RESERVE

MONTANA ADMINISTRATIVE REGISTER

1983 ISSUE NO. 9
MAY 12, 1983
PAGES 367-515

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 9

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 The notice section contains state agencies' proposed new, amended or repealed rules, the rationale for the change, date and address of public hearing, and where written comments may be submitted.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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STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF PUBLIC ACCOUNTANTS

In the matter of the proposed adoption of new rules of enforcement.	)))	NOTICE OF PUBLIC HEARING FOR THE PROPOSED ADOPTION OF NEW RULES FOR ENFORCEMENT

TO: All Interested Persons:

1. On June 13, 1983 at 9:00 a.m., a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1430 9th Avenue, Helena, Montana to consider the rules of positive enforcement being proposed by the Board of Public Accountants.

2. The proposed rules do not replace or modify any section currently found in the Montana Administrative Code.

3. The proposed rules will read as follows:

"I. DEFINITIONS (1) The word 'licensee' as used in these rules shall include certified public accountants and licensed public accountants." (authority: Sec. 37-1-136, 37-50-201, MCA; implements: Sec. 37-1-136, 37-50-321, MCA)

"II. ENFORCEMENT AGAINST HOLDERS OF CERTIFICATES AND LICENSES (1) Pursuant to sections 37-1-136 and 37-50-321, MCA, and the Montana administrative procedures act, the board may revoke any certificate or license issued under Title 37, Chapter 50, MCA, suspend any such certificate, license, or permit for a period of not more than one year, refuse to renew such certificate, license or permit, censure any licensee, or place any licensee on probation, all with or without terms, for any one or more the following reasons:

(a) fraud or deceit in obtaining a certificate, license, or permit;

(b) cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant or a licensed public accountant by any other state for any cause other than failure to pay a renewal fee or to comply with a continuing professional education requirement in such other states;

(c) failure on the part of a holder of a certificate or license to maintain compliance with the requirements for issuance of a certificate, license, or annual permit;

(d) suspension or revocation of the right to practice before any state or federal agency;

(e) dishonesty, fraud or gross negligence in the practice of public accountancy;

(f) violation of any of the provisions of Title 37, Chapter 50, MCA, or rules promulgated by the board;

(g) conviction of a felony or of any crime, an element of which is dishonesty or fraud, under the laws of any state of the United States;

(h) performance of any fraudulent act while holding

a certificate or license issued under Title 37, Chapter 50, MCA;

(i) any conduct reflecting adversely upon the licensee's fitness to engage in the practice of public accountancy; and

(j) failure to meet the continuing education requirements established by the board.

(2) In lieu of or in addition to any causes specifically provided in subsection (1) of this section, the board may require of a licensee:

(a) satisfactory completion of such continuing professional education programs the board may specify;

(b) limitation of the scope of the accounting practice to those functions which the board may specify;

(c) reimbursement of board costs.

(3) The board may publish the enforcements implemented against licensees under subsections (1) and (2) of this section whenever the board determines that the public's need to know outweighs the licensee's need for confidentiality." (authority: Sec. 37-1-136, 37-50-201, MCA; implements: Sec. 37-1-136, 37-50-321, MCA)

"III. ENFORCEMENT PROCEDURES - INVESTIGATIONS (1) The board may conduct investigations of suspected violations of Title 37, Chapter 50, MCA or of the rules of the board to determine whether to institute proceedings against any person or firm under sections 37-1-136, 37-50-321, MCA; but an investigation under this section shall not be a prerequisite to such proceedings. In aid of such investigations, the board or any member thereof may issue subpoenas to compel witnesses to testify and to produce evidence.

(2) The board may designate any person not a board member to serve as investigation officer to conduct an investigation. The report of the investigating officer, the testimony and documents gathered in the investigation and the pendency of the investigation shall be treated as confidential information by the board and its designees, and shall not be disclosed except to the extent deemed necessary in order to conduct the investigation or in compliance with section 37-1-135, MCA.

(3) Upon finding of reasonable cause, the board shall direct that notice be issued pursuant to section 37-50-321, MCA. If the subject of the investigation is not a licensee, the board shall take appropriate action. Upon finding of no reasonable cause, the board shall close the matter and thereafter release information relating thereto only with the consent of the board and of the person or firm under investigation.

(4) The board may review the professional work of licensed or certified persons on a general and random basis, without any requirement of a formal complaint or suspicion of impropriety on the part of any particular such person. In the event that as a result of such review the board discovers grounds for a more specific investigation, the board may proceed according to these rules.

(5) The board may delegate to a committee of licensees having appropriate experience and competence the duty of reviewing reports submitted by the investigation officer. The purpose of such reviews is to determine the existence of reasonable cause and report its findings to the board. The committee may also be requested to provide the board with its recommendation with respect to sanctions to be imposed upon a licensee found to be in violation of Title 37, Chapter 50, MCA.

(6) After making a final determination and the entry of action taken in the public record, the board may exchange information relating to proceedings resulting in disciplinary action against licensees with the board of accountancy of other states and with other public authorities or private organizations having an interest in such information. (authority: Sec. 37-1-136, 37-50-201, MCA; implements: Sec. 37-1-136, 37-50-321, MCA)

"IV. ENFORCEMENT PROCEDURES - HEARING BY THE BOARD

(1) In any case where reasonable cause has been determined with respect to a violation by a licensee, or where the board has received a written complaint by any person furnishing grounds for a determination of such reasonable cause, or where the board has received notice of a decision by the board of accountancy of another state furnishing such grounds, the board may issue a notice setting forth appropriate charges and set a date for hearing before the board on such charges. The board shall, not less than 30 days prior to the date of the hearing, serve a copy of said notice upon the licensee, either by personal delivery or by mailing a copy thereof by certified mail to the licensee at the address last known to the board, or by civil service according to the Montana rules of civil procedure.

(2) A licensee against whom a notice of proposed board action has been issued under this section shall have the right, reasonably in advance of the hearing, to examine and, at his or her own expense, copy the report of investigation, if any, and any documentary or testimonial evidence and summaries of anticipated evidence, in the board's or its designee's possession relating to the subject matter of the complaint.

(3) In a hearing under this section, the respondent licensee may appear in person or, in the case of a firm, through a partner, officer, director or shareholder or by counsel, examine witnesses and evidence presented in support of the board's action, and present evidence and witnesses on his own behalf. The licensee shall be entitled, on application to the board, to the issuance of subpoenas to compel the attendance of witnesses and the production of documentary evidence.

(4) In a hearing under this section a stenographic record shall be made, and shall be transcribed on request of any party. The cost of the transcription shall be paid by the requesting party.

(5) In a hearing under this section a vote of majority of all members of the board shall be required to sustain any charge and to impose any sanction with respect thereto.

(6) If, after service of notice, the licensee fails to appear at the hearing, the board may proceed to hear evidence against the licensee and may enter such order as it deems warranted by the evidence, which order shall be final unless the licensee petitions for review thereof pursuant to subsection (7) of this section; provided, however, that within 30 days from the date of any such order, upon showing of good cause for the licensee's failure to appear and defend, the board may set aside the order and schedule a new hearing on the complaint to be conducted in accordance with applicable subsections of this rule.

(7) A person who has exhausted all administrative remedies available from the board, and who is aggrieved by the final decision in a contested case before the board, is entitled to judicial review by filing a petition in district court within 30 days after service of the board's final decision or, if a rehearing before the board is requested within 30 days after the decision thereon is served, copies of the petition shall be promptly served on the board. Said judicial review shall in all ways comply with Part 7, Chapter 4 of Title 2, MCA. " (authority: Sec. 37-1-136, 37-50-201, MCA; implements: Sec. 37-1-136, 37-50-321, MCA)

" V. REINSTATEMENT (1) In any case where the board has suspended or revoked a certificate, license, or permit, the board may, upon application in writing by the person or firm affected and for good cause shown, modify the suspension or reissue the certificate, license, or permit.

(2) Before reissuing or terminating the suspension of a certificate, license, or permit, and as a condition thereto, the board may require the applicant therefore

to show evidence of successful completion of specified continuing professional education, or to undergo a practice review conducted in such fashion as the board may specify." (authority: Sec. 37-1-136, 37-50-201, MCA; implements: Sec. 37-1-136, 37-50-321, MCA)

"VI. INJUNCTIONS AGAINST UNLAWFUL ACTS (1) Whenever the board believes that any person has engaged, or is about to engage, in any acts or practices which constitute or will constitute a violation of Title 37, Chapter 50, MCA or of the rules of the board, the board may make application to the appropriate court for an order enjoining such acts or practices, and upon a showing by the board that such person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order or other order as may be appropriate shall be granted by such court without bond." (authority: Sec. 37-1-136, 37-50-201, MCA; implements: Sec. 37-1-136, 37-50-321, MCA)

"VII. SINGLE ACT EVIDENCE OF PRACTICE (1) In any action brought under sections 37-1-136 or 37-50-321, MCA or any other statute, evidence of the commission of a single act prohibited by Title 37, Chapter 50, MCA or the rules of the board, shall be sufficient to justify a sanction, injunction or other disciplinary action without evidence of a general course of conduct." (authority: Sec. 37-1-136, 37-50-201, MCA; implements: Sec. 37-1-136, 37-50-321, MCA)

4. The board is proposing the adoption of these rules to enact a positive enforcement program and to give the board the mechanism to detect and investigate substandard accounting work. In 1979, when the Board of Public Accountants was reviewed for sunset auditing, the report specifically stated that the board needed to establish more effective methods to police its profession.

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 the Board of Public Accountants, 1424 9th Avenue, Helena, Montana 59620-0407, no later than June 9, 1983.

6. The board or its designee will preside over and conduct the hearing.

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

BOARD OF PUBLIC ACCOUNTANTS
JACK DOBBINS, CHAIRMAN

BY: _____
ROBERT WOOD, STAFF ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 2, 1983.

STATE OF MONTANA
DEPARTMENT OF COMMERCE

In the matter of the proposed adoption of a rule pertaining to semi annual assessments for state banks, trust companies, and investment companies.	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE PERTAINING TO SEMI-ANNUAL ASSESSMENTS FOR STATE BANKS, TRUST COMPANIES, AND INVESTMENT COMPANIES

TO: All Interested Persons:

1. On Friday, June 3, 1983, a public hearing will be held in the downstairs conference room of the Department of Commerce building, 1430 9th Avenue, Helena, Montana at 1:30 p.m. to consider the adoption of a rule pertaining to semi-annual assessments for state banks, trust companies and investment companies.

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

3. The proposed rule will read as follows:

"I. SEMI-ANNUAL ASSESSMENT

Total Assets (Million)	Base	Plus rate/ Million	Over (Million)
0-1	0	.0006	0
1-10	600	.000075	1
10-50	1,275	.00006	10
50-100	3,675	.00003	50
over 100	5,175	.00002	100"

4. The department is proposing the rule to implement Chapter 507, 1983 Session Laws (HB 701) which establishes the formula for a semi-annual assessment of state chartered banks, trust companies and investment companies which will allow the Department of Commerce to recover 80% of its supervisory and examination costs.

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 Les Alke, Commissioner of Financial Institutions, Department of Commerce, 1430 9th Avenue, Helena, Montana 59620, no later than June 9, 1983.

6. Robert Wood, Department attorney has been designated to preside over and conduct the hearing.

7. The authority of the department to make the proposed rule is based on section 32-1-213, MCA,and implements section 32-1-213, MCA,as amended by Chapter 507, 1983 Sessions Laws.

DEPARTMENT ~~OF~~ COMMERCE

BY: _____
ROBERT WOOD, STAFF ATTORNEY

Certified to the Secretary of State, May 2, 1983.

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

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

TO: All Interested Persons

1. On June 10, 1983, at 9:00 a.m., a public hearing will be held in Room C209 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rules 16.32.101, 16.32.103, 16.32.107, 16.32.108, 16.32.110, 16.32.111, 16.32.112, 16.32.114, 16.32.118; and the adoption of a new RULE I; all relating to the review of certificate of need applications for new institutional health services and facilities.

2. On August 26, 1982, the department published notice of the proposed amendment of rules 16.32.101, 16.32.103, 16.32.107, 16.32.108, 16.32.110, 16.32.111, 16.32.112, 16.32.114, and 16.32.118, and the adoption of a new rule relating to the review of certificate of need applications for new institutional health services and facilities. This notice appeared at page 1586 of the 1982 Montana Administrative Register, issue number 16. A public hearing was held on the proposed rules on September 20, 1982. On February 24, 1983, the department published proposed amendments to the proposed rules, as a result of comments received at the hearing. This notice appeared at page 158 of the 1983 Montana Administrative Register, issue number 4. On April 2, 1983, the Governor signed into law Senate Bill 293 (Chapter 329, Laws of 1983), amending the Certificate of Need law, and affecting the department's authority, as implemented by the proposed rules. The department has revised the proposed rules to be consistent with SB 293.

3. The rules as now proposed read as follows:

16.32.101 DEFINITIONS For the purposes of these rules:

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

~~(2)~~ ~~"Batching period" means a period established pursuant to (RULE--1) during which letters of intent for specified categories of new institutional health services and for specified regions of the state will be accumulated.~~

~~pending further processing of all letters of intent within the batch.~~

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

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

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

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

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

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

(3) "DOCTOR'S OFFICES" MEANS THE PRIVATE OFFICES OF A PHYSICIAN OR GROUP OF PHYSICIANS, AND ASSOCIATED SUPPORT FACILITIES WHICH ARE AVAILABLE FOR USE ONLY BY THOSE PHYSICIANS WHOSE OFFICES ARE LOCATED ON THE PREMISES. SUCH FACILITIES MAY INCLUDE OBSERVATION BEDS, BUT MAY NOT INCLUDE INPATIENT SERVICES.

(4) ~~(3)~~ ~~(7)~~ "Health service" means major subdivisions, as determined by the department, within diagnostic, therapeutic or rehabilitative areas of care, including alcohol, drug abuse and mental health services, that may be provided by a health care facility. Specific treatments, tests, procedures or techniques in the provisions of care do not, by themselves, constitute a health service.

(a) "Health service" includes radiological diagnostic health services offered in, at, through, by or on behalf of a health care facility including services offered in space leased or made available to any person by a health care

facility ~~which are provided by any computed tomographic scanning equipment,~~ except when the capital expenditure for the addition to or replacement of the same service is less than ~~$150,000~~ $500,000. ~~For the purpose of this subsection, a CT head scanner and a CT body scanner do not provide the same service and a CT fixed scanner and a CT mobile scanner do not provide the same service.~~

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

~~(5)~~ (4) ~~(8)~~ "Enforceable capital expenditure commitment" means an obligation incurred by or on behalf of a health care facility when:

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

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

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

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

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

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

AUTHORITY: Sec. 50-5-103 MCA
IMPLEMENTING: Title 16, Chapter 5, Part 3 MCA

16.32.103 SUBMISSION OF ~~APPLICATION~~ LETTER OF INTENT

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

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

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

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

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

~~(2)~~ (1) At least ~~30~~ 10 ~~[TEN]~~ days before any person acquires or enters into a contract to acquire an existing health care facility, the person shall notify the department and the agency qualified as a health systems agency pursuant to 42 USC 300 1 of the intent to acquire the facility and of the services to be offered in the facility and its bed capacity. The notice must be in writing and must contain the following:

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

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

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

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

(2) ~~(1)~~ ~~(3)~~ Except as provided in ~~subsections~~ SUBSECTION (1) ~~and (2)~~ of this rule ~~Any~~ any person proposing an activity subject to review under section 50-5-301, MCA, AND NOT EXEMPT UNDER [SECTION 9 OF CHAPTER 329, LAWS OF 1983] shall submit to the department a letter of intent as a prerequisite to filing an application for a certificate of need, except a health maintenance organization is excluded from submitting a letter of intent or application for a certificate of need for feasibility surveys or planning funded under 42 U.S.C. Sec. 246. ~~(2)~~ The letter of intent must contain the following information:

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

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

(c) methods and terms of financing the proposal;

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

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

(f) the proposed geographic area to be served.

(3) ~~(3)~~ ~~(4)~~ Within ~~30~~ 10 calendar days after the receipt of ~~the~~ a letter of intent PURSUANT TO ~~SUBSECTIONS~~ SUBSECTION (1) ~~AND (2),~~ AND WITHIN 30 CALENDAR DAYS AFTER RECEIPT OF A LETTER OF INTENT PURSUANT TO SUBSECTION ~~(3),~~ (2), the department shall notify, ~~in writing,~~ the applicant IN WRITING whether or not the activity proposed in the letter is subject to review under section 50-5-301, MCA. ~~If the~~

~~department determines the activity is subject to review, it shall supply an application form to the applicant submitting the letter of intent. The application must be returned to the department within 90 days of receiving it. Failure to return the application form within 90 days requires the process to begin again with the filing of another letter of intent.~~

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

(a) ~~(b)~~ For letters of intent submitted under subsection ~~(2)~~ (1) of this rule, this decision will be based on a determination whether acquisition of the facility will result in changes in the services or bed capacity of the facility, as described in paragraphs (1)(a), (b), and (c) ~~(2)(b), (c) and (d)~~ of this rule. Acquisition of a health care facility from a health maintenance organization will be considered a change in service.

(b) ~~(a) (c)~~ For letters of intent submitted under subsection ~~(3)~~ (2) of this rule, ~~in~~ in determining whether or not a capital expenditure for equipment is over ~~$150,000~~ $500,000, the department will review the list submitted by the applicant pursuant to paragraph ~~(4)(i)~~ ~~(3)(b)~~ (2)(b) of this rule and will aggregate the total cost for each item of equipment obligated for or purchased within a health care facility's fiscal year for a program, service or plan.

(4) AN APPLICANT WHOSE PROPOSAL IS DETERMINED TO BE SUBJECT TO CERTIFICATE OF NEED REVIEW UNDER SUBSECTION (3)(a) OF THIS RULE MUST SUBMIT A FULL LETTER OF INTENT AS DESCRIBED IN SUBSECTION (2) OF THIS RULE WITHIN 30 DAYS OF THAT DETERMINATION IN ORDER TO BE ENTITLED TO REVIEW WITH THE CURRENT BATCH, IF BATCHING IS REQUIRED.

