi) isolation;
(xvii) vital signs evaluation;
(xviii) overall management and evaluation of care plan;
(xix) observation and assessment; and
(xx) tube feeding.

(2) For elderly persons and physically disabled persons, level of care will be assigned using the following methodologies:

(a) Skilled nursing facility (SNF) level of care is indicated when:

(i) the person requires 180 management minutes or more of nursing care;

(ii) the person requires one of the specified skilled services;

(iii) the person requires 40 management minutes of licensed nursing time per 24 hours; or

(iv) the person meets any two of the following criteria:

(A) the person's medical status is unstable, deteriorating, critical or terminal;

(B) the person requires 150 minutes or more of nursing care;

(C) the person has 5 or more problems determined to be high-level by the department or its designee.

(b) Intermediate care facility (SNF) level of care is indicated when:

(i) the person does not qualify for skilled level of care; and

(ii) the person is determined by the department or its designee to need care at a level higher than personal care.

(c) ICF level of care is also indicated when:

(i) the person in the absence of the home and community-based services program and related resources would require care at the intermediate level as determined by the department or its designee through a functional rating of the person. The need for such care, arising from this absence, is indicated when the person:

(A) is able to ambulate (walk or wheel) to a dining room or equivalent;

(B) is capable of self care with minimal assistance;

(C) has four or fewer problems determined to be low level by the department or its designee; and

(D) requires no more than one-hour of nursing care per 24 hours.

(d) A candidate for discharge is a person who has 2 or less problems. This criteria does not apply to persons with a diagnosis of mental illness or mental retardation.

(3) For developmentally disabled persons, level of care will be assigned using the following methodologies:

(a) Intermediate care facility for the mentally retarded (ICF/MR) level of care is indicated when a developmentally disabled person as defined in Rule XIV:

(i) has severe medical problems requiring substantial care, but not to the extent that habilitation is impossible;

(ii) has extreme deficits in self-care and daily living skills which require intensive training; or

(iii) has significant maladaptive social and/or interpersonal behavior patterns which require an on-going, supervised program of intervention.

(b) Skilled nursing facility (SNF) level of care is indicated when a developmentally disabled person as defined in Rule XIV:

(i) has needs for medical care which override the need for the active treatment provided in an ICF/MR; and

(ii) meets the requirements for SNF level of care as found in subsection (2)(a) above.

(c) Intermediate care facility (ICF) level of care is indicated when a developmentally disabled person as defined in Rule XIV:

(i) has needs for medical care which override the need for the active treatment provided in an ICF/MR; and

(ii) meets the requirements for ICF level of care as found in subsection (2)(b) above.

The authority of the department to adopt the rule is based on HB 424, Ch. 516, L. 1983 and implements HB 424, Ch. 516, L. 1983.

RULE LXII QUALIFIED MENTAL RETARDATION PROFESSIONAL

(1) The department will approve persons as qualified mental retardation professionals for purposes of providing pre-screening as described in Rule LIX and case management services as described in Rule XVII.

(2) Qualified mental retardation professional means a person who has specialized training or one year of work experience in habilitation or related services with mentally retarded or other developmentally disabled individuals.

(3) The department will accept as evidence of specialized training the following factors:

(a) licensure or certification in a profession which involves direct care to developmentally disabled persons;

(b) documentation of training, such as certification as a developmental disabilities client programming technician; or

(c) certification as a developmental disabilities professional person.

(4) The department will accept as evidence of work experience documentation of supervised employment in direct care to developmentally disabled persons.

The authority of the department to adopt the rule is based on 53-6-113 and 53-20-204, MCA and HB 424, Ch. 516, L. 1983 and implements 53-6-101 and 53-20-203, MCA and HB 424, Ch. 516, L. 1983.

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

46.4.127 PROVISION OF CONGREGATE NUTRITION SERVICES~~,~~

~~CONGREGATE NUTRITION PROVIDERS~~ (1) An area agency may award nutrition services funds only to a nutrition service provider which:

(a) provides congregate nutrition services;

(b) ~~can~~ provides home delivered nutrition services directly or by contract; ~~and~~

(c) agrees to coordinate its activities with, and provide some meals at, the community focal point; and

(d) meets the relevant requirements of ~~ARM--46.4.129~~ Rules II through VII.

(2) An area agency shall award funds to a nutrition services provider which:

(a) was a nutrition project receiving funds under the former Title VII of the act on September 30, 1978; and.

(b) has carried out its nutrition servicesactivities with demonstrated effectiveness.

~~(3)--The nutrition services provider shall:~~

~~(a)--provide a hot or other appropriate meal in a congregate setting at least once a day, five or more days a week;~~

~~(b)--locate congregate nutrition services as close as possible to the majority of eligible older persons who are all other persons and the spouse of the older person regardless of age; and~~

~~(c)--give preference to community facilities when locating a congregate site.~~

The authority of the department to amend the rule is based on 53-5-205, MCA and implements 53-5-205, MCA.

46.12.502 SERVICES NOT PROVIDED BY THE MEDICAID PROGRAM

(1) Items or medical services not specifically included within defined benefits of the medicaid program are not reimbursable under the medicaid program.

(2) The following medical and nonmedical services are explicitly excluded from the Montana medicaid program except for those services covered under the health care facility licensure rules of the Montana department of health and environmental sciences when provided as part of a prescribed regimen of care to ~~the~~ an inpatient of a licensed health care facility, and except for those services specifically available, as listed in Rule XV, to persons eligible for home and community-based services:

(a) chiropractic services;

(b) acupuncture services;

(c) naturopathic services;

(d) dietician services;

(e) nurse practitioner services;

(f) psychiatric social work services;

(g) mid-wifery~~,~~ services;

(h) social work services;
(i) physical therapy aide services;
(j) physician assistant services;
(k) nonphysician surgical assistance services;
(l) nutritional services;
(m) masseur or masseuse services;
(n) dietary supplements;
(o) homemaker services; and
(p) telephone service in home, remodeling of home, plumbing service, car repair and/or modification of automobile.

The authority of the department to amend the rule is based on 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and implements 53-6-141, MCA and HB 424, Ch. 516, L. 1983.

46.12.550 HOME HEALTH SERVICES, DEFINITION (1) Home health services are the following services provided by a licensed home health ~~care~~ agency on a part-time or intermittent basis to a recipient in his place of residence~~;~~ ~~which does not include a hospital, skilled nursing facility or intermediate care facility except for home health services in an intermediate care facility that are not required to be provided by the facility~~:

(a) nursing services;
(b) home health aide services;
(c) physical therapy~~,~~ services;
(d) occupational therapy~~,~~ services;
(e) speech therapy~~,~~ services; and
(f) medical supplies and equipment suitable for use in the home.

~~(2) The above services, when provided to residents of skilled nursing or intermediate care facilities, are considered institutional services and, as such, the department's rules for those specific services will be applicable.~~

(2) Place of residence includes a person's own home, a personal care facility, a foster home, a community home for the developmentally disabled, a rooming house or a retirement home. Place of residence does not include a hospital, skilled nursing facility or intermediate care facility except that home health services may be provided in an intermediate care facility if those services are not required to be provided by the facility.

(3) Nursing services may be provided by contract with a licensed registered nurse in geographic areas not covered by a licensed home health agency.

The authority of the department to amend the rule is based on 53-6-113, MCA and implements 53-6-101, 53-6-131 and 53-6-141, MCA.

46.12.552 HOME HEALTH SERVICES, REIMBURSEMENT (1) Reimbursement for home health services will be at cost, subject to upper limits defined in subsection (3), as determined by an audit conducted according to Title XVIII of the Social Security's Act definition of allowable costs, except that:

(a) payment by the home health agency for contracted therapy services may not exceed the Montana state medicaid therapy fee schedule as an allowable cost for the contracted service~~.~~;

(b) payment for home health services which are medical supplies and equipment and which are provided in intermediate care facilities as allowed in ARM 46.12.550(2) may not exceed the requirements of ARM 46.12.805.

Subsections (2) and (3) remain the same.

(4) Total payment for home health services ~~will~~ may not exceed $400.00 per recipient per month, except with ~~without~~ prior authorization by ~~of~~ the department.

Subsections (5) and (6) remain the same.

The authority of the department to amend the rule is based on 53-6-113, MCA and implements 53-6-101, 53-6-131 and 53-6-141, MCA.

46.12.555 PERSONAL CARE ATTENDANT SERVICES-~~IN-A-RECIPI-ENT'S-HOME~~, DEFINITION (1) Personal care attendant services in a recipient's ~~home~~ place of residence mean medically oriented tasks which include basic personal hygiene and grooming (bathing, dressing, shaving), assistance with toileting, assistance with self-administered medications, assistance with food, nutrition, diet (including the preparations of meals if incidental to medical need), and accompanying the patient to obtain medical diagnosis or treatment.

~~(2)~~ (a) ~~It~~ Except as allowed under the home and community-based program, personal care attendant services does not include basic homemaker/chore services, such as cleaning, dishwashing, repair or laundering of clothing, friendly visiting, or baby sitting.

(2) Place of residence includes a person's own home, foster home or a community home for the developmentally disabled. Place of residence does not include a hospital or a long term care facility as defined in 50-5-101 (20), MCA.

The authority of the department to amend the rule is based on 53-6-113, MCA and implements 53-6-101, 53-6-131 and 53-6-141, MCA.

46.12.556 PERSONAL CARE ATTENDANT SERVICES, REQUIREMENTS

~~These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.~~

~~(1) Personal care service in a recipient's home must be prescribed by a physician in accordance with a plan of treatment.~~ A provider of personal care attendant services will comply with all provider requirements for medicaid as provided for in sub-chapter 3 of ARM, Title 46, chapter 12.