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

(6) IF AN EXISTING HEALTH CARE FACILITY OR DOCTOR'S OFFICE PROPOSES TO ESTABLISH A HOME HEALTH AGENCY, KIDNEY TREATMENT CENTER, LONG-TERM CARE FACILITY, MENTAL HEALTH CENTER, REHABILITATION CENTER, HOSPICE, OR OTHER SERVICE NOT NOT PREVIOUSLY OFFERED BY OR THROUGH THE HEALTH CARE FACILITY OR DOCTOR'S OFFICE AND WHICH WOULD CONSTITUTE A HEALTH CARE FACILITY IF ESTABLISHED INDEPENDENTLY, SUCH PROPOSAL WILL BE REVIEWED PURSUANT TO 50-5-301(1)(f), MCA.

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

~~(a) Classification of applicant.~~

~~(b) General information regarding present facility and the geographical area documented as served by the applicant.~~

~~(c) Description of proposed project.~~

~~(d) Personnel requirements of proposed project.~~

~~(e) Construction aspects of the proposed project.~~

~~(f) Justification of need of proposed project.~~

~~(g) Financial and economic feasibility of proposed project.~~

~~(h) Provision for cost containment of proposed project.~~

~~(i) Equipment list including estimated cost of each item.~~

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

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

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

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

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

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

AUTHORITY: Sec. 50-5-103, 50-5-302, MCA
IMPLEMENTING: Sec. 50-5-301, 50-5-302, MCA

(NEW RULE) (this rule will be numbered 16.32.106)

RULE I BATCHING PERIODS, SUBMISSION OF APPLICATIONS

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

(a) January 1 through January 20

(b) MARCH 1 THROUGH MARCH 20

(c) ~~(b)~~ May 1 through May 20

(d) JULY 1 THROUGH JULY 20

(e) ~~(c)~~ September 1 through September 20

(f) NOVEMBER 1 THROUGH NOVEMBER 20

Except as provided in subsection (5) below AND IN SECTION 16.32.103(4), letters of intent will be accepted only during these periods. Letters of intent received at other times will be assigned to the next batching period.

(2) The following challenge periods are established:

For the batching period ending:	The challenge period is:
January 20	February 1 through ~~April 30~~ FEBRUARY 28
MARCH 20	APRIL 1 THROUGH APRIL 30
May 20	June 1 through ~~August 31~~ JUNE 30
JULY 20	AUGUST 1 THROUGH AUGUST 31
September 20	October 1 through ~~Dec. 31~~ OCTOBER 31
NOVEMBER 20	DECEMBER 1 THROUGH DEC. 31

(3) The following categories of health services will be batched: general medical-surgical, psychiatric, obstetric, pediatric, skilled nursing, ~~and~~ intermediate care, OTHER. ONLY PROPOSALS IN THESE CATEGORIES INVOLVING NEW SERVICES, NEW OR INCREASED BED CAPACITY, OR CONSTRUCTION OR REPLACEMENT OF HEALTH CARE FACILITIES WILL BE BATCHED.

(4) Except as provided in subsection ~~(12)~~ (13) below, upon determination by the department that an activity described in a letter of intent is subject to certificate of need review, the letter of intent will be placed in the appropriate batch, according to its category and region of the state. On the first day of the month following the conclusion of each batching period, the department will publish notices in ~~newspapers~~ A NEWSPAPER of general circulation in the affected areas listing the letters of intent which have been received in the batch just concluded.

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

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

(7) Concurrently with the notices of comparative review, the department will send application forms to all applicants

in the batch, and will notify all applicants of the time period, which may not be less than 30 nor more than 90 days, within which an application must be received by the department. Failure to return the application within the time specified will require the process to begin anew with another letter of intent.

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

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

(a) Classification of applicant.

(b) General information regarding present facility and the geographical area documented as served by the applicant.

(c) Description of proposed project.

(d) Personnel requirements of proposed project.

(e) Construction aspects of the proposed project.

(f) Justification of need of proposed project.

(g) Financial and economic feasibility of proposed project.

(h) Provision for cost containment of proposed project.

(i) Equipment list including estimated cost of each item.

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

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

(a) If the application is determined to be incomplete, the department shall, WITHIN 5 WORKING DAYS AFTER THAT DETERMINATION, notify the applicant in writing by mail of the incompleteness and of the specific information that is necessary to complete the application. The department shall also indicate a time, which may be no less than 15 days, within which the department must receive the additional information requested. WITHIN 15 DAYS AFTER RECEIPT OF THE ADDITIONAL INFORMATION, THE DEPARTMENT SHALL DETERMINE WHETHER THE APPLICATION IS COMPLETE. If the information submitted is still not sufficient, the department may require additional information.

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

(c) An application may be changed any time prior to the department's declaration that the application is complete.

Change in intent of the application or impact on the financial feasibility of the proposed project after the department's declaration requires the process to begin again with the filing of another letter of intent.

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

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

AUTHORITY: Sec. 50-5-103, 50-5-302, MCA
IMPLEMENTING: Sec. 50-5-302, MCA

16.32.107 ACCEPTANCE OF APPLICATIONS; REVIEW PROCEDURES

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

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

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

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

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

(a) the review period schedule;

(b) the date by which a written request for an informational hearing must be received by the department;

(c) the manner in which notification will be provided of the time and place of an informational hearing so requested; and

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

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

~~5.~~ (6)(a) An agency qualified as a health systems agency pursuant to 42 U.S.C. Sec. 300l ~~shall~~ must be given the opportunity to provide the department with recommendations on the application within 60 calendar days after the notice of acceptance of the completed application has been published as required by ARM 16.32.107~~(2)~~ (4) unless another period of time has been agreed to, in writing, by the health systems agency and the department. Health systems agency reviews of an application by a health maintenance organization may not extend beyond 60 days.

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

AUTHORITY: Sec. 50-5-103, 50-5-302, MCA
IMPLEMENTING: Sec. 50-5-302 MCA

16.32.108 INFORMATIONAL HEARING (1) During the course of the 90 day review period, ~~an~~ any affected person ~~or third party payer~~ may request an informational hearing by writing to the department. THE DEPARTMENT MAY ALSO HOLD A HEARING ON ITS OWN INITIATIVE.

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

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

(a) Written notice must be sent by certified mail to the person requesting the hearing, the applicant, AND all other applicants assigned for comparative review with the applicant~~,~~. ~~and an~~ THE agency qualified as health system agency pursuant to 42 U.S.C. Sec. 300l~~,~~, Health care facilities, the Department of Social and Rehabilitation Services, rate review agencies, health maintenance organizations in the service area, and contiguous agencies qualifying as health systems agencies pursuant to 42 U.S.C. Sec. 300l will be notified by ordinary mail.

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

(c) The notice ~~shall~~ must indicate:

(i) date of the hearing;

(ii) time of the hearing;
(iii) location of the hearing; and
(iv) the person to send written comments to prior to the hearing if unable to attend the hearing.

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

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

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

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

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

AUTHORITY: Sec. 50-5-103, 50-5-302, MCA
IMPLEMENTING: Sec. 50-5-302 MCA

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

(1)(a) and (b) No change from existing rule.

(c) In the case of an application proposing a new ~~institutional~~ health service:

(i) The equal access the medically underserved population, as well as all other population within the geographical area documented as served by the applicant will have to the proposed new ~~institutional~~ health service; and

(ii) The effect the proposed new ~~institutional~~ health service will have on energy conservation.

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

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

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

(3) In the case of an application proposing the formation of a health maintenance organization for which assistance may be provided under 42 U.S.C. Sec. 300e the following criteria shall apply:

(a) No change from existing rule.

(b) The availability in a cost-effective and reasonable manner consistent with the basic method of a health maintenance organization or proposed health maintenance organization, of the proposed new ~~institutional~~ health service from other health care facilities. In assessing the availability of these health services from these health care facilities, the department shall consider only whether the services from these providers:

(3)(b)(i) through (iv) No change from existing rule.

(4) No change from existing rule.

(5) No change from existing rule.

(6) In the case of a new ~~institutional~~ health service which is proposed to be provided by or through a health maintenance organization for which assistance may be provided under 42 U.S.C. Sec. 300e and which includes in the proposal the construction, development or establishment of a new inpatient health care facility, the department shall determine whether utilization of the facility by members of the applicant will account for at least 75 percent of the projected annual inpatient days, as determined in accordance with the recommended occupancy levels under the applicable health systems plan, and furthermore:

(6)(a) and (b) No change from existing rule.

AUTHORITY: Sec. 50-5-103, 50-5-304, MCA
IMPLEMENTING: Sec. 50-5-304 MCA

16.32.111 DEPARTMENT DECISION (1) If the department fails to ~~issue~~ REACH a decision within the 90 calendar days, or the longer period of time agreed upon by the applicant, OR TO ISSUE A DECISION WITHIN 5 WORKING DAYS THEREAFTER, a certificate of need ~~shall not be issued.~~ will not automatically issue.

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

(3) The decision of the department must be based on the record and contained in ~~through~~ written findings of fact and conclusions of law, and ~~shall~~ must be mailed to the applicant, all other applicants assigned for comparative review with the applicant, and any agency qualified as a health systems agency pursuant to 42 U.S.C. Sec. 300l and ~~shall~~ must be made available, upon request, to ~~other~~ others for cost. ~~When~~ Whenever the department's decision involves new ~~institutional~~ health services proposed by a health maintenance organization, or the department's decision to deny

a certificate of need is based on its findings with respect to provision of health services to minorities and medically underserved populations, the department shall send copies of the department's written findings and decision to Region VIII office of the Department of Health~~, Education and Welfare~~ and Human Services at the time the applicant is notified of the department's decision.

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

AUTHORITY: Sec. 50-5-103 MCA
IMPLEMENTING: Sec. 50-5-302, 50-5-304 MCA

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

(a) For the purpose of this rule "good cause" exists if the requestor:

(i) presents significant relevant information not previously considered by the department;

(ii) demonstrates that there have been significant changes in factors or circumstances relied upon by the department in reaching its decision; or

(iii) demonstrates the department has failed to follow procedural requirements in reaching its decision.

(b) The request must be received in writing within ~~30~~ 20 calendar days after the department's INITIAL decision has been issued and state facts constituting the alleged "good cause".

(c) The department has 7 calendar days from receipt of the request in which to determine if "good cause" has been demonstrated, and shall notify the requestor, in writing, of its decision. If the department determines "good cause" exists, ~~a contested case~~ AN INFORMAL hearing shall be held within ~~30~~ 20 calendar days after receipt of the request. ~~in accordance with the Montana Administrative Procedure Act and rules implementing it.~~

(d) Notice of the ~~contested case~~ RECONSIDERATION hearing shall be sent to the person requesting the hearing, the applicant, any agency qualified as a health systems agency pursuant to 42 U.S.C. Sec. 3001 and any other affected person upon request. ~~Contents of the notice shall conform to the~~

~~require- ments of the Montana Administrative Procedure Act and its implementing rules.~~

(e) AT THE RECONSIDERATION HEARING, THE AFFECTED PARTIES OR THEIR COUNSEL WILL BE GIVEN THE OPPORTUNITY TO PRESENT WRITTEN OR ORAL EVIDENCE IN OPPOSITION TO THE DEPARTMENT'S ACTION; WRITTEN OR ORAL STATEMENTS CHALLENGING THE GROUNDS UPON WHICH THE DEPARTMENT'S ACTION WAS BASED; AND OTHER WRITTEN OR ORAL EVIDENCE RELATING TO THE FACTORS ON WHICH "GOOD CAUSE" FOR THE HEARING WAS BASED.

(f) ~~(e)~~ The department shall make written findings of fact and conclusions of law which state the basis for its decision within ~~45~~ 30 calendar days after the conclusion of the RECONSIDERATION hearing. These findings of fact and conclusions of law shall be sent to the person requesting the hearing, the applicant, and the agency qualified as the health systems agency pursuant to 42 U.S.C. Sec. 300l. Any other affected person upon request may receive a copy of these findings for cost.

(g) ~~(f)~~ The decision of the department following the reconsideration hearing shall be considered the department's final decision for the purpose of appealing the decision.

(2) ~~An aggrieved applicant or an agency qualified as a health systems agency pursuant to 42 U.S.C. Sec. 300l may appeal the department's final decision to the board by filing with the board a notice of appeal, in writing, within 30 calendar days after the department's final decision has been mailed to the parties described in subsection (1)(d).~~ AN AFFECTED PERSON MAY APPEAL THE DEPARTMENT'S INITIAL DECISION DIRECTLY TO THE BOARD WITHOUT FIRST REQUESTING A RECONSIDERATION HEARING.

~~(3) The appeal shall be held within 30 calendar days after receipt of the notice of appeal and shall be conducted in accordance with the Administrative Procedure Act and its implementing rules.~~

(3) ~~(4)~~ ~~The~~ A decision of the board ON APPEAL shall be made in writing within 45 calendar days after the conclusion of the BOARD hearing, and shall be sent to the applicant, the department and the agency qualified as the health systems agency pursuant to 42 U.S.C. Sec. 300l. Any other affected person upon request may receive a copy of this decision for cost. The board, in accordance with the reasons found in section 2-4-704, MCA, may affirm the department's decision, remand the application to the department for further proceedings, reverse the department's decision or modify the department's decision. The decision of the board shall be considered final.

AUTHORITY: Sec. 50-5-103, 50-5-306, MCA
IMPLEMENTING: Sec. 50-5-306, MCA

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

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

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

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

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

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

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

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

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

(h) CHANGE OF OWNERSHIP OF A HEALTH CARE FACILITY WHICH DOES NOT INVOLVE A CHANGE IN SERVICES OFFERED OR OF RATES CHARGED FOR SERVICES.

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

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

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

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

the notice, the abbreviated review schedule will be terminated and the review of the application will continue in accordance with the normal review procedures.

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

(8) Projects or portions of projects which qualify for abbreviated review under subsection (2)(d) of this rule must be approved if the department determines that the health care facility for which the expenditures are proposed is needed, and that the expenditures are consistent with the state health plan.

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

AUTHORITY: Sec. 50-5-103, 50-5-302, MCA
IMPLEMENTING: Sec. 50-5-302 MCA

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

(1) THE DEPARTMENT MAY, AFTER NOTICE AND OPPORTUNITY FOR A HEARING, SUSPEND OR REVOKE A CERTIFICATE OF NEED UPON A FINDING THAT THE HOLDER OF THE CERTIFICATE IS IN VIOLATION OF THE CERTIFICATE OF NEED LAW, THIS CHAPTER, OR THE TERMS OF THE CERTIFICATE OF NEED. THE NOTICE AND HEARING PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT (TITLE 2, CHAPTER 4, PART 6, MCA) WILL APPLY.

(2)(a) A HOLDER OF A CERTIFICATE OF NEED MAY SUBMIT TO THE DEPARTMENT A WRITTEN REQUEST FOR A 6-MONTH EXTENSION OF HIS CERTIFICATE OF NEED, FOR GOOD CAUSE. THE REQUEST MUST BE SUBMITTED AT LEAST 30 CALENDAR DAYS BEFORE EXPIRATION OF THE CERTIFICATE OF NEED. THE REQUEST MUST SET FORTH THE REASONS CONSTITUTING GOOD CAUSE FOR THE EXTENSION, AND MUST BE ACCOMPANIED BY AN AFFIDAVIT VERIFYING THAT ALL INFORMATION SUBMITTED IS TRUE AND CORRECT.

(b) WITHIN 20 DAYS AFTER RECEIPT OF THE REQUEST, THE DEPARTMENT MUST ISSUE ITS WRITTEN DECISION GRANTING OR DENYING THE EXTENSION. THE DECISION MUST BE SENT TO THE APPLICANT BY CERTIFIED MAIL, AND DISTRIBUTED TO OTHERS AS PROVIDED IN 16.32.111(3).

(c) RECONSIDERATION OF THE DEPARTMENT'S DECISION MAY BE REQUESTED AND CONDUCTED AS PROVIDED IN 16.32.112(1).

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

AUTHORITY: Sec. 50-5-103, 50-5-305, MCA
IMPLEMENTING: Sec. 50-5-305, MCA

4. Please refer to the earlier notices for the rationales for the proposed rules. The following specific comments refer to new changes made in today's notice:

16.32.101 DEFINITIONS Several of the definitions are now set forth in the law and can therefore be deleted from these rules. The change from $150,000 to $500,000 in the definition of "health service" reflects the new review thresholds established by SB 293. A new definition of doctor's office is proposed in order to clarify the limits of the exclusion from review to which such facilities are entitled.

16.32.103 SUBMISSION OF LETTER OF INTENT SB 293 extends certificate of need review to purchases of major medical equipment. The pre-purchase notice previously proposed in [former] subsections (1) and (3)(a) is therefore no longer necessary.

Subsection (6) has been added to clear up a potential ambiguity in the law created by the new $100,000 threshold for review of new health services. If a hospital or other health care facility or doctor's office proposes to establish a new health service which would constitute a new health care facility if established independently, the department will treat such a proposal as the establishment of a new health care facility rather than simply the addition of a new health service. Consequently, the $100,000 threshold would not apply.

NEW RULE I BATCHING PERIODS, SUBMISSION OF APPLICATIONS The new language in subsection (3) reflects the limitations on batching imposed by SB 293. The new language in subsection (11)(a) reflects time constraints for the department's review of applications, as required by SB 293.

16.32.111 DEPARTMENT DECISION The new language in subsection (1) reflects provisions of SB 293.

16.32.112 APPEAL PROCEDURES SB 293 substantially amended the appeal procedures for CON review. In particular, a reconsideration hearing may be granted only for "good cause", even for the applicant. The reconsideration hearing will be an informal procedure, and the affected person has the option of skipping the reconsideration process and appealing directly to the Board. The Board hearing will be a de novo evidentiary procedure. In addition, various time deadlines have been shortened. All of these new provisions are reflected in the proposed rule.

16.32.118 DURATION OF CERTIFICATE; TERMINATION; EXTENSION SB 293 revised the provisions for extension, expiration and termination of a certificate of need. The amendments to rule 16.32.118 establish procedures for termination of a CON whose terms have been violated, and for requests to extend the terms of a CON for "good cause".

5. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Robert L. Solomon, Room C108, Cogswell Building, Capitol Complex, Helena, Montana, 59620, no later than June 15, 1983.

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

7. The authority of the Department to make the proposed rules is based on section 50-5-103, 50-5-302, 50-5-304, 50-5-305, and 50-5-306, MCA, and the rules implement Title 50, Chapter 5, Part 3, MCA.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State May 2, 1983

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

In the matter of the amendment of rule 16.6.116, setting fees for searches of vital statistics records and certified copies of birth, death, and fetal death certificates	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT OF ARM 16.6.116 (Fees for Copies and Research)

TO: All Interested Persons

1. On June 13, 1983, at 10:00 a.m., a public hearing will be held in Room A110 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the amendment of rule 16.6.116, which sets fees for searches of the vital statistics records and certified copies of birth, death and fetal death certificates.