~~(2) Personal care service must be supervised by a registered nurse.~~ Personal care attendant services must be prescribed in accordance with a plan of treatment by a physician and must be supervised in accordance with a plan of treatment by a registered nurse.

~~(3) The personal care service provider cannot be a family member and must meet the following criteria:~~ Personal care attendant services may not be provided to a person by a member of that person's immediate family. For the purposes of this provision a member of that person's immediate family includes the following:

(a) husband or wife;
(b) natural parent;
(c) natural child;
(d) natural sibling;
(e) adopted child;
(f) adoptive parent;
(g) stepparent;
(h) stepchild;
(i) step-brother or step-sister;
(j) father-in-law or mother-in-law;
(k) son-in-law or daughter-in-law;
(l) brother-in-law or sister-in-law;
(m) grandparent;
(n) grandchild;
(o) foster parents; or
(p) foster child.

~~(a) mental competency and the physical ability to perform required personal care services;~~

~~(b) ability to read and write;~~

~~(c) ability to communicate with the recipient and speak English;~~

~~(d) willingness to accept training and supervision of a registered nurse.~~

(4) A provider of personal care attendant services must be:

(a) literate and able to communicate as appropriate with recipients;

(b) trained to perform personal care attendant tasks; and

(c) willing to accept specialized training from and supervision by a registered nurse.

The authority of the department to amend the rule is based on 53-6-113, MCA and implements 53-6-101, 53-6-131 and 53-6-141, MCA.

46.12.1101 ~~APPLICATION AND DETERMINATION~~ CERTIFICATION PROCEDURE FOR NURSING HOME CARE

(1) Nursing home care mean~~ing~~s professional skilled or intermediate nursing care in a licensed facility and may be provided under the following conditions~~:~~:

(a) Each facility must have a signed agreement with the department and have designated a certain number of beds for each classification of care provided by the facility and a per diem rate will have been established in accordance with ARM 46.12.1204.

~~(1)~~ (b) Each patient must be placed in a nursing home under the direction and care of a physician.

(c) Applicants for nursing home admission who are medicaid recipients and persons making application for medicaid, including those making application for medicaid while residents of nursing homes, shall be reviewed and certified by a preadmission screening team as requiring skilled or intermediate level of care before any payment will be made on their behalf.

(i) Payment for nursing home care shall be effective on the date of entry to the nursing home if certification occurs prior to entry to the nursing home.

(ii) Payment for nursing home care shall be effective on the date of certification if certification occurs after entry to the nursing home.

(iii) Ninety (90) day retroactive coverage of nursing home care is available only if:

(A) the client was financially eligible during the retroactive period; and

(B) the client has been certified by the pre-admission screening team as requiring skilled or intermediate level of care during the retroactive period.

(d) Non- medicaid applicants for admission to a nursing home may ~~voluntarily submit to~~ request preadmission screening. The preadmission screening team may screen those non-medicaid applicants as the team's caseload permits. ~~and if the non-medicaid applicant requests this service.~~

Subsections (2) through (10) are deleted in their entirety.

~~(11)~~ (2) All nursing home residents who are recipients of medicaid shall be evaluated on a continuing basis by ~~the designated review organization~~ the department or its designee. Non-medicaid nursing home residents may ~~voluntarily submit to~~ request an evaluation by the ~~designated review organization~~ department or its designee, and the ~~designated review organization~~ department or its designee may, as the caseload permits, evaluate the appropriateness of care received by those persons. ~~as the designated review organization's caseload permits.~~

~~(12)~~ (3) The levels of care which may be provided under the medical assistance program in those ~~homes~~ nursing facilities which meet the licensing requirements of the state department of health for the particular level of care will be:

Subsections (a) through (b)(ii) remain the same.

(c) Intermediate care for the mentally retarded is a service provided in a protected residential setting and includes ongoing evaluation, planning, 24-hour supervision, coordination and integration of health and habilitation services to help each person function at his optimal ability. Habilitation treatment is a program of behaviorally stated goals and objectives for a person which are based on an appropriate assessment of that person's needs and strengths.

The authority of the department to amend the rule is based on 53-6-113, MCA and HB 424, Ch. 516, L. 1983 ~~and~~ implements 53-6-101, MCA and HB 424, Ch. 516, L. 1983.

46.12.1102 ~~SCREENING GUIDELINES FOR~~ LEVEL OF CARE DETERMINATIONS ~~(1) The goal of skilled care is to provide an alternative to hospital care for patients who require general medical management and skilled nursing care on a continuing basis, but who do not require the constant availability of physician services ordinarily found only in the hospital setting.~~

~~(2)~~ (1) ~~There are~~ The three basic considerations in every level of care determination~~:~~ are ~~(a)~~ the individual patient's medical, psychological and social needs; ~~(b)~~ the specific services required to fill these needs; and, ~~(c)~~ the health and other personnel required to adequately provide these services.

(a) Specific level of care criteria, as well as preadmission screening procedures, are found in Rules LIX and LXI.

~~(3)~~ (2) ~~Determining~~ Assessing a patient's medical condition and evaluating the appropriateness of services for that condition is primarily a ~~physician's~~ nurse coordinator's function. If questions arise regarding the patient's medical condition or the propriety of some or all of the services ordered by the attending physician, ~~because the services ordered appear unusual for the type of patient involved, the case should be referred to the designated review organization~~ physician advisor review, including peer review, may be requested by the attending physician..

(3) Assessing a patient's psychological and social condition and evaluating the appropriate services for that condition is primarily a function of the department or its designee.

The authority of the department to amend the rule is based on 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and imple-

ments 53-6-101 and 53-6-131, MCA and HB 424, Ch. 516, L. 1983.

46.12.1103 SKILLED CARE (1) The goal of skilled care is to provide care for patients who require general medical management and skilled nursing care on a continuing basis, but who do not require the constant availability of physician services ordinarily found only in the hospital setting.

~~(1)~~ (2) Skilled nursing care includes components which distinguish it from supportive care. Supportive care does not require professional health training. One component is the observation and assessment of the total needs of the patient. Another component is the rendering of direct services to a patient where the ability to provide the services requires specialized training, such as a registered or a licensed practical nurse.

~~(2)~~ (3) In evaluating whether the services required by the patient are the continuous skilled services which constitute "skilled care", several basic principles are considered.

Subsections (a) through (d) remain the same.

~~(3)~~ (4) Any of the following treatment services or care indicate need for skilled nursing care:

Subsections (a) through (m) remain the same.

The authority of the department to amend the rule is based on 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and implements 53-6-101 and 53-6-131, MCA and HB 424, Ch. 516, L. 1983.

46.12.3603 FINANCIAL REQUIREMENTS, NON-INSTITUTIONALIZED SSI-RELATED INDIVIDUALS AND COUPLES Subsection (1) remains the same.

(2) For individuals and couples under the heading aged, blind or disabled individuals or couples who are not receiving SSI, the SSI financial requirements which are set forth in 20 CFR Part 416, Subparts J, K and L, will be used to determine whether an individual or couple is eligible with respect to resources and with respect to income. 20 CFR Part 416, Subpart J, contains the SSI criteria for evaluating family relationships; 20 CFR Part 416, Subpart K, for evaluating income, including the income of financially responsible relatives; and 20 CFR Part 416, Subpart L, for evaluating resources, including the resources of financially responsible relatives. The department hereby adopts and incorporates by reference 20 CFR Part 416, Subparts J, K and L. A copy of these federal regulations may be obtained from the ~~Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604~~ social security administration.

(a) Notwithstanding the above and in accordance with ARM 46.12.3601(2)(b) and (c), for purposes of this coverage group:

(i) the increase in OASDI benefits on July 1, 1972 will be excluded from unearned income; and

(ii) any cost-of-living increases in OASDI paid under

section 215(i) of the Social Security Act after April 1977 will be excluded from unearned income.

(b) In addition, aged, blind or disabled individuals who would be institutionalized solely because of the income and resources requirements relating to financially responsible relatives will be exempt from those requirements and such individuals will have their eligibility determined on the basis of their own income and resources if the department approves such an exemption. The administrative mechanism for approval of this exemption shall consist of:

(i) The department shall review individual cases.

(ii) The department will accept applications for exemption only from department long term care specialists, and developmental disabilities division area office staff, who must recommend that the income and resources requirements relating to financially responsible relatives not be applied in the particular case.

(iii) The application must justify the exemption by showing that:

(A) The economic burden on the financially responsible relative for the care of the individual is the sole reason that institutionalization of the individual is being pursued. The burden on the financially responsible relative of personally providing care to the individual is not a factor.

(B) Enabling the applicant to be eligible for medicaid on the basis of his own income and resources will result in an individual plan of care for home and community-based services which is feasible and cost-effective as provided in Rule XXII.

Subsections (3) through (3)(ii) remain the same.

(4) For individuals under the heading individuals who were eligible for medicaid in December 1973, the December 1973 OAA, AB, APTD, or AABD financial requirements will be used to determine whether the individual continues to be eligible with respect to December 1973 medicaid financial criteria. A copy of the December 1973 OAA, AB, APTD, and AABD financial requirements may be obtained from the ~~Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604~~ social security administration.

(a) When individuals under this heading must also meet current medicaid financial requirements, as provided in ARM 46.12.3601(4)(b), the SSI financial requirements identified in subsection (2) above apply.

The authority of the department to amend the rule is based on 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and implements 53-6-101 and 53-6-131, MCA and HB 424, Ch. 516, L. 1983.

46.12.3804 INCOME ELIGIBILITY, NON-INSTITUTIONALIZED MEDICALLY NEEDY Subsections (1) through (1)(a)(iii) remain the same.