2. The proposed amendment replaces present rule 16.6.116 found in the Administrative Rules of Montana. The proposed amendment would increase the fee for a certified copy of a certificate from $3 to $5, and increase the hourly charge for a search of the vital statistics records from $5 to $10.

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

16.6.116 FEES FOR COPIES AND RESEARCH (1) ~~Prior to October 1, 1981, the department shall charge a fee of $2 for each certified copy of a birth, death, or fetal death certificate issued by the Bureau of Records and Statistics of the department. Effective October 1, 1981, this fee will be $3.~~ The fee is $5 for each certified copy of a birth, death, or fetal death certificate issued by the Bureau of Records and Statistics.

(2) The department shall charge a fee of ~~$5~~ $10 for each hour or fraction thereof spent by bureau personnel, for file searches made at the request of any person.

4. The Department is proposing this amendment to the rule because insofar as the fee for a certified copy of a certificate is concerned, Senate Bill 232, passed by the 1983 legislature and effective July 1, 1983, mandates that the minimum fee for searches and certified copies be $5. The fee for a search is adjusted from $5 to $10 to adequately cover the actual present costs to the department of performing such searches.

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, MT., no later than June 13, 1983.

6. Robert L. Solomon, Cogswell Building, Capitol Complex,

Helena, MT, 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 50-15-111, MCA, and the rule implements section 50-15-111, MCA.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State May 2, 1983

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

In the matter of the adoption of rules setting fees for tests of air quality and micro-biological analyses	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES (Laboratory Fees)

To: All Interested Persons

1. On June 13, 1983, at 10:00 a.m., a public hearing will be held in Room A110 of the Cogswell Building, 1400 Broadway, Helena, Montana, to consider the adoption of rules which set fees for air quality analyses, establish a handling fee for microbiological tests other than those performed on drinking water, and exempt from the handling charges any microbiological test done on a sample submitted at the request of the department

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

3. The proposed rules provide as follows:

RULE I LABORATORY FEES -- AIR (1) Fees for air quality analyses are as follows:

Type of analysis	Cost
Total suspended particulate (TSP), hi-vol sampler	$ 3.80 per filter
TSP, dichotomous sampler	3.70 per filter
Sulfate in hi-vol filter	11.40 per filter
Nitrate in hi-vol filter	11.40 per filter
Trace metals-one metal	10.10 per filter
Trace metals-each additional metal	4.10 per filter
Fluoride: Paper	31.30
Fluoride: Plate	15.70 per plate
Fluoride: Vegetation	54.00
Sulfur and BTU in coal	167.70
Sulphation rate	12.50 per plate

AUTHORITY: Sec. 50-1-202, MCA
IMPLEMENTING: Sec. 50-1-202, MCA

RULE II LABORATORY FEES -- MICROBIOLOGICAL (1) The handling fee is $1.50 per specimen for performance of any microbiological test other than a test of drinking water which is covered by ARM 16.38.302. Microbiological tests include, but are not limited to, diagnostic bacteriology, mycology, parasitology, virology, and immunology analyses.

(2) No handling fee will be charged for a microbiological test on any specimen whose submission to the laboratory was requested by the department.
AUTHORITY: Sec. 50-1-202, MCA
IMPLEMENTING: Sec. 50-1-202, MCA

4. The department is proposing these rules because present law requires it to impose test fees by rule, and

Senate Bill 270, passed by the 1983 legislature, created a fund into which such fees are to go for use by the laboratory to help cover its costs.

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, MT, no later than June 13, 1983.

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

7. The authority of the Department to make the proposed rules is based on section 50-1-202, MCA, and the rules implement section 50-1-202, MCA.

JOHN J. DRYNAN, M.D., Director

Certified to the Secretary of State May 2, 1983

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the Matter of the Amendment of Rules 23.3.131, 23.3.141, and 23.3.142, Concerning Proof of Name and Date of Birth, Military Persons and Dishonored Checks	NOTICE OF PROPOSED AMENDMENT OF RULES 23.3.131, 23.3.141, and 23.3.142 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On June 15, 1983, the Department of Justice proposes to amend rules 23.3.131 concerning acceptable proof of name and date of birth, 23.3.141 concerning military renewal of driver licenses, and 23.3.142 concerning dishonored checks.

2. The rules as proposed provide as follows:

23.3.131 PROOF OF NAME, DATE OF BIRTH, AND SOCIAL SECURITY NUMBER FOR DRIVER'S LICENSE AND DUPLICATE DRIVER'S LICENSE APPLICATIONS. The name and date of birth on all original and duplicate driver license applications must be verified by a birth certificate or other satisfactory evidence. In addition, social security numbers ~~must~~ may be ~~given~~ requested to ensure ready identification. Applicants must produce acceptable documents as follows:

(1) Birth certificate; or

(2) Any two of the following documents at the discretion of the examiner:

(a) School census record;

(b) Federal census record;

(c) Applicant's own child's birth certificate;

(d) Printed notice of birth in newspaper;

(e) Birthday or baby book;

(f) Hospital records;

(g) Voting registration card;

(h) Adoption decree;

(i) Legal change of name as recorded in a court decree;

(j) From members of the military, a letter from the base commander, or a personnel officer, certifying name and date of birth from their records, or a military identification card;

(k) Military discharge or a release from service form, or certified copy;

(l) A valid or expired driver's license issued by any other state or country;
(m) A passport;
(n) Any confirmation of birthdate in a court;
(o) Marriage license;
(p) Baptismal record;
(q) Physician's office record, if physician is one attending birth;
(r) Sworn statement of physician, midwife or attendant present at birth;
(s) Family Bible or photostat of page showing parentage and birth entries; or
(3) Any other documentary evidence which confirms to the satisfaction of the examiner the true identity and date of birth of the applicant. Authority: Sec. 44-1-103 MCA; IMP, 61-5-111(1) MCA

23.3.141 MILITARY PERSONS ~~All active duty military persons are exempt from compliance with the Montana driver license statute.~~ (1) Any person who has a valid Montana driver's license at the time of entering active duty with the armed forces may apply for a military renewal. The military renewal will be valid so long as the person is assigned to active duty not to exceed 30 days following the date of release from active duty, unless the license is suspended, revoked, or cancelled prior to the person's release. Active duty means duty while assigned to any of the armed forces of the United States except temporary active duty in the National Guard or in any reserve unit for less than 6 months, ~~or full-time active duty with a NationalGuard, that has not been called to federal service.~~ Active duty does not include full time active duty with the National Guard unless the National Guard has been called to federal service.

(2) If the person on active duty does not apply for a military renewal, his/her current driver's license will be valid after the date of expiration for not to exceed 30 days following the date of release from active duty only when it is in the person's immediate possession and accompanied by his/her discharge, separation, leave or furlough papers showing the date of entry into the service.

(3) The military renewal is not issued or available to any person who applies for and receives a Montana driver license following the date of assignment to active duty. The military renewal does not extend to the spouse or dependents of the person on active duty. Authority: 44-1-203, MCA; IMP, 61-5-104, MCA

23.3.142 DISHONORED CHECKS (1) If a check drawn and remitted in payment of the driver's license fee is dishonored:

~~(1)~~ (a) the applicant is not entitled to the issuance of a driver's license, and

~~(2)~~ (b) the Division shall cancel ~~previously issued licenses~~ any license issued as a result of the dishonored check.

(2) If a check drawn and remitted in payment of the Driver Rehabilitation Program fee is dishonored:

(a) the person's probationary license shall be cancelled, and

(b) the suspension or revocation, whichever the case may be, shall be reinstated.

Authority: Sec. 44-1-103 MCA; IMP, 61-5-111 and 61-5-201 MCA

3. The rules are proposed to be amended to institute changes in the practices of the department.

4. Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to Assistant Attorney General Sarah M. Power, Justice Building, 215 N. Sanders, Helena, Montana, 59620, no later than June 13, 1983.

5. If a person who is directly affected by the proposed amendments wishes to express data, views and arguments orally or in writing at a public hearing, he or she must make written request for a hearing and submit the requests along with any written comments to Assistant Attorney General Sarah M. Power, Justice Building, 215 N. Sanders, Helena, Montana, 59620, no later than June 13, 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 amendments; from the Administrative Code Committee or 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 59,000 persons based on the 590,000 licensed drivers in Montana.

7. The authority of the department to make the proposed amendments is based on section 44-1-103, MCA.

MIKE GREELY
Attorney General

Certified to the Secretary of State May 2, 1983.

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

In the matter of the Amendment of Rule 24.9.225, relating to the dismissal of complaints in which the Commission staff has found no cause	))))	NOTICE OF PROPOSED AMENDMENT OF RULE 24.9.225 (DISMISSAL OF NO CAUSE COMPLAINTS)
		NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On June 13, 1983, the Human Rights Commission proposes to amend rule 24.9.225, which establishes a procedure to be followed in a case in which the Commission staff has found, after investigation, that no cause exists to credit the allegations of the complaint.

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

24.9.225 PROCEDURE ON FINDING OF NO CAUSE (1) If a finding of no cause is made by the Division in regard to any complaint, notice of the Division finding shall be served on all parties. The Notice shall include a statement of the reasons for the finding and a statement informing the parties of the Charging Party's or aggrieved person's right to seek a reconsideration of the finding. A reasonable time, of at least ten (10) days shall be given to the Charging Party or aggrieved person from the date of service of the notice to request an appeal of the no cause determination. The request shall be in writing.

(2) Upon receipt of a request for reconsideration, the Division Administrator shall schedule an informal conference between the Administrator and the person requesting the reconsideration. The conference shall not be in the form of a hearing and no record of the conference shall be kept. The purpose of the conference is to afford an opportunity for the Charging Party or the aggrieved person to explain to the Administrator any reasons which that person believes support a finding of reasonable cause, and which should have been considered or accorded more weight by the investigator.

(3) If as a result of the informal conference, the Administrator determines that the finding of no cause should be rescinded, he shall rescind the finding and so notify all parties. If the finding is rescinded, the case shall be returned to the person or persons on the Division Staff responsible for its investigation or a new person appointed and the investigation shall continue or new finding entered consistent with the recommendations of the Division Administrator.

(4) If following the informal conference, the Administrator affirms the no cause finding, notice of his decision shall be sent to all parties together with a copy of the original determination and a statement explaining the right of the Charging Party or aggrieved person to request that his or her case be set for hearing. The notice shall specify the time in which the Charging Party or aggrieved person must request that the case be certified for hearing, which in no case shall be less than thirty (30) days from the date that notice of the administrator's determination is sent to the parties.

(5) If a case in which the Division has found no cause is certified for hearing, it shall be heard by the Commission in the same manner in which it hears other contested cases.

(6) If no conference is requested or, subsequent to a conference, no written request for hearing is made in the time stated in the notice, ~~the no cause finding shall be submitted to the Commission at its next meeting. The Commission shall consider all the evidence produced by the division's investigation and either affirm the finding with a dismissal order, order the finding changed to a reasonable cause finding, or order the case resubmitted for further investigation.~~ The division administrator shall issue a dismissal order on behalf of the Commission in which the the no cause finding is adopted as the final order of the Commission. Notice of the ~~Commission determination~~ dismissal order shall be sent to all parties.

(7) ~~Affirmance by the Commission of a finding of no cause~~ The issuance of a dismissal order adopting the no cause finding as the final order of the Commission completes the administrative process with regard to the complaint or with regard to those allegations of the complaint in regard to which no cause if found.

3. The Commission proposes the amendments in order to streamline its procedures and to eliminate duplicative reviews in cases in which the charging party does not request a hearing.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendments in writing to Anne L. MacIntyre, Human Rights Division, Capitol Station, Helena, Montana, 59620, no later than June 10, 1983.

5. If a person who is directly affected by the proposed amendment wishes to express his date, 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 Anne L. MacIntyre, Human Rights Division, Capitol Station, Helena, Montana, 59620, 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. Ten percent of those persons directly affected has been determined to be more than 25 persons based upon the number of potential complainants and respondents in Montana.

7. The authority of the Commission to make the proposed amendment is based on Section 49-2-204, MCA, and section 2 of Chapter 540, 1983 Laws of Montana. The rule as amended implements sections 49-2-504, 49-2-505, and 49-2-507, MCA, and sections 8, 9, and 11 of Chapter 540 1983 Laws of Montana.

In the matter of the adoption of Rules governing the issuance of right to sue letters by the Commission	NOTICE OF PROPOSED ADOPTION OF RULES GOVERNING THE ISSUANCE OF RIGHT TO SUE LETTERS NO PUBLIC HEARING CONTEMPLATED

To: All interested persons:

1. On June 13, 1983, the Human Rights Commission proposes to adopt rules to govern the issuance of right to sue letters in discrimination cases pending before the Commission.

2. The proposed rules provide as follows:

RULE I. ISSUANCE OF RIGHT TO SUE LETTER. (1) When the Commission or Division receives a request from a charging party that a letter be issued entitling the charging party to pursue his complaint in district court or when the Commission or division receives a request from a respondent that the matter be removed to district court, the division shall issue a letter entitling the charging party to pursue the complaint of discrimination in district court if the provisions of [Section 1 of Chapter 505, 1983 Laws of Montana] or of [Section 13 of Chapter 540, 1983 Laws of Montana] have been met. The letter shall be entitled a "right to sue" letter.

(2) The division administrator shall issue the right to sue letter on behalf of the Commission upon receipt of a written request from either party if the administrator determines:

(a) No contested case hearing has been held in the case;

(b) 180 days have elapsed since the complaint was filed;

(c) the efforts of the division to settle the case after informal investigation have been unsuccessful; and

(d) the Commission will be unable to hold a contested case hearing in the matter within 12 months of the date the complaint was filed.

(3) If the administrator is unable to find that each element of section (2), above, has been satisfied, the administrator shall issue a letter denying the request. The reasons for the denial shall be set forth in the letter.

(4) No right to sue letter shall be issued by the Commission or the division in any case in which the Commission has issued a dismissal order pursuant to A.R.M. 24.9.225. AUTH: 49-2-204, MCA, and Sec. 2, Ch. 540, L. 1983. IMP: Sec. 1, Ch. 505, L. 1983 and Sec. 13, Ch. 540, L. 1983.

Rule II. CONTENTS OF RIGHT TO SUE LETTER. (1) Each right to sue letter issued by the division shall set forth the following information:

(a) A statement whether the letter was issued at the request of the charging party or respondent.

(b) A notice informing the charging party that in order to pursue the complaint of discrimination, the charging party must petition the district court in the district in which the alleged violation occurred for appropriate relief within 90 days of receipt of the letter. The notice shall conspicuously state that if the charging party fails to file a petition in district court within the 90 day period, the claim shall be barred.

(c) A notice informing the charging party of the court's discretion to award attorney's fees to the prevailing party in a discrimination action in district court.

(d) A notice informing the charging party of the effect of the issuance of the right to sue letter as provided in [Rule III].

(e) A statement certifying that the requirements of section (2) of [Rule I] for issuance of a right to sue letter have been satisfied.

(2) The respondent shall be notified of the issuance of the right to sue letter.

(3) The right to sue letter shall be served upon the charging party either by hand delivery or by certified mail. AUTH: 49-2-204, MCA, and Sec. 2, Ch. 540, L. 1983. IMP: Sec. 1, Ch. 505, L. 1983 and Sec. 13, Ch. 540, L. 1983.

RULE III. EFFECT OF ISSUANCE OF RIGHT TO SUE LETTER. (1) The issuance of a right to sue letter pursuant to (Rule I) shall constitute the completion of the administrative process with regard to any complaint of discrimination in which the right to sue letter is issued. AUTH: 49-2-204, MCA, and Sec. 2, Ch. 540, L. 1983. Imp: Sec. 1, Ch. 505, L. 1983 and Sec. 13, Ch. 540, L. 1983.

3. The Commission proposes the rules in order to establish procedures and guidelines to govern the issuance of right to sue letters by its staff.

4. Interested parties may submit their data, views, or arguments concerning the proposed rules in writing to Anne L. MacIntyre, Human Rights Division, Capitol Station, Helena, Montana, 59620, no later than June 10, 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 Anne L. MacIntyre, Human Rights Division, Capitol Station, Helena, Montana, 59620, no later than June 10, 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 subdivision or agency, or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25 persons, based upon the number of potential complainants and respondents in Montana.

7. The authority of the Commission to make the proposed rules is based on section 49-2-204, MCA, and section 2 of Chapter 540, 1983 Laws of Montana. The rule as amended implements section 1 of Chapter 505, 1983 Laws of Montana and section 13 of Chapter 540, 1983 Laws of Montana.

HUMAN RIGHTS COMMISSION
MARGERY H. BROWN, CHAIR

BY: Anne L. MacIntyre
ANNE L. MacINTYRE
ADMINISTRATOR/ATTORNEY
HUMAN RIGHTS DIVISION

Certified to the Secretary of State May 2, 1983.

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

In the matter of the repeal of Rules 46.5.608 and 46.5.619, the adoption of rules and the amendment of Rules 46.5.601, 46.5.602, 46.5.603, 46.5.604, 46.5.605, 46.5.606, 46.5.607, 46.5.609, 46.5.610, 46.5.611, 46.5.612, 46.5.613, 46.5.614, 46.5.615, 46.5.616, 46.5.617, and 46.5.618 pertaining to youth care facilities; licensing, placement budgets and parental contribution.	))))))))))))))))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED REPEAL OF RULES 46.5.608 AND 46.5.619, THE ADOPTION OF RULES AND THE AMENDMENT OF RULES 46.5.601, 46.5.602, 46.5.603, 46.5.604, 46.5.605, 46.5.606, 46.5.607, 46.5.609, 46.5.610, 46.5.611, 46.5.612, 46.5.613, 46.5.614, 46.5.615, 46.5.616, 46.5.617, AND 46.5.618 PERTAINING TO YOUTH CARE FACILITIES

TO: All Interested Persons

1. On June 7, 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 46.5.608 and 46.5.619, the adoption of rules and the amendment of Rules 46.5.601, 46.5.602, 46.5.603, 46.5.604, 46.5.605, 46.5.606, 46.5.607, 46.5.609, 46.5.610, 46.5.611, 46.5.612, 46.5.613, 46.5.614, 46.5.615, 46.5.616, 46.5.617 and 46.5.618 pertaining to youth care facilities; licensing, placement budgets and parental contribution.