(b) For groups under non-institutionalized SSI-related

individuals and couples, quarterly countable income will be determined using the SSI income requirements set forth in 20 CFR, Part 416, Subpart K, as supported by 20 CFR, Part 416, Subpart J. 20 CFR Part 416, Subpart K, contains the SSI criteria for evaluating income, including the income of financially responsible relatives, and 20 CFR Part 416, Subpart J, contains the SSI criteria for evaluating family relationships. The department hereby adopts and incorporates by reference 20 CFR Part 416, Subparts J and K. A copy of these federal regulations may be obtained from the ~~Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604.~~ social security administration.

(i) The exemption from the income requirements relating to financially responsible relatives as described at ARM 46.12.3603(2)(b) applies to individuals applying as medically needy.

Subsections (2) through (4)(c) remain the same.

The authority of the department to amend the rule is based on 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and implements 53-6-101 and 53-6-131, MCA and HB 424, Ch. 516, L. 1983.

46.12.3805 RESOURCE STANDARDS, NON-INSTITUTIONALIZED MEDICALLY NEEDY Subsections (1) and (1)(a) remain the same.

(2) For groups under non-institutionalized SSI-related individuals and couples, the SSI resource standards set forth in 20 CFR, Part 416, Subpart L, as supported by 20 CFR, Part 416, Subpart J, will be used to determine whether the individual or couple is eligible with respect to resources. 20 CFR Part 416, Subpart L, contains the SSI criteria for evaluating resources, including the resources of financially responsible relatives, and 20 CFR Part 416, Subpart J, contains the SSI criteria for evaluating family relationships. The department hereby adopts and incorporates by reference 20 CFR Part 416, Subparts J and L. A copy of these federal regulations may be obtained from the ~~Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604.~~ social security administration.

(a) The exemption from the resources requirements relating to financially responsible relatives as described at ARM 46.12.3603(2)(b) applies to individuals applying as medically needy.

Subsection (3) remains the same.

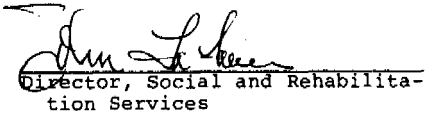
The authority of the department to amend the rule is based on 53-6-113, MCA and HB 424, Ch. 516, L. 1983 and implements 53-6-101 and 53-6-131, MCA and HB 424, Ch. 516, L. 1983.

5. The 1983 Montana Legislature enacted House Bill 424 authorizing the Department of Social and Rehabilitation

Services to implement a program to provide Medicaid funded services in noninstitutional settings. This program of home and community-based Medicaid services has been approved by the secretary of the United States Department of Health and Human Services in accordance with certain provisions of the Omnibus Reconciliation Act of 1981. These rules are intended to implement that program by providing procedures to govern the administration of the program, to determine eligibility of persons for the program, to define the services to be provided, and to provide rates of reimbursement for the services.

6. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than June 24, 1983.

7. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.



Director, Social and Rehabilitation Services

Certified to the Secretary of State May 16, 1983.

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

In the matter of the adoption of a rule and the amendment of Rules 46.12.102, 46.12.302, and 46.12.303 pertaining to medical services, co-payments.	)))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF A RULE AND THE AMENDMENT OF RULES 46.12.102, 46.12.302, AND 46.12.303 PERTAINING TO MEDICAL SERVICES, CO-PAYMENTS

TO: All Interested Persons

1. On June 20, 1983, at 9:30 a.m., a public hearing will be held in Room 304 of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the adoption of a rule and the amendment of Rules 46.12.102, 46.12.302 and 46.12.303 pertaining to medical services, co-payments.

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

RULE I RECIPIENT REQUIREMENTS, CO-PAYMENTS (1) Each recipient, unless eligible for an exemption, must pay to the provider the following co-payments not to exceed the cost of the service:

(a) inpatient hospital services, $3.00 per service not to exceed $65.00 per admission;

(b) outpatient hospital services, $1.00 per service;

(c) podiatry services, $1.00 per service;

(d) outpatient physical therapy services, .50 per service;

(e) speech pathology, .50 per service;

(f) audiology services, .50 per service;

(g) hearing aides, .50 per service;

(h) outpatient occupational services, .50 per service;

(i) home health services, $1.00 per service;

(j) personal care services in a recipient's home, .50 per service;

(k) home dialysis for end stage renal disease, .50 per service;

(l) private duty nursing services, .50 per service;

(m) clinic services, $1.00 per service;

(n) psychological services, .50 per service;

(o) dental services, $1.00 per service;

(p) outpatient drugs, the amount specified in ARM 46.12.703;

(q) prosthetic devices, durable medical equipment and medical supplies, $.50 per item for items that do not require prior authorization, and $3.00 per item for items that require prior authorization;

(r) optometric services, $1.00 per service;

(s) eyeglasses, $1.00 per service; and

(t) physician's services, $1.00 per service.