2. Rule 46.5.608 proposed to be repealed is on page 46-236 of the Administrative Rules of Montana.

The authority of the agency to repeal this rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

3. Rule 46.5.619 proposed to be repealed is on page 46-255 of the Administrative Rules of Montana.

The authority of the agency to repeal this rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

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

RULE I CHILD CARE AGENCY, RECORDS (1) Each child care agency must maintain accurate and current records on each child in care, as follows:

(a) identifying information on the child and his family, including the child's name, date and place of birth, sex, religion, race, names of relatives, and other necessary information;

(b) date of the child's admission and name of the referring party;

(c) date of the child's discharge and authorization for the discharge;

(d) documentation concerning a child's specific medical problems; and

(e) a dated record of significant occurrences for each child while in care.

(2) Additional records to be kept by all child care agencies, except receiving homes are as follows:

(a) a copy of the court order, parental agreement, consent decree, or consent adjustment authorizing the child's placement and any other pertinent court action concerning the child;

(b) a report stating the reasons for placement and the current case plan;

(c) a social study on the child and his family;

(d) psychological or psychiatric information on the child if psychological or psychiatric services have been provided to the child at any time;

(e) quarterly progress reports on the child's reaction to the placement and services provided; and

(f) quarterly reports from any parties providing any services to the child outside the child care agency.

(3) In addition, a copy of the most recent physical examination of the child must be kept by all child care agencies, except receiving homes and maternity homes.

(4) Each child care agency must keep an accurate monthly record showing the number of children in care, the number admitted and discharged, the children's ages and sex, and the current average length of stay. This information must be submitted to the department upon the department's request.

The authority of the agency to adopt the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

RULE II CHILD CARE AGENCY, SECLUSION (1) A seclusion room is a single room in a child care agency treatment unit in which a child may be confined.

(a) Seclusion may be used as a means of intervention when the child is in danger of harming himself, others, or property.

(b) Seclusion shall be used only for the time needed to change the behavior necessitating its use. Seclusion shall not be used as punishment.

(2) Each child care agency which utilizes seclusion shall have a written statement of its seclusion policies which describe, at a minimum:

(a) the philosophy for use of the room;

(b) the procedure for admittance;

(c) emergency procedures for special circumstances occurring while the child is in placement (i.e., fire, internal or external disaster, etc.);

(d) the method for children to express grievances regarding the use of seclusion.

(3) Children shall not be placed in a seclusion room which has not been inspected and approved by the department.

(4) Records of the use of the seclusion room, policies for the operation and supervision of the room, the children's treatment records, staff records and the room itself shall be made available to the department for inspection.

(5) If the child care agency does not meet all requirements for the use of the seclusion room, the department shall give written notice of the specific deficiencies which shall be corrected. The child care agency shall cease secluding any children in the room until corrections are made and authorization is given by the department.

(6) When a seclusion room is used, the following physical requirements shall apply:

(a) the room shall be a minimum of eighty (80) square feet to be occupied by one (1) child only;

(b) the room shall be maintained in a clean and sanitary condition;

(c) all utility or ventilation switches, including electrical outlets, shall be outside the room. Switches will be restricted to operation by staff only;

(d) windows shall be of shatter resistant material;

(e) the room shall contain an observation window constructed of shatter resistant material;

(f) there shall be no features by which a child may be injured within the room;

(g) there shall be no more than one locked door between the child and staff;

(h) if soundproof, the room shall have an intercom system which shall be activated when in use;

(i) there shall be an approved ventilation system.

(7) A child may not be placed in seclusion unless:

(a) lesser restrictive alternatives have been attempted by staff and have failed to control the child;

(b) the child is in danger of harming himself, others, or property;

(c) the placement in seclusion has been approved by a certified mental health professional as defined in SB 214, Ch. 578, L. 1983; and

(d) the child has been placed in the secure treatment

unit of the child care facility as part of the child's treatment program.

(8) Placement in seclusion may not exceed one (1) hour unless specifically authorized by a certified mental health professional. In no event may placement in seclusion exceed twenty-four (24) hours. A child who requires seclusion in excess of twenty-four (24) hours shall be transferred to an acute psychiatric care facility.

(a) A staff member with no other immediate duties shall continuously monitor the child placed in seclusion by visual or auditory means and shall remain within twenty (20) feet of the room. If continuous monitoring is by auditory means, the staff member shall visually check on the child at least every ten (10) minutes.

The authority of the agency to adopt the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

RULE III CHILD CARE AGENCY ADDITIONAL REQUIREMENTS (1) In addition to the preceding standards which apply specifically to child care agencies, a child care agency must also comply with the standards contained in Rule IV, Rule V (2)-(8), Rule VI, and Rule VII.

The authority of the agency to adopt the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

RULE IV YOUTH GROUP HOME, ADMINISTRATION (1) The youth group home shall be a nonprofit corporation registered under the laws of Montana or under direct administration of a unit of state, local or tribal government.

(2) The provider shall have established sound plans and policies of organization and administration clearly defining legal responsibility, administrative authority and responsibility for services to the residents and community.

(3) The provider shall have written policies for personnel, admission, discharge, program and financial records. These policies shall be furnished to the department with the initial license application and annually thereafter.

(4) Staff of the youth group home shall receive training from the provider on the provider's policies and current status of residents.

The authority of the agency to adopt the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

RULE V YOUTH GROUP HOME, PROGRAM REQUIREMENTS (1) The program of all youth group homes shall include the following:

(a) Care and guidance:

(i) provision of three regular, well-balanced meals per day, maintenance of home, and clothing, and supervision of child's health and dental care;

(ii) personal care, supervision, and attention appropriate to age;

(iii) provision of opportunities for educational, social and cultural growth through suitable reading materials, toys, activities and equipment;

(iv) provision of opportunities for associations with peer groups and for experiences in school and community;

(v) cooperation with the placing agency and participating in case conferences;

(vi) cooperation with the placing agency in arranging for contact with child's own family when appropriate.

(b) Nutrition:

(i) The provider shall serve meals and snacks appropriate to the nutritional needs of the children and shall include the four basic food group requirements.

(ii) Special diets shall be provided for residents as ordered in writing by a physician. Such orders shall be kept on file at the facility.

(iii) Copies of menus as served shall be kept on file for one month and shall be available for inspection.

(iv) All food shall be transported, stored, covered, prepared and served in a sanitary manner.

(v) Use of home canned products, other than jams, jellies and fruits is prohibited unless the youth group home has been commercially approved.

(vi) Hands shall be washed with warm water and soap before handling of food.

(c) Education: Each provider shall assure that all children in its care are enrolled and have opportunity to receive educational credit from an accredited school unless otherwise approved by the department.

(d) Religion: All children in the youth group home shall have the opportunity to voluntarily practice their respective religion. Children shall be permitted to attend religious services of their choice in the community and to receive visits from representatives of their respective faiths.

(e) Culture: The provider shall give encouragement and opportunity to each child to identify with his cultural heritage.

(f) Clothing:

(i) The provider shall provide each child with his own clothing suitable to the child's age and size and comparable to the clothing of other children in the community.

(ii) Children shall have some choice in the selection of their clothing.

(g) Personal hygiene: The provider shall train children in personal care, hygiene, and grooming and shall provide each child with the necessary supplies.

(h) Privacy and individualism: The provider shall allow the children to have privacy.

(i) The provider shall provide a separate bed, separate storage space for clothing and personal articles, and a place for the child to display his socially appropriate creative works and symbols of identity.

(ii) Each child shall be provided with access to a quiet area where he can be alone when appropriate.

(i) Money: Money earned by a child or received as a gift or allowance shall be his personal property and accounted for separately from group home funds.

(i) If the youth group home is partly supported by institutional production on a commercial basis, compliance with child labor laws and minimum wage laws must be assured.

(j) Training and employment: The provider shall assist in preparing children for economic independence.

(i) The provider shall assist children in obtaining the skills necessary for employment (i.e., completing applications, appearance, attitude toward employment, interviewing for jobs) and shall utilize community resources for vocational counseling and training.

(ii) The provider must distinguish between tasks which children are expected to perform as part of living together, jobs to earn spending money, and jobs performed for vocational training. Children in care shall not be used as employees of the facility without prior approval of the department.

(k) Recreation: The provider shall encourage the children to continue any socially appropriate activities, classes or participation in clubs or groups. The children shall be allowed to become voluntarily involved in community programs that meet his needs, interests and abilities.

The authority of the agency to adopt the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

RULE VI YOUTH GROUP HOME, PHYSICAL CARE (1) Every youth group home shall have access to the services of at least one physician.

(2) Medical, dental, psychiatric, psychological care and counseling services shall be obtained for children as needed.

(3) If a child has not received a complete physical examination within six months prior to placement, the provider shall arrange for the child to have a complete physical examination within 30 days after admission to the facility and yearly thereafter.

(4) If a child has not had a dental examination within a year prior to placement the provider shall arrange for the

child to have one within 90 days after admission. All necessary dental work shall be done and reexamination shall be arranged for the child at least annually.

(5) Provisions for treatment of diseases, remedial defects or deformities, and malnutrition shall be made by the provider immediately upon the physician's recommendation with notification to the placing agency.

(6) All medication shall be kept in a place inaccessible to children, in their original containers, labeled with the original prescription label.

(7) Discipline: Each youth group home shall have a written policy for the discipline of children in care. Copies shall be made available to all provider staff, referring parties, parents, and the children. This policy shall include the philosophy of discipline, methods of discipline permitted, and the purpose of discipline as it relates to the ongoing learning and development process.

(a) Discipline must not be physically or emotionally damaging.

(b) There must be no cruel, harsh, or unusual punishment.

(c) Verbal abuse of a child is prohibited.

(d) No child of any age can be shaken or hit.

(e) Children must not be denied meals, mail or visits with their families as punishment.

(f) No disciplinary practices of any sort shall be employed which are humiliating or degrading to the child or which undermine the child's self-respect.

(g) Medication shall never be used to discipline or threaten children.

(h) An incident report shall be completed by any child care staff involved in an infraction of the discipline requirements. The incident report shall be placed in the child's file.

(i) An investigation of the incident shall be conducted by the provider's board of directors, supervisors or placing agency. A complete report of the investigation shall be placed in the provider's records and shall be available for inspection by the licensing agent and referring party.

The authority of the agency to adopt the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

RULE VII YOUTH GROUP HOME, ENVIRONMENTAL REQUIREMENTS

(1) The youth group home shall provide an adequate and potable supply of water. The facility shall:

(a) connect to a public water supply system approved by department of health and environmental sciences; or

(b) for youth group homes utilizing a nonpublic water system, the department hereby adopts and incorporates by

reference the following circulars prepared by the department of health and environmental sciences:

(i) circular #11 for springs;

(ii) circular #12 for water wells;

(iii) circular #17 for cisterns.

(A) These circulars set forth the relevant water quality standards for springs, water wells and cisterns. A copy of these circulars may be obtained from the Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana.

(c) If a non-public water supply is used, the facility shall submit a water sample at least quarterly to a laboratory licensed by the department of health and environmental sciences in order to determine that the supply does not contain microbiological contaminants.

(d) The water system shall be repaired or replaced when the supply:

(i) contains unacceptable levels of microbiological contaminants; or

(ii) does not have the capacity to provide adequate water for drinking, cooking, personal hygiene, laundry, and water carried waste disposal.

(2) To insure sewage is safely disposed of, the youth group home shall either:

(a) connect to a public sewer approved by the department of health and environmental sciences; or

(b) if a nonpublic system is utilized, the department hereby adopts and incorporates by reference bulletin 332, which sets forth standards for sewage disposal. A copy of bulletin 332 may be obtained from the Department of Health and Environmental Sciences, Cogswell Building, Helena, Montana.

(c) The sewage system shall be repaired or replaced whenever:

(i) it fails to accept sewage at the rate of application;

(ii) seepage of effluent from or ponding of effluent on or around the system occurs;

(iii) contamination of a potable water supply or state waters is traced to the system; or

(iv) a mechanical failure occurs.

(3) Solid waste disposal: The youth group home shall:

(a) store all solid waste in containers which have lids and are corrosion-resistant, flytight, watertight, and rodent-proof;

(b) clean all solid waste containers frequently;

(c) transport or utilize a private or municipal hauler to transport the solid waste at least weekly to a landfill site approved by the Department of Health and Environmental Sciences in a covered vehicle or covered containers.

(4) A youth group home shall comply with the following structural requirements:

(a) All rooms and hallways shall have adequate lighting.

(b) Adequate space shall be provided for all phases of daily living, including recreation, privacy, group activities and visits from family, friends and community acquaintances.

(c) Children shall have indoor areas of at least 40 square feet of floor space per child for quiet, reading, study, relaxing, and recreation. Halls, kitchens, and any rooms not used by children shall not be included in the minimum space requirement.

(d) A sleeping room shall contain at least 50 square feet of floor space per person. Bedrooms for single occupancy must have at least 80 square feet.

(5) Bathrooms shall be cleaned thoroughly with a germicidal cleaner at least weekly and more often if needed.

(6) Other areas shall be cleaned on a regular basis.

(7) There shall be hot and cold water available in the youth group home.

(8) There shall be a washing machine and dryer available.

(9) The youth group home shall be equipped with a telephone. Telephone numbers of the hospital, police department, fire department, ambulance, and poison control center shall be posted by each telephone. Telephone numbers of the parent(s) and placing agency shall be readily available.

(10) Youth group homes shall have reasonable access to schools, churches, job opportunities, shopping, health and recreational activities.

The authority of the agency to adopt the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

RULE VIII YOUTH GROUP HOME, FIRE SAFETY (1) The department hereby adopts and incorporates by reference group R division 3 of the uniform building code which sets forth the fire safety regulations which shall apply to youth group homes. A copy of group R division 3 of the uniform building code may be obtained from the Building Codes Division, Department of Administration, 1218 East Sixth Avenue, Helena, Montana.

(2) Smoke detectors approved by a recognized testing laboratory shall be located in any areas requiring separation and at stairways.

(3) A fire extinguisher approved by a recognized testing laboratory with a minimum rating of 2A10BC shall be readily accessible to the kitchen area.

(4) The date and signature of the person checking both the batteries in the smoke detector and the fire extinguisher shall be recorded and filed at the youth group home.

(a) Smoke detector batteries shall be checked by the

provider at least once each month and the batteries replaced at least once each year.

(b) Fire extinguishers shall be checked by the provider at least quarterly.

(5) The staff shall be trained in the proper use of the fire extinguisher and the training recorded in the files.

(6) Staff and residents shall be instructed upon arrival in the procedure for evacuation in case of fire. The procedure shall be posted in a conspicuous place in the youth group home.

(7) All exits shall be clear and unobstructed at all times.

(8) Paint, flammable liquids and other combustible material shall be kept in locked storage away from heat sources or in outbuildings not used by the children.

The authority of the agency to adopt the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

RULE IX YOUTH GROUP HOME, TRANSPORTATION (1) Persons transporting the children shall possess a valid Montana motor vehicle operator's license.

The authority of the agency to adopt the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

RULE X YOUTH GROUP HOME, GUNS AND AMMUNITION (1) Guns, including air rifles and/or ammunition shall not be kept in a youth group home.

The authority of the agency to adopt the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

RULE XI YOUTH GROUP HOME, STAFF (1) Houseparents, substitute houseparents and other child care staff must be at least 18 years of age and of good moral character.

(2) Personnel shall be in good physical and mental health. A CSD-SS-33, "Personnel Statement of Health for Licensure" form provided by the department must be completed by the provider for each staff member and submitted with the initial application for licensure and annually thereafter.

(3) The provider shall establish minimum qualifications for staff and adopt a procedure for screening applicants.

(4) Staff shall attend meetings and training sessions in order to improve their knowledge, understanding and practice. Training shall include a minimum of four hours of orientation by the provider within the first week regarding the organization, program and emergency procedures.

(5) The resident to staff ratio on the premises shall not be more than 6 to 1 awake from 7 a.m. to 11 p.m. or 8 to 1 sleeping from 11 p.m. to 7 a.m.

The authority of the agency to adopt the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

RULE XII YOUTH GROUP HOME, PLACEMENT AGREEMENTS

(1) When a child is admitted to the group home, the provider shall enter into a written placement agreement with the placing agency.

(2) The placement agreement shall set forth the terms of the child's placement, the responsibilities of the provider, the placing agency and, when appropriate, the parents.

(3) No child from out-of-state shall be accepted into the youth group home without the approval of the interstate compact administrator pursuant to Sections 41-4-101 through 41-4-109, MCA.

The authority of the agency to adopt the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

RULE XIII YOUTH GROUP HOME, CHILDREN'S CASE RECORDS

(1) The provider shall maintain a written case record for each child which shall include administrative, treatment, and educational data from the time of admission until the time the child leaves the group home. A child's case record shall include the following:

(a) the name, sex, birthdate and birthplace of the child;

(b) the name, address, and telephone number of the parent(s) or guardian of the child;

(c) date of admission and placing agency;

(d) when the child was not living with his parents prior to admission, the name, address, telephone number and relationship to the child of the person with whom the child was living;

(e) date of discharge, reason for discharge, and the name, telephone number and address of the person or agency to whom the child was discharged;

(f) all documents related to the referral of the child to the facility as provided by the placing agency;

(g) documentation of the current custody and legal guardianship as provided by the placing agency;

(h) the child's court status, if applicable;

(i) a copy of the child's birth certificate or a written statement of the child's birthdate including the source of this information;

(j) consent forms signed by the parents or guardian

prior to placement allowing the group home to authorize all necessary medical care, routine tests, immunization and emergency medical or surgical treatment;

(k) cumulative health records including medical history and immunization records as provided by the placing agency;

(l) education records and reports;

(m) treatment or clinical records and reports;

(n) records of special or critical incidents;

(o) case plans and related material;

(p) social summary current to date of placement.

The authority of the agency to adopt the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

RULE XIV YOUTH GROUP HOME, PAYMENT (1) The department shall make payments to group home providers for children for whom the department is financially responsible, and will consider the same costs as listed for payments to child care agencies in ARM 46.5.618.

The authority of the agency to adopt the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

RULE XV PREPARATION OF PLACEMENT BUDGET (1) Within the limits of the appropriation, the department shall prepare placement budgets for each judicial district for the substitute care of youth in need of supervision or delinquent youth.