(2) The following recipients are exempt from co-payments:

(a) individuals under 21 years of age;

(b) pregnant women; and

(c) inpatients in a hospital, skilled nursing facility, intermediate care facility or other medical institution if such individual is required to spend for the cost of medical care all but his personal needs allowance, as defined in ARM 46.12.4008, including individuals served under the home and community-based services waiver as provided for in Rule XI through LVII of MAR Notice No. 46-2-379 published in the Montana Administrative Register.

(3) No co-payment will be imposed with respect to emergency services or family planning services.

The authority of the department to adopt this rule is based on Sections 53-2-201 and 53-6-113, MCA, and the rule implements Section 53-6-141, MCA.

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

46.12.102 MEDICAL ASSISTANCE, DEFINITIONS (1) Department means the Montana department of social and rehabilitation services.

(2) Medically necessary service, or services, means a service reimbursable under ARM, Title 46, chapter 12, subchapters 5,7,8,9 and 20 or any service listed separately on a hospital claim which is reasonably calculated to prevent, diagnose, correct, cure, alleviate, or prevent the worsening of conditions in a patient which:

(a) endanger life, or

(b) cause suffering or pain, or

(c) result in illness or infirmity, or

(d) threaten to cause or aggravate a handicap, or

(e) cause physical deformity or malfunction and there is no other equally effective, more conservative, or substantially less costly course of treatment more suitable for the recipient requesting the service or, when appropriate, no treatment at all.

(i) Services which are considered by the medical profession as experimental or which are generally regarded by the medical profession as unacceptable treatment will not be considered medically necessary for the purpose of the medical assistance program.

(ii) Emergency service means a service performed after the provider's usual hours of business or a service that must be provided in a hospital emergency room to prevent the death or serious impairment of the health of a recipient.

Subsections (3) through (35) remain the same.

The authority of the department to amend this rule is based on Section 53-6-113, MCA, and the rule implements Sections 53-6-101, 53-6-131, and 53-6-141, MCA.

46.12.302 CONTRACTS Subsections (1) through (3) remain the same.

(a) No provider may deny services to any recipient because of the recipient's inability to pay a co-payment specified in Rule I.

Subsection (4) remains the same.

The authority of the department to amend this rule is based on Sections 53-2-201 and 53-6-113, MCA, and the rule implements Sections 53-6-101, 53-6-111, 53-6-113 and 53-6-141, MCA.

46.12.303 BILLING, REIMBURSEMENT, CLAIMS PROCESSING, AND PAYMENT Subsections (1) through (3) remain the same.

(a) Providers may bill recipients for the co-payments specified in Rule I.

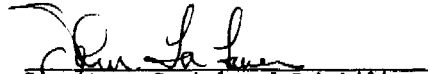
Subsections (4) through (7)(b) remain the same.

The authority of the department to amend this rule is based on Sections 53-2-201 and 53-6-113, MCA, and the rule implements Sections 53-6-101, 53-6-111, and 53-6-141, MCA.

4. The Department is proposing these co-payments because the executive budget was developed using the anticipated savings from co-payments allowed under the federal Tax Equity and Responsibility Act of 1983. Therefore, the payments are necessary to assure that the Department stays within its appropriation for Medicaid. Co-payments are intended to encourage Medicaid recipients to use the Medicaid program for only necessary medical care and to avoid unnecessary or excessive use of Medicaid services.

5. Interested parties may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than June 28, 1983.

6. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.



Director, Social and Rehabilitation Services

Certified to the Secretary of State May 16, 1983.

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

In the matter of the repeal of Rules 46.16.101 through 46.16.103, 46.16.105, 46.16.106, 46.16.108, 46.16.110 and 46.16.115 pertaining to the end stage renal program	))))))	NOTICE OF PROPOSED REPEAL OF RULES 46.16.101 THROUGH 46.16.103, 46.16.105, 46.16.106, 46.16.108, 46.16.110 AND 46.16.115 PERTAINING TO THE END STAGE RENAL PROGRAM

TO: All Interested Persons

1. On July 1, 1983, the Department of Social and Rehabilitation Services will repeal Rules 46.16.101 through 46.16.103, 46.16.105, 46.16.106, 46.16.108, 46.16.110 and 46.16.115 pertaining to the End Stage Renal Program.

2. The rules to be repealed can be found on pages 46-6197 through 46-6214 of the Administrative Rules of Montana.

3. The department is repealing these rules as directed by SB 418, Ch. 692 passed by the 48th Legislature. SB 418 transfers the End Stage Renal Disease Program to the Department of Health and Environmental Sciences and repeals the above-stated rules of this department relating to the End Stage Renal Disease Program.

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 16, 1983.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of Rule 10.57.112 Certification of Exchange Teachers	))))	NOTICE OF THE ADOPTION OF RULE 10.57.112 CERTIFICATION OF EXCHANGE TEACHERS

TO: All Interested Persons

1. On March 17, 1983, the Board of Public Education published notice of the proposed adoption of Rule 10.57.112 Certification of Exchange Teachers, at page 217 of the Montana Administrative Register, issue number 5.