(2) The following method will be used to allocate placement budgets to each judicial district:

(a) The youth court for each judicial district shall submit a proposed budget request on forms provided by the department no later than August 1, 1983, for fiscal year 1984 and May 15, in subsequent fiscal years.

(b) The department will determine a percentage by the following formula:

(i) total expenditures during the previous fiscal year for substitute care of youth in need of supervision and delinquent youth placed pursuant to Youth Court Act, title 41, chapter 5, MCA, divided by the total expenditures by the department and the department of institutions for the previous fiscal year for substitute care for all children placed in substitute care.

(c) The department will multiply the percentage determined in subsection (b) by the foster care appropriation for the upcoming fiscal year to determine the monies available for youth placed in substitute care pursuant to the Youth Court Act.

(d) Based upon the total amount of monies available as determined by subsection (c), a budget will be prepared for

each judicial district using the following considerations:

(i) the proposed budget requested by the youth court;

(ii) the total population of the judicial district;

(iii) the total youth population of the judicial district;

(iv) the total number and costs of placements in public facilities and out-of-home facilities;

(v) trends in population, placements, and local economics.

(3) The placement budget for each judicial district shall be determined by the department each year prior to July 1 (with the exception of fiscal year 1984) and shall be sent by the department to the youth court judge, and the probation officer(s) for the district.

(4) The placement budget shall be prepared for the purposes of monitoring the expenditure of funds for substitute care for youth placements; payments for placements shall be made by the department in accordance with Section 41-3-104, MCA.

(5) The department shall be responsible for the actual payment of funds for substitute care. The department shall be responsible for monitoring the impact of youth court placements on the placement budget and shall advise the youth court judge and probation officers regularly about the status of the budget.

(6) The youth courts may negotiate with each other about the transfer of placement budget amounts. The department may change budgeted amounts depending upon availability of funds and requests from the youth courts.

The authority of the agency to adopt the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements HB 24, Ch. 465, L. 1983.

RULE XVI INVESTIGATION OF FINANCIAL STATUS (1) An investigation of the financial status of the parents or guardianship assets of every child in substitute care shall be conducted by the county of responsibility for the purposes of determining the financial ability of the parents or the adequacy of the guardianship assets to pay the cost of supporting the child in a youth care facility.

(a) Voluntary placement. If a child enters substitute care under a voluntary placement agreement executed by the parents or guardian, the assessment of financial ability and determination of amount of contribution shall be completed prior to the child entering care.

(b) Involuntary placement. If a child is placed in substitute care on an involuntary basis under an emergency informal adjustment or other court order an investigation of the financial status of the child's parents or the extent of guardianship assets shall be conducted pursuant to the order

of the court and a written report including the financial assessment and determination of the recommended amount of parental contribution shall be filed with the court within the time fixed by the court order.

The authority of the agency to adopt the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements HB 24, Ch. 465, L. 1983.

RULE XVII PARENTAL CONTRIBUTION COMPUTATION (1) For purposes of determining whether a parent is financially able or the guardianship assets are adequate to support the child in a youth care facility and for purposes of determining a recommended amount of contribution, the department hereby adopts and incorporates by reference ARM 42.6.101 through ARM 42.6.108, which sets forth the formula for determining the suggested minimum monthly child support contribution for purposes of child support enforcement purposes. A copy of ARM 42.6.101 through ARM 42.6.108 may be obtained from Child Enforcement Bureau, Department of Revenue, Mitchell Building, Helena, Montana 59620.

The authority of the agency to adopt the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements HB 24, Ch. 465, L. 1983.

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

46.5.601 DEFINITIONS The following definitions apply to all ~~child--care--agency~~ youth care facility licensing and standards rules:

(1) "Child" or "youth" means any person under the age of 18 years, ~~and may also include a person 18 to 21 years of age if jurisdiction of the youth court is so extended over such person, or if such extension is otherwise permitted by law.~~ without regard to sex or emancipation.

(2) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security, and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or who are without the care and supervision of their parents or guardian.

(3) "Youth care facility" (YCF) means a licensed facility in which substitute care is provided to youth in need of care, youth in need of supervision, or delinquent youth and includes youth foster homes, youth group homes, and child care agencies.

(4) "Youth foster home" or "foster care home" or "boarding home" means a YCF in which substitute care is provided to 1 to 6 children or youth to whom the foster parents are not related by blood, marriage, adoption or wardship.

(5) "Youth group home" means a YCF in which substitute

care is provided to 7 to 12 children or youth, and includes a district youth guidance home.

~~(2)~~ (6) "Child care agency" means any ~~foster or boarding home~~ YCF in which substitute care is provided to 13 or more children. ~~are retained at any one time for full time care.~~

~~(3)~~ (7) "Receiving home" or "shelter care program" means a ~~child care agency~~ YCF which regularly receives children under temporary conditions until the court, ~~or~~ probation office, the department, ~~of social and rehabilitation services,~~ or other appropriate social agency has made other provisions for their care.

~~(4)~~ (8) "Maternity home" means a ~~child care agency of~~ YCF which ~~the primary function is to~~ primarily provides for the care and maintenance of minor girls and adult women during pregnancy, childbirth, and post-natal periods.

~~(5)~~ (9) "Child care staff" means ~~child care agency~~ YCF personnel who directly participate in the care, supervision and guidance of children in a ~~child care agency~~ YCF.

~~(6)~~ (10) "Houseparent" means a ~~child care agency~~ staff member whose primary responsibility is the day-to-day care of children in a ~~child care agency~~ youth group home.

(11) "Foster parent" means a person responsible for the day-to-day care, supervision and guidance of children in a youth foster home.

(12) "Department" means department of social and rehabilitation services.

(13) "Placement budget" means a budget prepared by the department for each judicial district for the purpose of identifying the amount of funds to be used by the department for payment for the substitute care of youth in need of supervision and delinquent youth placed by the youth court in that judicial district.

The authority of the agency to amend the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

46.5.602 PURPOSE (1) These rules establish licensing procedures and minimum standards for ~~child care agencies~~ youth care facilities.

The authority of the agency to amend the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

46.5.603 LICENSE REQUIRED (1) Every ~~child care agency, as defined in ARM 46.5.601, must be licensed under ARM 46.5.604~~ youth care facility shall be licensed by the department, or responsible tribal authority.

(2) Failure of a ~~child care agency~~ provider to obtain or renew a license ~~may subject the child care agency to any~~

~~penalties established by law or these rules~~. while continuing to operate a youth care facility is a misdemeanor and shall be subject to the penalties provided in Section 41-3-504, MCA.

The authority of the agency to amend the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

46.5.604 LICENSES (1) One-year licenses. The department shall issue a one-year ~~child care agency~~ youth care facility license to any license applicant ~~which~~ that meets all minimum standards established by these rules, as determined by the department after a licensing study.

~~(a) The department shall deny a one-year license to any license applicant which fails to meet all minimum standards established by these rules.~~

~~(b)~~ (a) The department shall renew ~~a one-year~~ the license annually on the expiration date of the previous year's license if:

(i) the ~~child care agency~~ YCF makes written application for renewal at least 30 days prior to the expiration date of its current license; and

(ii) the ~~child care agency~~ YCF continues to meet all minimum standards established by these rules, as determined by the department after a relicensing study.

~~(c)~~ (b) If a ~~child care agency~~ YCF makes timely application for renewal of a ~~one-year~~ license, but the department fails to complete the relicensing study before the expiration date of the previous year's license, the previous year's license will continue in effect for the time necessary for the department to complete the relicensing study and to make a determination of compliance with minimum standards.

(2) Provisional licenses. The department may in its discretion issue a provisional license for any period up to 6 months to any license applicant which:

(a) has met all applicable standards for ~~health and~~ fire ~~life~~ safety; and

(b) has agreed in writing to comply fully with all minimum standards established by these rules within the time period covered by the provisional license.

(i) The department may in its discretion renew a provisional license if the license applicant shows good cause for failure to comply fully with all minimum standards within the time period covered by the prior provisional license, but the total time period covered by the initial provisional license and renewals may not exceed one year.

(3) Restricted license. A restricted license may be issued for the care of a specific child with the approval of the department.

(4) The YCF shall not accept more children than the number specified on the license.

The authority of the agency to amend the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

46.5.605 LICENSING PROCEDURES (1) Application for a ~~child-care-agency~~ YCF license must be made on an application form ~~for-a-license-for-child-care-and-must-be-accompanied-by-the-following-items:~~ provided by the department.

Subsections (1)(a) through (2) are deleted in their entirety.

~~(3)~~ (2) Upon receipt of an application for license or renewal of license, the department shall conduct a licensing study~~,~~ to determine if the applicant meets all applicable standards for license established in these rules.

~~(4)~~ (3) If the department determines that an application or accompanying information is incomplete or erroneous, it will notify the applicant of the specific deficiencies or errors, and the applicant ~~may~~ shall submit the required or corrected information~~:~~ within 60 days. The department shall not issue a license or renew a license until it receives all required or corrected information.

~~(5)--All-items-required-to-be-submitted-under-subsections-(1)--or--(2)--above,--for--license--or--renewal--of--license,--are-available--to--the--public,--except--items--(1)(d),--(1)(e),--and-(1)(o)-which-are-confidential.~~

The authority of the agency to amend the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

46.5.606 LICENSE REVOCATION (1) The department may in its discretion revoke a ~~one-year-or-provisional~~ license if the department determines that:

(a) the ~~child-care-agency~~ YCF is not in compliance with ~~health-or-life/~~ fire safety standards; or

(b) the ~~child-care-agency~~ YCF is not in substantial compliance with any other licensing standards established by this rule; or

(c) the ~~child-care-agency~~ YCF has made any ~~substantial~~ misrepresentations to the department, either negligent or intentional, regarding any aspect of its operations or facility ~~to-the-department-or-members-of-the-public-or-any-other-person.~~

~~(2)--After-revocation-of-a-one-year-license,-the-department-may,--in-its-discretion-and-upon-request-from-the-child-care-agency,-issue-a-provisional-license-under-the-standards-established-under-ARM-46.5.604-to-any-child-care-agency-whose-license-was-revoked-under-subsection-(1)(b)-above.~~

The authority of the agency to amend the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section

53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

46.5.607 HEARING (1) Any person dissatisfied because of either the department's refusal to grant a license or the department's revocation of a license may request a hearing as provided in ARM 46.2.202 within 90 days of the notice of adverse action.

The authority of the agency to amend the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

46.5.609 CONFIDENTIALITY OF RECORDS (1) All records maintained by a ~~child--care--agency~~ YCF pertaining to an individual child are confidential and are not available to any person, agency or organization except as specified in subsections (2) through (5) of this section below.

(2) All records pertaining to an individual child are available upon request to:

(a) the child's parent, guardian, legal custodian, or attorney;

(b) a court with ~~current~~ continuing jurisdiction over the placement of the child or any court of competent jurisdiction issuing an order for such records;

(c) a mature child to whom the records pertain, absent specific and compelling reasons for refusing specific records; or

(d) an adult who was formerly the child in care to whom the records pertain.

(3) Records pertaining to significant occurrences in relation to a specific child may be reviewed by the referral agency.

(4) All records pertaining to individual children placed by the department are available at any time to the department or its representatives.

(5) Records pertaining to individual children not placed by or in the custody of the department ~~are~~ shall be available to the department ~~solely~~ for the purposes of licensing or relicensing the ~~child--care--agency~~ YCF.~~,--to--assure--that required-records-are-being-kept-for-all-children-in-care.--For this-purpose-only-the-department-may-in-its-discretion-accept any-evidence-it-finds-appropriate-to-show-the-existence-of such--records,--including,--if--necessary,--on--site--access--to individual--records-by-an--authorized-representative-of--the department.~~

The authority of the agency to amend the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

46.5.610 REPORTS (1) The provider shall agree to submit to the department, upon its request, any reports required

by federal or state law or regulation.

~~(1)~~ (2) ~~A child care agency must~~ The YCF (except youth foster homes) shall report any of the following changes to the department prior to the effective date of the change:

(a) a change of administrator~~of the child care agency~~, as defined in ARM 46.5.614(6)(b);

(b) a change in location~~of the child care agency~~;

(c) a change in the name of the ~~child care~~ agency, program or facility; or

(d) a significant change in the ~~child care agency's~~ organization, administration, purposes, programs, or services.

Subsections (2) through (3) are deleted in their entirety.

(3) As required by section 41-3-201 MCA, the provider and each staff member shall report any incidents of known or suspected child abuse or neglect to the local county welfare office or the state child abuse hot line 1-800-332-6100. If no action is taken on the referral, or if the above resources are not available at the time, reports shall be made to the social and rehabilitation services district or state office. The provider shall inform each new employee, within the first 24 hours of employment, of the child abuse and neglect reporting statute and responsibilities of staff relative to this law.

The authority of the agency to amend the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

46.5.611 CHILD CARE AGENCY, CASE PLANS Subsections (1) through (4) remain the same.

The authority of the agency to amend the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

46.5.612 CHILD CARE AGENCY, ADMISSIONS, DISCHARGE AND FOLLOW-UP Subsections (1) through (7) remain the same.

The authority of the agency to amend the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

46.5.613 CHILD CARE AGENCY, DEVELOPMENT AND TRAINING

Subsections (1) through (14) remain the same.

The authority of the agency to amend the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section

53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

46.5.614 CHILD CARE AGENCY, PERSONNEL Subsections (1) through (12) remain the same.

The authority of the agency to amend the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

46.5.615 CHILD CARE AGENCY, CHILD STAFF RATIO AND EMERGENCY OVERFLOW Subsections (1) through (2)(c) remain the same.

The authority of the agency to amend the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

46.5.616 CHILD CARE AGENCY, FINANCES Subsections (1) through (6) remain the same.

The authority of the agency to amend the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

46.5.617 CHILD CARE AGENCY, PHYSICAL PLANT Subsections (1) through (11) remain the same.

The authority of the agency to amend the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

46.5.618 CHILD CARE AGENCY, PAYMENTS The department shall make payments to child care agencies for care of children for whom the department is responsible at a level of care and service as determined by the department. The amount of the payment shall be based upon a rate system of reasonable costs developed by the department which will include the following requirements.

(1) Child care agencies must be licensed by the department, or responsible tribal authority, to receive payments for care from the department. The child care agency has the responsibility to apply for financial participation by the department. The department will establish annual deadlines for information from the child care agencies in order to establish ~~monthly~~ daily rates. The financial information to be provided by the child care agencies must be reported according to ~~guidelines set~~ forms provided by the department

and shall include:

(a) a report of all expenditures for the operation of the child care agency including items which may be unallowable for reimbursement from the department;

(b) a budget narrative explaining in detail the report of expenditures;

(c) a report of all income to the child care agency by amount, source, and purpose, excluding names of private donors;

(d) a statistical report including the child care agency's average length of stay over the previous year, average daily population, the breakdown of financial responsibility by agency by number of youth per day, and any anticipated changes of these statistics above for the next 12-month period; and

(e) a detailed description of the treatment program including staffing pattern, and when requested, functional job descriptions of all child care agency staff which contribute to the treatment program.

Subsections (2) through (3)(g) are deleted in their entirety.

~~(4)~~ (2) Within the limits of the appropriations for substitute care, ~~T~~the rate **system** will include payment for only those expenses which are directly related to the care of the children in the YCF. Such expenses may include the following categories:

(a) Basic child care costs: This category includes food and food related costs, children's allowances, school supplies and tuition charges, personal hygiene costs, recreational expenditures (including equipment), miscellaneous household supplies, and transportation costs for children and program operation.

(i) Food costs include groceries, food preparation, food purchasing and processing and kitchen maintenance for children and supervision staff~~,~~; and salaries and benefits of kitchen staff.

(ii) Allowance includes youth's personal allowance.

(iii) Clothing includes youth's personal wardrobe; initial purchase, replacement, and maintenance such as dry cleaning, shoe repair, etc.

(iv) Education costs include school supplies, lessons, school related fees, etc.

(v) Personal hygiene items include soaps, shampoos, toilet articles, haircuts, curlers, and deodorants~~, and medicine chest supplies~~.

(vi) Recreational expenditures include equipment purchase and maintenance, activity charges such as admissions, lessons, memberships, and costs of activities for groups.

(vii) Miscellaneous household supplies include items for operation of the program and household not covered under facility maintenance or food preparation.

(viii) Transportation costs include transporting of

children to schools, to appointments for social and medical services, to and from home if agreed to by provider and agency, and program operation.

(b) Shelter costs: This category includes costs for space, maintenance, insurance, telephone, and utilities for child maintenance, recreation, dining, counseling, treatment, program supervision, and administration of the facility. Attention homes are included with group homes because most Montana attention homes are housed in group home facilities.

(i) Space costs include all areas for child maintenance, supervision, treatment and administration. Space costs do not include portions of the facility which are used for production of products sold or used in the facility.

(ii) Maintenance costs include expenditures related to replacement and maintenance of the building and grounds. Salaries and benefits of maintenance or janitorial staff specifically responsible for the upkeep of the facility are also to be included in this category.

(iii) Insurance includes liability and fire insurance for the facility. Auto insurance may be included if the liability policies are all inclusive (otherwise, auto insurance is to be included under transportation, child care costs).

(iv) Telephone includes local service as well as long-distance service for the residents and program operation.

(v) Utilities include gas and electricity for heating and lighting, water, sewage, cable T.V., and garbage service (if not included in rent).

(vi) Supplemental shelter costs might include extra space to provide private rooms for treatment needs, play therapy quarters, specially equipped isolation rooms, et cetera. Coverage of supplemental shelter costs shall be contracted for by ~~SRS~~ the department.

(c) Supervision of children: This category covers costs of providing supervision of the youth in the facility. Salaries and benefits are to be included. If room and board is provided to child supervision staff, those costs can be included in food, child care costs, and shelter, but must be specified.

Subsection (c)(i) through (c)(v) are deleted in their entirety.

(d) Treatment: This category includes activities associated with a formal treatment program operated by the child care agency as well as coordination of community resources in relation to a treatment/service plan for each youth. ~~The requirements are explained in detail in ARM 46.5.744(2) and 46.5.618(3).~~

(e) Program management includes supervision of treatment and child supervision staff, development and maintenance of the treatment program, staff training, advocacy for youth and program, management and coordination of program with agencies and community.

~~(5)~~ (3) Cost items which cannot be directly identified with the care and maintenance of children receiving payment from the department are unallowable to be included in the department rate. The following is a list of common unallowable items and is not all-inclusive:

(a) interest on corporate loans, bad debts, capital expenditures;

(b) fund raising; public relations; administrative salaries, clerical costs related to general administration;

(c) expenses associated with buildings, equipment, and grounds not identified with the care of individual children;

(d) attorney fees or retainers paid for corporate agency business~~, audit costs~~; and

(e) donations made by the institution as voluntary gifts or paybacks to parent organizations membership dues in local and national organizations.

~~(6)~~ (4) ~~The division will develop guidelines for reasonable costs to be reimbursed, according to categories described in ARM 46.5.618(4). The division will reimburse the child care agency costs for care up to the maximums set in the guidelines. Governmental funds~~ All funds, except donated funds, which are received by the child care agency for operation of the program will be considered a first resource to the child care agency and will therefore be deducted from the care costs before establishment of a monthly rate. Donated funds means funds received by the child care agency which would be considered a tax deductible charitable contribution for the donating party. ~~A portion of the governmental funds may be set aside for administrative or other designated purpose. Such a portion shall be set by the division. Private donations received for the operation of the program will also be deducted from the costs prior to establishment of a monthly rate. If the private donations are designated for purposes other than operations, such as building funds, special projects, administration or other unallowable costs, that income will not be used in the calculation of a monthly rate.~~ An 80% of licensed capacity figure will be used for child care agencies which provide long-term care. A 75% of licensed capacity figure will be used for child care agencies which provide short-term care. (average length of stay of less than 30 days per youth).

~~(7)~~ (5) Any child care agency which receives payment for care of children from the department must provide a copy of the annual audit to the ~~division~~ department annually. The ~~division~~ department has the right to inspect all of the child care agency's financial records at any time and may conduct an audit of all such records within 10 days of a notice of such intent. Denial of access to the department ~~or division~~ will result in immediate discontinuation of financial payments for care.

The authority of the agency to amend the rule is based upon HB 24, Ch. 465, L. 1983 and the rule implements Section 53-2-201(1)(b)(ii), MCA and HB 24, Ch. 465, L. 1983.

6. The rules are proposed to be repealed, adopted and amended due to the passage of HB 24, Ch. 465, L. 1983 passed by the 48th Legislature. HB 24, Ch. 465, L. 1983 provides that the department shall license all youth care facilities and administer all state and federal funds appropriated for substitute care provided for youths in need of supervision and delinquent youths placed by the Youth Court.

The proposed rules for licensing standards are necessary because there were no existing licensing standards for youth group homes and the standards for child care agencies required revision.

The proposed rules regarding the determination and allocation of placement budgets for youth court placements and the rules concerning parental contribution are necessary to implement the provisions of HB 24, Ch. 465, L. 1983 and to properly administer the appropriated funds for substitute care.

The 48th Legislature anticipated that the department would adopt rules to implement the statutory changes contained in HB 24, Ch. 465, L. 1983 and so stated in the Statement of Intent.

7. 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 15, 1983.

8. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.

John LaFaver
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 2, 1983.

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

In the matter of the amendment of Rule 46.5.508 pertaining to foster care review committee	)	NOTICE OF THE PROPOSED AMENDMENT OF RULE 46.5.508 PERTAINING TO FOSTER CARE REVIEW COMMITTEE. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On June 20, 1983, the Department of Social and Rehabilitation Services proposes to amend Rule 46.5.508 pertaining to foster care review committee.

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

46.5.508 FOSTER CARE REVIEW COMMITTEE

Subsections (1) through (3)(c) remain the same.

(d) a representative of a local school district~~.~~;

(e) the foster parent of the child whose care is under review, if there is one. The foster parent's appointment is effective only for and during that review.

Subsections (4) through (6) remain the same.

The authority of the department to amend the rule is based on Section 41-5-807, and the rule implements Section 41-5-807, as amended by Sec. 1, Ch. 201, L. 1983.

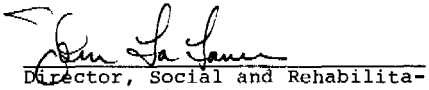
3. This rule is proposed to be amended due to the passage of SB 352 passed by the 48th Legislature which provided that the foster parent of the child be added as a member of the Foster Care Review Committee.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Office of Legal Affairs, Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than June 10, 1983.

5. If a person who is directly affected by the proposed amendment wishes to express his data, views and arguments orally, he must make written request for a public hearing and submit this request along with any written comments he has to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, 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

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 35 persons based on 350 children subject to foster care review.



Director, Social and Rehabilitation Services

Certified to the Secretary of State May 2, 1983.

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

In the matter of the amendment of Rule 46.12.102 pertaining to medical assistance, definitions.	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.12.102 PERTAINING TO MEDICAL ASSISTANCE

TO: All Interested Persons

1. On June 3, 1983, at 10:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rule 46.12.102 pertaining to medical assistance, definitions.

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

46.12.102 MEDICAL ASSISTANCE, DEFINITIONS

Subsections (1) through (5) remain the same.

~~(6) Upper limits of reimbursement for noninstitutional services are:~~

~~(a) the provider's actual charge (the amount submitted on the claim to medicaid);~~

~~(b) the medicaid median charge as determined from medicaid claims submitted during all of the calendar year preceding the state fiscal year in which the determination is made; however, if the individual can supply the department with convincing evidence that the department's determination of median charge does not reasonably represent the individual provider's median charge, the department may conduct an analysis that documents a more appropriate figure;~~

~~(c) the amount allowable for the same service under medicare and the prevailing charge under part B, medicare;~~

~~(d) the 75th percentile of the range of weighted medicaid median charges for that particular covered service. This percentile is set by the department during the calendar year preceding the state fiscal year in which the determination is made.~~

~~(7)~~ (6) Valid and proper claim means a claim which has been signed and submitted on a department approved billing form with all the requested information supplied, and for which no further written information or substantiation is required for payment.

~~(8)~~ (7) Designated review organization means either the department or other entity, contracting with the department or designated by law to determine the medical necessity of medical services rendered to recipients of public assistance.

~~(9)~~ (8) Affiliates means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

~~(10)~~ (9) Provider agreement means an agreement that continues for a specific period of time not to exceed twelve months and which must be renewed in order for the provider to continue to participate in the medicaid program.

~~(11)~~ (10) Fiscal agent means an organization which processes and pays provider claims on behalf of the department.

~~(12)~~ (11) Suspension of payments means the withholding of all payments due a provider pending the resolution of the matter in dispute between the provider and the department.

~~(13)~~ (12) Suspension of participation means an exclusion from participation in the medicaid program for a specified period of time.

~~(14)~~ (13) Termination from participation means an exclusion from participation in the medicaid program.

~~(15)~~ (14) Withholding of payments means a reduction or adjustment of the amounts paid to a provider on pending and subsequently submitted bills for purposes of offsetting overpayments previously made to the provider.

~~(16)~~ (15) Grounds for sanctions are fraudulent, abusive, or improper activities engaged in by providers of medical assistance services.

~~(17)~~ (16) Intern means a medical practitioner involved in a period of on-the-job training as part of a larger educational program.

~~(18)~~ (17) Resident means a medical practitioner involved in a prolonged period of on-the-job training which may either be part of a formal educational program or be undertaken separately after completion of a formal program, sometimes in fulfillment of a requirement for credentialing.

~~(19)~~ (18) License means permission granted to an individual or organization by competent authority to engage in a practice, occupation or activity which would otherwise be unlawful. It is granted in the state where the practice, occupation or activity is carried out.

~~(20)~~ (19) Certification means the process by which a governmental or non-governmental agency or association evaluates and recognizes an individual, institution or educational program as meeting predetermined standards.

~~(21)~~ (20) Outpatient drugs means drugs which are obtained outside of a hospital.

~~(22)~~ (21) Maximum allowable cost (MAC) is the upper limit the department will pay for drugs in accordance with 42 CFR 447. 331 which is a federal regulation dealing with limits of payment. The department hereby adopts and incorporates 42 CFR 447.331 by reference. A copy of the above-cited regulation may be obtained from the department of Social and Rehabilitation Services, Economic Assistance Division, 111 Sanders, Helena, Montana, 59601.

~~(23)~~ (22) Estimated acquisition cost is the cost for drugs for which no MAC price has been determined. The estimated acquisition cost is established and adjusted monthly by

the department upon notification of drug prices by pharmacies or legitimate pharmacy supplies.

~~(24)~~ (23) For SSI-related medically needy, family size means the number of eligible individuals and responsible relatives living in the same household unit. Ineligible persons living in the same household who are not responsible relatives are not counted when determining family size. For AFDC-related medically needy, family size means the number of eligible individuals in the same household unit. Ineligible persons living in the same household, including ineligible responsible relatives, are not counted in determining family size.

~~(25)~~ (24) Medically needy means aged, blind or disabled individuals or families and children who are otherwise eligible for medicaid and whose income is above the prescribed limits for the categorically needy but within the limits prescribed in subchapter 38.

~~(26)~~ (25) Families and children refers to eligible members of families with dependent children who are financially eligible under AFDC-related rules in subchapters 34, 38, and 40. In addition, this group includes individuals under 21 who are not dependent children but who are financially eligible under the above-cited subchapters. It does not include individuals under age 21 whose eligibility for medicaid is based on the blindness or disability; for these individuals, the SSI-related rules in subchapters 36, 38, and 40 apply.

~~(27)~~ (26) Categorically needy means aged, blind or disabled individuals or families and children:

(a) who are otherwise eligible for medicaid and who meet the financial eligibility requirements of AFDC, SSI, or an optional state supplement; or

(b) whose categorical eligibility is otherwise provided for in subchapters 34, 36, 38, and 40.

~~(28)~~ (27) AFDC means aid to families with dependent children under Title IV-A of the Social Security Act.

~~(29)~~ (28) SSI means supplemental security income under Title XVI of the Social Security Act.

~~(30)~~ (29) Optional state supplement means a cash payment made by the department, under ARM 46.9.201 through 205, to an aged, blind or disabled individual.

~~(31)~~ (30) OAA means old age assistance under Title I of the Social Security Act.

~~(32)~~ (31) AB means aid to the blind under Title X of the Social Security Act.

~~(33)~~ (32) AABD means aid to the aged, blind and disabled under Title XVI of the Social Security Act.

~~(34)~~ (33) APTD means aid to the permanently and totally disabled under Title XIV of the Social Security Act.

~~(35)~~ (34) OASDI means old age, survivors, and disability insurance under Title II of the Social Security Act.

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

3. The amendment is proposed to delete a substantive reimbursement rule that had been included under definitions. The department will rely on its reimbursement rules included within each of the Medicaid services sections of the ARM. The reimbursement rule proposed to be deleted does not conform with the department's other Medicaid reimbursement rules, federal regulations or the department's state plan. The deletion of this rule will eliminate discrepancies in reimbursement procedures and will change reimbursement levels in a few scattered cases.

4. 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 13, 1983.

5. 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 2, 1983.

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

In the matter of the amendment of Rule 46.12.2002 pertaining to medical services; physician services requirements.	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.12.2002 PERTAINING TO MEDICAL SERVICES

TO: All Interested Persons

1. On June 3, 1983, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the amendment of Rule 46.12.2002 pertaining to medical services; physical services requirements.

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

46.12.2002 PHYSICIAN SERVICES, REQUIREMENTS Subsections (1) through (4)(c) remain the same.

(d) a completed copy of the approved acknowledgement of receipt of hysterectomy information form must be attached to the medicaid claim when billing for hysterectomy services~~;~~ except

(i) in cases where the recipient was sterile before the hysterectomy or there is a life-threatening emergency that precludes the recipient from giving prior acknowledgement of receipt of hysterectomy information; and

(ii) the physician who performed the hysterectomy certifies, in writing, that the recipient was sterile before the hysterectomy and states the cause of sterility; or

(iii) the physician who performed the hysterectomy certifies, in writing, that the hysterectomy was performed during a life-threatening emergency situation that precluded the recipient from giving prior acknowledgement of receipt of hysterectomy information and gives a description of the nature of the emergency.

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

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

3. Federal regulations have required that all recipients who receive hysterectomies give acknowledgement of the receipt of prior hysterectomy information. Those regulations have changed where the recipient was previously sterile or a life-threatening emergency precludes the giving of prior hysterectomy information. The amendments are proposed so that the department's rules will comply with federal regulations.

4. 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 13, 1983.

5. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.

John LaFaver
Director, Social and Rehabilitation Services

Certified to the Secretary of State May 2, 1983.

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

In the matter of the adoption of Rules 46.4.101, 46.4.102, 46.4.105, 46.4.106, 46.4.107, 46.4.108, 46.4.111, 46.4.112, 46.4.115, 46.4.116, 46.4.119, 46.4.120, 46.4.121, 46.4.123 and 46.4.125 pertaining to the administration of the state plan on aging; services for senior citizens	)	NOTICE OF PUBLIC HEARING ON THE ADOPTION OF RULES 46.4.101, 46.4.102, 46.4.105, 46.4.106, 46.4.107, 46.4.108, 46.4.111, 46.4.112, 46.4.115, 46.4.116, 46.4.119, 46.4.120, 46.4.121, 46.4.123 AND 46.4.125 PERTAINING TO SERVICES FOR SENIOR CITIZENS

TO: All Interested Persons

1. On June 8, 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 adoption of Rules 46.4.101, 46.4.102, 46.4.105, 46.4.106, 46.4.107, 46.4.108, 46.4.111, 46.4.112, 46.4.115, 46.4.116, 46.4.119, 46.4.120, 46.4.121, 46.4.123 and 46.4.125 pertaining to the administration of the state plan on aging; services for senior citizens.

2. The department proposes to readopt the following rules in their entirety without changes:

46.4.101	PURPOSE
46.4.106	DESIGNATION OF AREA AGENCIES
46.4.107	DIVISION HEARING PROCEDURES
46.4.108	FUNCTIONS OF AREA AGENCY
46.4.111	AREA AGENCY ADVISORY COUNCIL
46.4.115	AREA PLAN REVIEW
46.4.116	AREA PLAN, APPROVAL/DISAPPROVAL
46.4.119	AREA PLAN, AMENDMENT/DEVELOPMENT
46.4.120	DIRECT PROVISION OF SERVICES BY AN AREA AGENCY
46.4.121	AREA AGENCY, FUNDS TERMINATION
46.4.123	SERVICE CONTINUATION BY DIVISION
46.4.125	CONTRIBUTIONS FOR SERVICE

These rules can be found on pages 46-87 through 46-119 of Title 46 of the Administrative Rules of Montana.

The authority of the department to adopt the rules is based on HB 663, Ch. 645, L. 1983, and the rules implement HB 663, Ch. 645, L. 1983.

3. The department proposes to readopt Rules 46.4.102, 46.4.105 and 46.4.112 with the following changes:

46.4.102 DEFINITIONS For purposes of this sub-chapter, the following definitions apply:

(1) "Act" means the Older Americans Act of 1965, as amended.

(2) "Administration on Aging" means the agency established in the office of the secretary, department of health and ~~welfare~~ human services, as part of the office of human development services which is responsible for administering the provisions of the act and whose address is North Building, 330 Independence Avenue, Southwest, Washington, D.C. 20201.

(3) "Federal Department" means the department of health and ~~welfare~~ human services.

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

(5) "Division" means the community services division of the department of social and rehabilitation services.

(6) "Commissioner" means the commissioner on aging of the administration on aging.

(7) "Area Agency" means the agency designated by the ~~bureau~~ division in a planning and service area to develop and administer an area plan for a comprehensive and coordinated system of services for older persons.

(8) "Community Focal Point" means a place or mobile unit in a community or neighborhood designated by an area agency for the collocation and coordination of services to older persons.

(9) "Comprehensive and Coordinated System" means a program of interrelated social and nutrition services designed to meet the needs of older persons in a planning and service area.

(10) "Indian Tribal Organization" means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned or chartered by the governing body.

(11) "Indian Tribe" means any tribe, band, nation or other organized group or community of Indians which is recognized as eligible for the special programs and services provided by the federal government to Indians because of their status as Indians.

(12) "Manual" means the state manual of policy and procedures for operations of programs under the Older Americans Act for the division.

(13) "Multipurpose Senior Center" means a community or neighborhood facility for the organization and provision of facilities for recreational and group activities for older persons and services including, but not limited to, health, social, nutritional, and educational services.

(14) "Planning and Service Area" means the geographic area served by an area agency.

(15) "Nonprofit Organization" means a corporation organized under Title 35, Chapter 2, MCA, in which no part of its

income or profit is distributable to its members, directors, or officers.

(16) "Older Person" means any person sixty years old or older.

(17) "Service Provider" means an individual, agency, or organization awarded a subgrant or contract from the division or an area agency to provide services under the state plan or an area plan.

(18) "Federal Fiscal Year" means the period beginning October 1 of one year and ending September 30 of the next year.

(19) "State Fiscal Year" means the period beginning July 1 of one year and ending June 30 of the next year.

(20) "State Plan" means the document submitted by the division to the administration on aging in order to receive grants from the state's allotments under the act.

(21) "Units of General Purpose Local Government" include, but are not limited to, counties and incorporated cities and towns and other government units as may be established by law pursuant to Title 7, Chapters 1, 2, and 3, MCA.

(22) "Area Plan" means the document submitted by an area agency to the division in order to receive subgrants or contracts from the division's grants under the Act. ~~to comply with Chapters 2, 3, and 4 of the manual~~

(23) "~~Social~~ Supportive services" means:

(a) access services such as:

(i) transporting older persons to and from community facilities and resources;

(ii) escorting older persons unable to use conventional means of transportation;

(iii) outreach to identify hard-to-reach older persons and assist them in obtaining services; and

(iv) informing older persons of the opportunities and services available and referring them to the proper service provider.

(b) community services such as education, information and referral, health, legal, advocacy, program development, counseling, health screening, residential repair and renovation, recreation and alteration, renovation, acquisition and construction of multipurpose senior centers;

(c) home services such as home health, homemaker, home chore; and

(d) services in care providing facilities such as placement, counseling, complaint and grievance resolution.

(24) "Nutrition Services" means congregate and home delivered meals, nutrition education and shopping assistance.

(25) "Entity" means an individual, person or organization.

(26) "MCA" means the Montana Code Annotated.

(27) "District" means one of the multi-county districts established by Executive Order 2-71 and Executive Order 7-73.