2. The agency has adopted the rule as proposed.

3. No comments or testimony were received.

Harriett C Meloy

HARRIETT C. MELOY, CHAIRMAN
BOARD OF PUBLIC EDUCATION

By Madelaine Dym

Certified to the Secretary of State May 12, 1983.

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

NEW EMERGENCY RULE

1. Statement of reasons for emergency: House Bill 207, passed by the 1983 Legislature at the initiative of the Legislative Auditor, eliminated the statutory fee schedule in Section 37-42-308, MCA, and, in place of the statute gave the department the authority to set fees to cover the costs of administration associated with applications for certification of individuals as water supply system or wastewater treatment plant operators, as well as the ongoing licensing program. Since the bill was effective March 28, 1983, the fee schedule in the statute was eliminated on that date, with the result that no fee schedule now exists until the department promulgates one by rule.

However, the law continues to require certified operators to apply for renewal of their licenses and to pay the required fee prior to July 1 of each year or suffer license suspension. At present, no fee is required because no fee schedule exists. The licensing and certificaton program for water and wastewater system operators is entirely funded through the fees paid by individuals renewing licenses prior to July 1 and new applicants for certificates, most funding coming from the approximately 1150 individuals in the former category. In effect, if no fees are paid prior to July 1, the department will be unable to perform its statutory duty to ensure, through its licensure and certification program (including the conducting of examinations), that operators of water and wastewater systems are qualified to operate those systems safely, resulting in a profound threat to public health.

It is impossible to adopt and make effective a rule containing a fee schedule before the middle of July, much less prior to July 1 of this year, if normal rulemaking procedure is followed. Therefore, in order to ensure that the licensing and certification program can continue, the department is adopting an emergency fee rule, effective immediately, which contains fees for licensure of each class of operator, with the intent to adopt a permanent fee rule as soon as possible.

2. The rule provides as follows:

RULE I FEES An applicant for certification or a certified operator applying for renewal of his certificate must pay to the department the fee below which is set for the class in which he is or wishes to be certified:

(1) Class I, $20
(2) Class II, $15
(3) Class III, $10
(4) Class IV, $5
(5) Class V, $3

3. The authority of the department to adopt the rule is based on section 37-42-202, MCA, and implements sections 37-42-304 and 37-42-308, MCA.

4. The rule is effective May 16, 1983.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State May 16, 1983

BEFORE THE BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA

In the matter of the Amendment of Rule 23.14.408	)))	NOTICE OF THE AMENDMENT OF RULE 23.14.408

TO: All Interested Persons:

1. On February 10, 1983 the Board of Crime Control published notice of a proposed amendment to rule 23.14.408 concerning certification requirements for peace officer trainees attendance and performance at certified training courses on page 113 of the 1983 Montana Administrative Register, issue number 3.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule as it provides standards for those peace officers who have prior law enforcement training and experience at the supervisory level in another state, are presently employed at the level by Montana law enforcement agencies and are requesting supervisory certification.

Michael Lewis
Administrator

Certified to the Secretary of State May 05, 1983

BEFORE THE BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA

In the matter of the Amendment of Rule 23.14.409	)))	NOTICE OF THE AMENDMENT OF RULE 23.14.409

TO: All Interested Persons:

1. On February 10, 1983 the Board of Crime Control published notice of a proposed amendment to rule 23.14.409 concerning certification requirements for peace officer trainees attendance and performance at certified training courses on page 115 of the 1983 Montana Administrative Register, issue number 3.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule as it provides standards for those peace officers who have prior law enforcement training and experience at the command level in another state, are presently employed at the level by Montana law enforcement agencies and are requesting command certification.

Michael Lavin
Administrator

Certified to the Secretary of State May 05, 1983

BEFORE THE BOARD OF CRIME CONTROL
OF THE STATE OF MONTANA

In the matter of the Amendment of Rule 23.14.410	)))	NOTICE OF THE AMENDMENT OF RULE 23.14.410

TO: All Interested Persons:

1. On February 10, 1983 the Board of Crime Control published notice of a proposed amendment to rule 23.14.410 concerning certification requirements for peace officer trainees attendance and performance at certified training courses on page 117 of the 1983 Montana Administrative Register, issue number 3.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule as it provides standards for those peace officers who have prior law enforcement training and experience at the administrative level in another state, are presently employed at the level by Montana law enforcement agencies and are requesting administrative certification.

Michael Kemmis
Administrator

Certified to the Secretary of State May 05, 1983

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

In the matter of the amendment of Rule 46.12.703 pertaining to medical services, outpatient drugs, reimbursement	))))	NOTICE OF THE AMENDMENT OF RULE 46.12.703 PERTAINING TO MEDICAL SERVICES, OUTPATIENT DRUGS, REIMBURSEMENT

TO: All Interested Persons

1. On January 27, 1983, the Department of Social and Rehabilitation Services published notice of the proposed amendment of Rule 46.12.703 pertaining to medical services, outpatient drugs, reimbursement at page 65 of the 1983 Montana Administrative Register, issue number 2.