The authority of the department to adopt the rule is based on HB 663, Ch. 645, L. 1983, and the rule implements HB 663, Ch. 645, L. 1983.

46.4.105 DESIGNATION OF PLANNING AND SERVICE AREAS (1) The division may designate as a planning and service area:

~~(1)~~ (a) any unit of general purpose local government;

~~(2)~~ (b) any district or combination of districts; or

~~(3)~~ (c) any Indian reservation.

(2) The designation of planning and service areas by the division will be governed by the following criteria:

(a) Planning and service areas will be designated every four years beginning October 1, 1987.

(b) There will be no more than 12 planning and service areas designated in each four year period.

(c) There will be no less than 7 planning and service areas designated in each four year period.

(d) The 11 or 12 planning and service areas that were designated prior to October 1, 1983 will continue to be designated as planning and service areas until October 1, 1987.

(e) The division will accept requests from planning and service areas that the area be divided into two new planning and service areas.

(f) Only one request will be approved by the division creating two planning and service areas out of one in the four year period beginning October 1, 1983.

The authority of the department to adopt the rule is based on HB 663, Ch. 645, L. 1983, and the rule implements HB 663, Ch. 645, L. 1983.

46.4.112 AREA PLAN CONTENT (1) An area plan shall provide for a comprehensive and coordinated delivery system.

(2) An area plan shall demonstrate how the area agency will meet functions required by ARM 46.4.108.

(3) An area plan shall provide that:

(a) services are provided as provided in ARM 46.4.120;

(b) any existing state and local licensure requirements for the provision of services are met.

(4) An area plan shall provide that ~~at least 50 percent~~ an adequate amount of the area agency's allotment for ~~social~~ supportive services shall be spent for access services, in home services, and legal services, excluding amounts for administration.

(5) An area plan shall specify:

(a) program objectives to implement all requirements regarding delivery of services;

(b) objectives established by the division;

(c) a resource allocation plan indicating the proposed use of all funds directly administered by the area agency;

(d) an inventory of programs operated by other agencies in the planning and service area for services to older persons;

(e) a description of community services areas and an identification of community focal points; and

(f) methods the area agency uses to set services priorities.

The authority of the department to adopt the rule is based on HB 663, Ch. 645, L. 1983, and the rule implements HB 663, Ch. 645, L. 1983.

4. The department proposes to readopt ARM 46.4.101 through 46.4.125 which rules had been adopted under an implied authority. HB 663 gives the department specific authority to adopt rules to administer the state plan on aging. The department intends to readopt the above described rules with some minor changes to reflect the provision of HB 663, and to continue the administration of the state plan on aging.

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 16, 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 2, 1983.

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

In the matter of the amendment of Rules 46.9.301, 46.9.302, 46.9.303, 46.9.305 46.9.310, 46.9.413 and 46.9.419 pertaining to matching grant-in-aids	)))))))	NOTICE OF PROPOSED AMENDMENT OF RULES 46.9.301, 46.9.302, 46.9.303, 46.9.305, 46.9.310, 46.9.413 AND 46.9.419 PERTAINING TO MATCHING GRANT-IN-AIDS. NO PUBLIC HEARING IS CONTEMPLATED.

TO: All Interested Parties

1. On June 20, 1983, the Department of Social and Rehabilitation Services proposes to amend Rules 46.9.301, 46.9.302, 46.9.303, 46.9.305, 46.9.310, 46.9.413 and 46.9.419 pertaining to matching grant-in-aids.

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

46.9.301 WHEN COUNTIES MAY APPLY AND AUTHORITY (1) A county may apply for an emergency grant-in-aid when it meets all the conditions set forth in section 53-2-323, MCA, any applicable conditions established in section 53-2-207, MCA and all conditions of the department set out below.

~~(2) A county may apply for a matching grant-in-aid when it meets all conditions set forth in Sec. 2, Ch. 11, Sp.L. 1981, and all conditions of the department set out in this sub-chapter.~~

(2) A county may not apply for an emergency grant-in-aid when it has opted for state assumption.

The authority of the department to amend the rule is based on Section 53-2-201, MCA, and Sec. 2, Ch. 11, Sp.L. 1981, and the rule implements Sections 53-2-207, 53-2-321 and 53-2-323, MCA, and Sec. 2, Ch. 11, Sp.L. 1981, and HB 798, Ch. 651, L. 1983.

46.9.302 AMOUNT OF GRANT ~~(1) A county eligible for a matching grant-in-aid shall be reimbursed for fifty percent of all allowable poor fund expenditures in excess of the available resources resulting from a levy of 8 mills as defined at ARM 46.9.303 (4). This matching reimbursement shall continue until such time as the county qualifies for an emergency grant-in-aid.~~

~~(2)~~ (1) A county eligible for an emergency grant-in-aid shall be reimbursed for all allowable poor fund expenditures in excess of the available resources resulting from the maximum mill levy allowed by 53-2-321, MCA as defined at ARM 46.9.303 ~~(5)~~ (4).

~~(3)~~ (2) The amount of reimbursement due a county determined eligible for a grant-in-aid shall be based on an audit

performed by the department at the close of the fiscal year. A county may receive interim reimbursement through the submission of monthly expenditures, on forms provided by the department, to the extent that such expenditures appear allowable after a desk audit. All findings of a desk audit are subject to a final audit.

The authority of the department to amend the rule is based on Section 53-2-201, MCA, and Sec. 2, Ch. 11, Sp.L. 1981, and the rule implements Sections 53-2-207, 53-2-321 and 53-2-323, MCA, and Sec. 2, Ch. 11, Sp.L. 1981.

46.9.303 DEFINITIONS For the purpose of this subchapter, the following definitions apply:

(1) "Indigent person" means any individual determined to be indigent in accordance with the eligibility criteria set forth in the county general assistance or the county medical plan as approved by the department (see 53-3-301, MCA) and provided that no third party (medicaid, supplemental security income, medicare, workman's compensation, private insurance carrier and other) is liable for cost of general relief.

(2) "Medical services" includes only those services set forth at ARM 46.12.501(1) provided that such services are determined to be medically necessary and shall not include any services not reimbursable under the medicaid program (see ARM 46.12.502). The list set forth at ARM 46.12.502 is not meant to be all inclusive.

(3) "Reasonable expenditures for medical services" includes those expenditures for necessary services which do not exceed the amount, scope and duration of reimbursement to a medical provider for provision of such services by the Montana medicaid program.

~~(4) "Available resources resulting from a levy of 8 mills" includes all of the following:~~

~~(a) the resources from a levy of eight (8) mills regardless of the amount actually collected;~~

~~(b) any miscellaneous revenues properly recognizable in the fiscal year in accordance with 7-6-2319, MCA (e.g., corporate license tax, penalty and interest on delinquent taxes, motor vehicle taxes and fees due the poor fund in accordance with 61-3-509 MCA and reimbursement for expenditures received from the department or any third party). This list is not all inclusive; and~~

~~(c) the cash balance in the poor fund at the close of the preceding fiscal year to the extent that cash balance exceeds allowable poor fund expenditures incurred but not paid during the preceding fiscal year. The county shall demonstrate, on forms provided by the department, that all liabilities from the preceding fiscal year have been properly accrued against the revenues of that year.~~

~~(5)~~ (4) "Available resources resulting from the maximum

mill levy allowed by 53-2-321, MCA" includes all of the following:

~~(a)--the resources from a levy of 10.75 mills regardless of the amount actually collected if the county participates in a work program approved by the department;~~

~~(b)~~ (a) the resources from a levy of 13.5 mills regardless of the amount collected; ~~if the county does not participate in a work program approved by the department;~~

~~(c)~~ (b) any miscellaneous revenues properly recognizable in the fiscal year in accordance with 7-6-2319, MCA (e.g. corporate license tax, penalty and interest on delinquent taxes, motor vehicle taxes and fees due the poor fund in accordance with 61-3-509, MCA and reimbursement for expenditures received from the department or any third party). This list is not all inclusive; and

~~(d)--any funds received for matching grant-in-aid; and~~

~~(e)~~ (c) the cash balance in the poor fund at the close of the preceding fiscal year to the extent that the cash balance exceeds allowable poor fund expenditures incurred but not paid during the preceding fiscal year. The county shall demonstrate, on forms provided by the department, that all liabilities from the preceding fiscal year have been properly accrued against the revenues of that year.

The authority of the department to amend the rule is based on Section 53-2-201, MCA, and Sec. 2, Ch. 11, Sp.L. 1981, and the rule implements Sections 53-2-207, 53-2-321 and 53-2-323, MCA, and Sec. 2, Ch. 11, Sp.L. 1981.

46.9.305 CONDITIONS FOR GRANTS (1) A county will be eligible for a grant-in-aid only if it supplies all information and meets all other conditions required by the department, applicable Montana law and these rules~~;~~:

~~(2)--A county is eligible for a matching grant-in-aid if the department determines that all of the following conditions have been met:~~

~~(a)--the amount levied for allowable poor fund expenditures as defined at Rule I exceeds 8 mills;~~

~~(b)--the amount actually expended for allowable poor fund expenditures exceeds all available resources resulting from a levy of 8 mills as defined at ARM 46.9.303(4);~~

~~(c)--the county participates in or operates a work program approved by the department;~~

~~(d)--the county has a general assistance and county medical plan approved by the department; and~~

~~(e)--the county has submitted, on forms provided by the department, a budget for the poor fund in accordance with 53-2-322, MCA.~~

~~(3)--county is eligible for an emergency grant-in-aid if the department determines that all of the following conditions have been met:~~

(a) the amount levied for allowable poor fund expenditures as set forth in ARM 46.9.310 equals the maximum mill levy allowed by 53-2-321, MCA;

(b) the amount actually expended for allowable poor fund expenditures exceeds all available resources resulting from the maximum mill levy allowed by 53-2-321, MCA;

(c) the county has a general assistance and county medical plan approved by the department; and

(d) the county has submitted, on forms provided by the department, a budget for the poor fund in accordance with 53-2-322, MCA.

~~(4)~~ (2) A county which operates a county medical facility must meet one of the following conditions:

(a) the county operates the county medical facility out of an enterprise or special revenue fund separate and distinct from the poor fund and bills the poor fund and other appropriate third parties for services provided to indigent persons; or

(b) the county, if it operates a county medical facility out of the poor fund, uses a financial record keeping system that documents that all expenditures claimed for the purpose of receiving ~~a~~ an emergency grant-in-aid ~~(either matching or emergency)~~ are allowable in accordance with ARM 46.9.310.

The authority of the department to amend the rule is based on Section 53-2-201, MCA, and Sec. 2, Ch. 11, Sp.L. 1981, and the rule implements Sections 53-2-207, 53-2-321 and 53-2-323, MCA, and Sec. 2, Ch. 11, Sp.L. 1981.

46.9.310 ALLOWABLE POOR FUND EXPENDITURES (1) Allowable poor fund expenditures are those reasonable, necessary and legal expenditures incurred for:

(a) the provision of care and maintenance of the indigent sick;

(b) general relief activities of the county welfare department; and

(c) reimbursement to the department for the county's proportionate share of approved administrative costs for all public assistance of the county welfare department.

(d) Expenses associated with incidental record keeping and payment to clients in an approved work program are allowed for ~~matching and~~ emergency grant-in-aid purposes.

Subsections (2) through (6)(1) remain the same.

The authority of the department to amend the rule is based on Section 53-2-201, MCA, and Sec. 2, Ch. 11, Sp.L. 1981, and the rule implements Sections 53-2-207, 53-2-321 and 53-2-323, MCA, and Sec. 2, Ch. 11, Sp.L. 1981.

46.9.413 GENERAL ASSISTANCE

Subsections (1) through (4) remain the same.

~~(5)--Any-county-to-be-eligible-for-a-matching-grant-in-aid-must-have-a-county-work-program.---The-county-plan-must describe-the-policies-and-operation-of-the-work-program-in-the county.--All-work-programs-must:~~

~~(a)--reimburse-participants-at--the-prevailing-rate-of wages-paid-by-that-county-for-similar-work,-but-no-less-than federal-minimum-wage;~~

~~(b)--provide-worker's-compensation;~~

~~(c)-maintain-a-system-of-records-whereby-a-review-can-be made-of-the-number-of-applicants,-number-of-participants,-and estimated-number-of-applicants-who-did-not-receive-benefits due-to-refusal-to-work.---These-records-must-be-available-to the-department-or-its-designee.~~

The authority of the department to amend the rule is based on Sec. 2, Ch. 11, Sp. L. 1981 and Sections 53-2-201, 53-2-323 and 53-3-102, MCA, and the rule implements Sec. 2, Ch. 11, Sp. L. 1981 and Sections 53-2-321, 53-2-323, 53-3-301 and 53-3-302, MCA.

46.9.419 COUNTY MEDICAL ASSISTANCE

Subsections (1) through (1)(d) remain the same.

(2) The county plan must describe the method of payment for medical services. For a county to be eligible for ~~matching or~~ emergency grant-in-aid, reimbursement must not exceed medicaid limits nor services exceed those provided by the medicaid program.

The authority of the department to amend the rule is based on Sec. 2, Ch. 11, Sp. L. 1981 and Sections 53-2-201, 53-2-323 and 53-3-102, MCA, and the rule implements Sec. 2, Ch. 11, Sp. L. 1981 and Sections 53-2-321, 53-2-323, 53-3-301 and 53-3-302, MCA.

3. The First Special Session of the 1981 Montana Legislature mandated that the department set criteria for matching grant-in-aid. The statute that gave the department the authority for a matching grant-in-aid program terminates on June 30, 1983. Section 4, Ch. 11, Sp. L. 1981. Therefore, the department proposes to amend its rules to delete provisions relating to matching grant-in-aid.

The 1983 Montana Legislature passed HB 798 which allows counties to opt for state assumption of certain of their public assistance duties. It was not the intent of the Legislature to allow those counties to receive emergency grant-in-aid.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later

than June 10, 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 along with any written comments he has to the Office of Legal Affairs, Department of Social and Rehabilitation Services, P.O. Box 4210, Helena, Montana 59604, no later than June 10, 1983.

6. If the Department receives requests for a public hearing under 2-4-315, MCA, 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 zero persons based on the premise that no persons are directly affected where the authorizing statute has terminated by its own express language. Section 4, Ch. 11, Sp. L. 1981.

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 2, 1983.

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

In the matter of the amendment of Rules 46.9.602, 46.9.603, 46.9.604, 46.9.605 and 46.9.606 pertaining to the community services block grants	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.9.602, 46.9.603, 46.9.604, 46.9.605 AND 46.9.606 PERTAINING TO THE COMMUNITY SERVICES BLOCK GRANTS

TO: All Interested Persons

1. On June 1, 1983, at 9:00 a.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana to consider the amendment of Rules 46.9.602, 46.9.603, 46.9.604, 46.9.605 and 46.9.606 pertaining to the community services block grants.

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

46.9.602 DEFINITIONS Subsections (1) through (6) remain the same.

(7) ~~"HRDC"~~ Contractor means human resource development council, one of the state's ten (10) organizations designated as a community action agency under the provisions of section 210 of the Economic Opportunity Act of 1964~~,~~ which is a nonprofit community organization serving low income persons in a multicounty area that has the same boundaries as one or more substate planning districts established by executive order of the governor.

~~(8) "Contractor" means the entity receiving CSBG funds under ARM 46.9.606(2) which must be either a county or an HRDC.~~

The authority of the department to amend the rule is based on HB 659, Ch. 237, L. 1983, and the rule implements HB 659, Ch. 237, L. 1983.

46.9.603 CONTRACTOR PLAN (1) To receive its allotment of CSBG funds, as determined under ARM 46.9.606, each contractor must submit, by October 1 of each year, its contractor plan to the department for review and approval. If the federal CSBG appropriation has not been determined to such a degree that estimates of allocations are feasible, the submittal date will be revised accordingly.

~~(a) If two or more counties choose to join in multicounty or regional efforts, one contractor plan for all participating counties may be submitted.~~

~~(b) If the federal CSBG appropriation has not been determined to such a degree that estimates of allocations are unfeasible, the submittal date in subsection (1) above will be~~

~~revised accordingly.~~

The authority of the department to amend the rule is based on HB 659, Ch. 237, L. 1983, and the rule implements HB 659, Ch. 237, L. 1983.

46.9.604 CONTRACTOR PLAN ASSURANCES AND CONTENT

Subsections (1) through (3)(h) remain the same.

(i) ~~if an HRDC, each board will be constituted so as to assure that:~~ each contractor must have a board of directors constituted so as to assure that:

(i) one-third of the members of the board are elected public officials, currently holding office, or their representatives, except that if the number of elected officials reasonably available and willing to serve is less than one-third of the membership of the board, membership on the board of appointive public officials may be counted in meeting such one-third requirements;

(ii) at least one-third of the members are persons chosen in accordance with democratic selection procedures adequate to assure that they are representative of the poor in the area served; and

(iii) the remainder of the members are officials or members of business, industry, labor, religious, welfare, education, or other major groups and interests in the community.

(4) The contractor plan must contain:

(a) evidence that an assessment of needs has been undertaken to determine the best expenditures of CSBG funds;

(b) a description of which services and activities will be carried out and the means to be used to provide those services and activities. Such description shall also include the geographic areas to be served, and categories or characteristics of individuals to be served. If direct services are planned, only individuals with income below the poverty line are eligible;

(c) a proposed budget describing how the CSBG funds will be used during the program period;

~~(d) an official resolution of approval by the county board of each participating county.~~

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

The authority of the department to amend the rule is based on HB 659, Ch. 237, L. 1983, and the rule implements HB 659, Ch. 237, L. 1983.

46.9.605 CONTRACTOR PLAN APPROVAL, DISAPPROVAL, AMENDMENTS (1) The contractor shall submit the plan to the county governing bodies within its multicounty area. A county governing body may approve, disapprove, or offer amendments to the plan. If the county governing body and the contractor

cannot agree as to the plan's components, the department shall prepare and approve a plan for such county.

~~(1)~~ (2) The department will, within 45 working days of plan receipt, notify the contractor of approval/disapproval of each contractor plan.

~~(2)~~ (3) The department will base its review of the contractor plan on whether or not:

(a) the contractor plan demonstrates that it provides a range of services and activities having a measurable and potentially major impact on causes of poverty in the community, or those areas of the community where poverty is a particularly acute problem;

(b) all assurances and requirements of ARM 46.9.604 have been met.