2. The department has amended the rule as proposed.

3. No comments or testimony were received.

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 16, 1983.

VOLUME NO. 40 OPINION NO. 11

TELEVISION DISTRICTS - Tax exemption for recipients of CATV signal;
MONTANA CODE ANNOTATED - Sections 7-13-2528, 7-13-2529.

HELD: The exemption from television district taxes for CATV subscribers provided in section 7-13-2529, MCA, benefits subscribers to CATV systems which receive signals from a television district translator.

10 May 1983

Willis M. McKeon, Esq.
Phillips County Attorney
Phillips County Courthouse
Malta, Montana 59538

Dear Mr. McKeon:

You have requested my opinion on the following question:

> Does the exemption from television district taxes provided for in section 7-13-2529, MCA, for persons receiving signal "through the medium of a community antenna system on which they are a subscriber in good standing" benefit subscribers to a cable television system which receives its signals from a tax-supported television translator?

Title 7, chapter 13, part 25, MCA, authorizes creation of television districts for the purpose of providing television translators with the capacity to bring television signals to remote parts of the State. Section 7-13-2528, MCA, authorizes television district commissioners to levy a special tax for that purpose against persons residing within the district. Section 7-13-2529, MCA, exempts from the tax persons who do not benefit therefrom, including persons who "receive service through the medium of a community antenna system" (hereinafter abbreviated "CATV"). Your letter informs me that a television district was created in

Phillips County providing three stations to residents of the district. In 1980, a CATV system opened for business, providing its subscribers with seven new stations and also furnishing the three old stations through a signal acquired from the television district translator. You inquire whether the CATV subscribers may benefit from the tax exemption provided in section 7-13-2529, MCA, even though they receive the benefits of the television district translator indirectly through the CATV service.

As a general rule, tax exemption statutes should be narrowly construed to promote equity in tax policy. III Sutherland Statutes and Statutory Construction § 66.09 (4th ed. 1974); but see Butte Country Club v. Department of Revenue, 37 St. Rptr. 479, 482, 608 P.2d 111, 115 (1980). In furtherance of this policy, at least one court has stated that "[t]he claimant for an exemption must show that his demand is within the letter as well as the spirit of the law." Jones v. Iowa State Tax Commission, 247 Iowa 530, 74 N.W.2d 563, 565 (1956). Application of the rule of construction would seem to require a holding denying exemption to CATV subscribers who benefit from the tax-supported translator from which their CATV provider receives its signal. I am unable to reach such a conclusion here, however, for two reasons. First, although the policy behind the statute may be clear, the statutory language is equally clear. It provides a tax exemption for subscribers receiving service from CATV, without qualification:

> The taxpayers in the television district who do not receive the signal of the television translator station or who receive direct reception from the television station from which the television translator repeats a signal or receive service through the medium of a community antenna system on which they are a subscriber in good standing will be exempt from the payment of the tax for the support of the television services of the television district.... (Emphasis added.)

§ 7-13-2529(1), MCA. Since rules of statutory construction cannot be applied to add or delete words from a statute, Reese v. Reese, 38 St. Rptr. 2157, 2159, 637 P.2d 1183, 1185 (1981), I am unable to rely on the rules cited above to amend the statute to qualify the

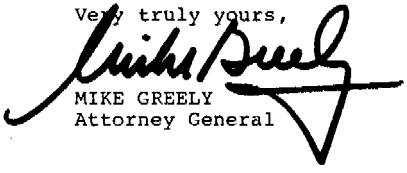
tax exemption there granted. See also Butte Country Club, 608 P.2d at 114. Second, my conclusion is bolstered by the actions of the 1983 Legislature in rejecting HB 527, which would have amended section 7-13-2529, MCA, to withdraw the tax exemption from CATV subscribers who indirectly benefit from a television district translator. The Legislature had the opportunity to clarify the statute and explicitly qualify the tax exemption. Their refusal to do so suggests a legislative intent that the exemption extend to all CATV subscribers.

There is an element of unfairness in this result, since it allows CATV subscribers to receive the benefits of a television district translator without paying a share of the tax, while at the same time requiring those persons within the district who do not receive CATV service to shoulder an inordinate share of the tax burden. However, the power to remedy the situation rests with the Legislature, and I am not empowered to achieve through an attorney general's opinion a result which the Legislature has expressly rejected. See Murray Hospital v. Angrove, 92 Mont. 101, 116, 10 P.2d 577, 583 (1932).

THEREFORE, IT IS MY OPINION:

> The exemption from television district taxes for CATV subscribers provided for in section 7-13-2529, MCA, benefits subscribers to CATV systems which receive signals from a television district translator.

Very truly yours,



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 138, 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 the 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 March 31, 1983. This table includes those rules adopted during the period April 1, 1983 through June 30, 1983, 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 March 31, 1983, 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 and 1983 Montana Administrative Registers.

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