~~(3)~~ (4) The department may disapprove a plan, in whole or in part, only if the plan conflicts with a state or federal law. If the contractor plan is either partially or totally unacceptable, the department will work with the contractor to develop an acceptable proposal. If an acceptable proposal can not be developed within thirty days after notice of disapproval, CSBG funds reserved for an affected county shall be distributed to contractors with approved contractor plans.

~~(4)~~ (5) If a contractor plan is disapproved, a contractor has the right to appeal to the director. The director's decision shall be the final administrative decision.

The authority of the department to amend the rule is based on HB 659, Ch. 237, L. 1983, and the rule implements HB 659, Ch. 237, L. 1983.

46.9.606 ~~COUNTY~~ CONTRACTOR ALLOTMENTS (1) From the available CSBG funds, the department shall retain 5% for cost of administration of the grant and 5% for special projects.

~~(2) If in federal fiscal year 1983, federal law allows CSBG funds to be granted to a contractor county, the proportions are as follows:~~

~~(a) 50% is allocated according to general population distribution as provided in subsection (3);~~

~~(b) 35% is allocated according to poverty population distribution as provided in subsection (4);~~

~~(c) 15% is used to assure a minimum grant equal to one half of one percent of CSBG funds for each county as provided in subsection (5) and to increase the grants for economically depressed counties as provided in subsection (6).~~

(2) The balance of the block grant funds after any retention pursuant to subsection (1) must be distributed to contractors that are eligible to receive such funding as follows:

(a) $500,000, or if the balance of the block grant funds is less than $500,000, then the entire balance of the block

grant funds, must be equally divided among the eligible contractors; and

(b) the balance of the block grant funds after distribution under subsections (1) and (2)(a) must be divided among eligible contractors as follows:

(i) one-half based upon the percentage of the state's population residing within the contractor's area; and

(ii) one-half based upon the percentage of the state's low-income population residing within the contractor's area.

(3) General population allocation: Each ~~county~~ contractor shall receive an amount equal to the ~~county's~~ contractor's 1980 census population ~~less the county's Indian population living on reservations~~ divided by Montana's 1980 census population ~~less the state's Indian population living on reservations~~ times the amount available for allocation according to general population distribution in subsection (2)~~(a)~~(b)(i).

(4) Poverty population allocation: Each eligible ~~county~~ contractor shall receive an amount equal to the ~~county's~~ contractor's 1980 census of poverty ~~less the county's Indian population living on reservations~~ below poverty population divided by Montana's 1980 census of poverty population ~~less Montana's Indian population living on reservations below poverty~~ times the amount available for allocation according to poverty population distribution in subsection (2)(b)(ii). If the 1980 census information referenced to in subsection (3) and (4) of the rule is unavailable, the most current and accurate information available will be used.

Subsections (5) through (7)(b)(ii) are deleted in their entirety.

The authority of the department to amend the rule is based on HB 659, Ch. 237, L. 1983, and the rule implements HB 659, Ch. 237, L. 1983.

3. The Omnibus Reconciliation Act of 1981, Title VI, Subtitle B, authorizes Community Services Block Grants (CSBG) to the states to ameliorate the causes of poverty within the states.

HB 659, passed by the 48th Legislature, mandates that CSBG funds be granted only to the state's eligible HRDCs. HRDCs are to submit proposed work plans to their respective county governing bodies for review and approval. Should an HRDC and its county not be able to agree as to the proposed use of funds, the Department would prepare the work plan and fund the HRDC for its implementation.

4. 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 9, 1983.

5. 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 2, 1983.

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

In the matter of the amendment of Rules 46.12.1201, 46.12.1202, 46.12.1204 and 46.12.1210 pertaining to reimbursement for skilled nursing and intermediate care services	))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.1201, 46.12.1202, 46.12.1204 AND 46.12.1210 PERTAINING TO REIMBURSEMENT FOR SKILLED NURSING AND INTERMEDIATE CARE SERVICES

TO: All Interested Persons

1. On June 6, 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 amendment of Rules 46.12.1201, 46.12.1202, 46.12.1204 and 46.12.1210 pertaining to reimbursement for skilled nursing and intermediate care services.

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

46.12.1201 TRANSITION FROM RULES IN EFFECT SINCE ~~JANUARY 1, 1981~~ JULY 1, 1982

(1) These rules shall be effective July 1, 198~~2~~3.

(2) Includable costs for cost reports with ending dates before July 1, 198~~2~~3, will be determined in accordance with rules for allowable costs then in effect.

(3) Each facility shall be required to submit a cost report for the period from the first day of their 1982 fiscal year through June 30, 1982. Administrative rules in effect on June 30, 1982, shall govern the preparation, submission and audit of this cost report as well as settlement for this period.

(4) Operating and property rates determined in accordance with ARM 46.12.1204 shall be subject to a phase-in process to yield a payment rate. The payment rate is the result of computing the formula:

R=RO+RP

RO=T + ((A-T) divided by 3), if A-T is greater than zero, for the period July 1, 1982 through ~~June 30~~ December 31, 1983, or

RO=T + (2 times ((A-T) divided by 3)), if A-T is greater than zero, for the period ~~July 1, 1983~~ January 1, 1984 through June 30, 1984, or

RO=A, if A-T is greater than zero, for the period July 1, 1984 through June 30, 1985, or

RO=T, if A-T is equal to or less than zero, for the period July 1, 1982 through June 30, 1985, and

RP=S + ((M-S) divided by 3), if M-S is greater than zero,

for the period July 1, 1982 through ~~June 30~~ December 31, 1983, or
RP=S + (2 times ((M-S) divided by 3)), if M-S is greater than zero, for the period ~~July 1, 1983~~ January 1, 1984 through June 30, 1984, or
RP=~~S~~M, if M-S is greater than zero, for the period July 1, 1984 through June 30, 1985, or
RP=S, if M-S is equal to or less than zero, for the period July 1, 1982 through June 30, 1985,
where:
R is the payment rate for the respective rate periods,
S is the interim property rate in effect on June 30, 1982,
T is the interim operating rate plus estimated incentive factor in effect on June 30, 1982,
A is the operating rate effective July 1, 1984, in accordance with ARM 46.12.1204(2), and revised annually in accordance with ARM 46.12.1204(5),
M is the property rate effective July 1, 1984, in accordance with ARM 46.12.1204(3), and revised annually in accordance with ARM 46.12.1204(5).

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

46.12.1202 PURPOSE AND DEFINITIONS (1) The purpose of the following rules is to define the basis and procedures the department will use to pay for long-term care facility services provided to medicaid recipients from July 1, 1982~~2~~3 forward.

Subsections (1)(a) through (1)(d) remain the same.

(2) As used in these rules governing long-term care facility services, the following definitions apply:

(a) "Long-term care facility services" means skilled nursing facility services provided in accordance with 42 CFR 405 Subpart K, intermediate care facility services provided in accordance with 42 CFR 442 Subpart F, and intermediate care facility services for the mentally retarded provided in accordance with 42 CFR 442 Subpart G. The department hereby adopts and incorporates herein by reference 42 CFR 405 Subpart K, and 42 CFR 442 Subparts F and G, which define the participation standards for providers, copies of which may be obtained through the Department of Social and Rehabilitation Services, P. O. Box 4210, 111 Sanders, Helena, Montana 59604. These services include, but are not limited to, a ~~regular~~ medically necessary room, dietary services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Examples of long term care facility services are:

Subsections (2)(a)(i) through (2)(g) remain the same.

(h) "Provider's average nursing care time" means the sum of management hours of care for medicaid recipients in a specific facility as identified by the department in its most recent patient assessment survey, divided by the number of medicaid recipients in that facility. For fiscal years beginning July 1, 1983, the most recent survey shall include a survey period of not less than three months nor more than six months.

Subsections (2)(i) through (2)(k) remain the same.

(l) ~~"Age-of--facility" means the number--of whole--years from the year of construction to the rate year~~. "Adjusted age of facility", for any given facility during any given rate year, means the addition-prorated age of the facility, in whole years, possibly further adjusted first by age limitations (as described in ARM 46.12.1204 (3)) and finally by remodeling allowances (as described in ARM 46.12.1204 (3)), if any. For facilities with no additions built subsequent to initial construction, the addition-prorated age of the facility is simply the age of the facility, the number of whole years from the year of construction to the rate year. For facilities with additions built subsequent to initial construction, the addition-prorated age of the facility is determined by weighting the ages of the original structure and all subsequent additions by their square footage.

(m) "Wood frame construction" means the use of wood or steel studs in most bearing walls, with an exterior covering of wood siding, shingles, stucco, brick, or stone veneer, or ~~or~~ other materials. "Wood frame construction" is defined to include all pre-engineered steel or aluminum buildings.

Subsections (2)(n) through (2)(v) remain the same.

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

46.12.1204 PAYMENT RATE (1) Except as provided under ARM 46.12.1204(4), a provider's payment rate is the sum of an operating rate and a property rate, adjusted by the phase-in procedure provided in ARM 46.12.1201(4).

(2) ~~The operating rate is the result of computing the formula:~~ The operating rate A, in dollars per patient-day, is given by:

~~A(1)=B times ((C times ((30.17 + (54,627 divided by D)) divided by .9)) + E), if T is equal to or greater than the result of computing A(1), or~~

~~A(2)=B times ((C times ((24.69 + (54,627 divided by D)) divided by .9)) + E), if T is equal to or less than the result of computing A(2), or~~

~~A(3)=T, if T is less than A(1) and greater than A(2),~~

~~where:~~

~~A(1),--A(2),--A(3)--is--the--operating--rate--per--day--of service,~~

A=A(1), if T_1 is equal to or greater than A(1), or

A=A(2), if T_1 is equal to or less than A(2), or

A=T_1, if T_1 is less than A(1) and greater than A(2), where:

A(1) = B times ((C times (($30.17 + ($54,627 divided by D)) divided by .9)) + E),

A(2) = B times ((C times (($24.69 + ($54,627 divided by D)) divided by .9)) + E),

B is the area wage adjustment for a provider,

C is 1.0 effective July 1, 1982, ~~1.09~~ 1.06 effective July 1, 1983, and ~~1.1081~~ 1.1554 effective July 1, 1984,

D is the number of licensed beds for a provider times 366 days,

E is the patient care adjustment for a provider,

T_1 is C times the interim operating rate in effect on June 30, 1982, indexed to December 31, 1982.

(a) The area wage adjustment for a provider is the result of computing the following formula:

B=1 + (((F-G) divided by G) times .71) if F is equal to or greater than one standard deviation from the average wage, or

B=1.0 if F is less than one standard deviation from the average wage,

where:

~~B--is--the--area--wage--adjustment--for--a--provider,~~

F is the average wage for a provider's wage area,

G is the average wage for all wage areas plus one standard deviation, if F is more than one standard deviation above the average wage, or

G is the average wage for all wage areas minus one standard deviation, if F is more than one standard deviation below the average wage.

(b) The patient care adjustment for a provider is the result of computing the following formula:

~~E=((J--divided--by--K)--times--L--times--K)----(L--times--K)~~ L times (J-K)

where:

E is the patient care adjustment for a provider.

J is the provider's average nursing care time,

K is the average nursing care time for all providers.

L is the average nursing care hourly wage including benefits.

(3) The property rate is the result of computing the formula:

(a) M = (((N divided by Z) times $6.09) times (O - (P times Q))) divided by .9

where:

M is the property rate per day of service,

N is 25 years minus the ~~age--of--the--facility--(limited--to~~

~~20--years)-as--of-1982--(or-as-of--licensure,-for--entire facilities-built-after-July-1,-1982),-if-the--facility-is of-wood-frame-construction,-or,-30-years-minus-the-age-of the-facility-(limited-to-22-years)--as-of-1982--(or-as-of licensure,--for--entire--facilities-built--after--July-1, 1982),-if-the-facility-is-of-non-wood-frame-construction.~~ adjusted age of the facility as of 1982 (or as of licensure, for entire facilities built after July 1, 1982), if the facility is of wood-frame construction, or, 30 years minus the adjusted age of the facility as of 1982 (or as of licensure, for entire facilities built after July 1, 1982), if the facility is of non-wood-frame construction.

O is 1.0 effective July 1, 1982, 1.06 effective July 1, 1983 and 1.1236 effective July 1, 1984,

P is .0400 if facility is of wood-frame construction, or .0333 if facility is of non-wood-frame construction,

Q is the ~~rate-year-minus-1983-(number-of-years-the-building-has-aged-since-1983),-or-the-rate-year-minus-the-year of--licensure-for--facilities-built--after-July-1,--1982.~~ number of years the building has changed in adjusted age since 1983.

Z is 25 years if the facility is of wood-frame construction, or 30 years if the facility is of non-wood-frame construction.

(b) ~~For-facilities-with--additions--built-subsequent--to the-initial--construction,--the-age--of-the--facility-shall-be determined-by-pro-rating-on-a-square-foot-basis.~~ The addition-prorated age of a facility is to be limited to no more than 20 years, for facilities of wood-frame construction, or to no more than 22 years, for facilities of non-wood-frame construction.

(c) For facilities extensively remodeled after July 1, 1982, ~~the-actual-age-of-the-facility-shall-be--reduced--by-one year-for-each-$1,200-per-bed-of-remodeling,-to-a-maximum-total reduction-for-remodeling-of-ten-years.--If-the-facility-was-at the-maximum--age-of-20-years-for-wood-frame-construction-or-22 years-for-non-wood-frame--construction-at-the-time-of-remodeling,-then-the-reduction-for--remodeling--shall-be-made-to-that maximum--age,-rather--than-to--actual-age.~~ a remodeling adjustment to the possibly limited (as described in ARM 46.12.1204 (3)(b)) age of the facility will be allowed, beginning with a given rate year, provided that the remodeling, or the claimed portion thereof, ended during the immediate prior June 1 to May 31 period. The remodeling adjustment consists of reducing the adjusted age of the facility by the lesser of ten years and the integer nearest the quotient formed by dividing the cost of remodeling by the product of $1,200 and the number of facility beds at completion of the remodeling.

(4) The payment rate to providers of intermediate care facility services for the mentally retarded is the actual

includable cost incurred by the provider as determined in ARM 46.12.1207 divided by the total patient days of service during the provider's fiscal year, except that the payment rate will not exceed the ~~interim~~ final rate in effect on June 30, 1982, as indexed to the mid-point of the rate year by 9% per 12-month year.

(a) One month prior to the beginning of the provider's fiscal year, an interim payment rate which is the department's estimate of actual includable cost divided by estimated patient days will be determined.

(b) The difference between actual includable cost prorated for services to medicaid patients as limited in ARM 46.12.1204(4) and the amount paid through the final payment rate will be settled through the overpayment and underpayment procedures set forth in ARM 46.12.1209.

(5) The averages, standard deviations, prorating for additions, and remodeling factors used in the patient care adjustment, area wage adjustment, or property rate are recalculated once a year, using the most currently available data prior to June 1. Revised rates based on the new calculations are issued by July 1 of each year.

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

46.12.1210 ADMINISTRATIVE REVIEW AND FAIR HEARING PROCEDURES Subsections (1) through (2)(d) remain the same.

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

(f) The hearings officer will conduct the fair hearing and may hold a pre-hearing conference and grant extensions of time as he deems necessary.

(g) The hearings officer will render a written proposed decision within ~~fifteen~~ thirty calendar days of final submission of the matter to him.

(3) Appeal. In the event the provider or department disagrees with the hearings officer's proposed decision, a notice of appeals may be submitted to the hearings officer for forwarding to the ~~board of social and rehabilitation appeals~~ department director within ten days of the receipt of hearings officer's decision. The notice of appeals shall set forth the specific grounds for appeal. If no notice of appeals is filed within ten days, the hearings officer's proposed decision shall become the final agency decision.

(a) All evidence in the record and offers of proof shall be transmitted to the ~~board~~ department director by the hearings officer. The decision of the ~~board~~ department director shall be based solely on the record transmitted by

the hearings officer. A legal brief or a legal argument based on the record may be presented personally or through a representative of the provider or the department to the ~~board~~ department director.

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

The authority of the department to amend the rule is based on Sections 53-6-113 and 53-2-201, MCA and the rule implements Sections 53-6-111, 53-6-141 and 53-2-201, MCA.

3. The primary purpose of this rule change is to implement changes in the reimbursement system to more realistically reflect current inflationary trends. Specifically, the changes will slow the rate of long term care per diem rate increases that were originally based on an inflation rate projected much higher than has been experienced. In addition, the reimbursement system is being clarified.

4. 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 14, 1983.

5. 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 2, 1983.

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

In the matter of the amendment of Rule 46.12.3803 pertaining to the medically needy income standards	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULE 46.12.3803 PERTAINING TO MEDICALLY NEEDY INCOME STANDARDS

TO: All Interested Persons

1. On June 3, 1983, at 1:00 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rule 46.12.3803 pertaining to the medically needy income standards.

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

46.12.3803 MEDICALLY NEEDY INCOME STANDARDS

(1) Notwithstanding the provisions found in subchapter 2, the following tables contains the amount of net income protected for maintenance by family size. The ~~first~~ table applies to ~~AFDC-related-families-and-children,-and-the-second-to SSI-related-individuals-and-couples~~ SSI and AFDC-related individuals and families.

~~(a) To arrive at quarterly medically needy income level, as used in ARM 46.12.3004, multiply the applicable monthly income level from the tables below by 3.~~

~~MEDICALLY NEEDY INCOME LEVELS~~
~~FOR AFDC RELATED FAMILIES AND CHILDREN~~

~~Family Size~~	~~Monthly Income Level~~
~~1~~	~~$212.00~~
~~2~~	~~279.00~~
~~3~~	~~332.00~~
~~4~~	~~425.00~~
~~5~~	~~501.00~~
~~6~~	~~564.00~~
~~7~~	~~624.00~~
~~8~~	~~685.00~~
~~9~~	~~744.00~~
~~10~~	~~804.00~~
~~11~~	~~864.00~~
~~12~~	~~923.00~~
~~13~~	~~983.00~~
~~14~~	~~1,042.00~~
~~15~~	~~1,102.00~~
~~16~~	~~1,162.00~~

~~MEDICALLY-NEEDY-INCOME-LEVELS~~
~~FOR-SSI-RELATED-INDIVIDUALS-AND-COUPLES~~

~~Family-Size~~	~~Monthly Income-Level~~
~~1~~	~~$205.00~~
~~2~~	~~271.00~~
~~3~~	~~442.00~~
~~4~~	~~565.00~~
~~5~~	~~666.00~~
~~6~~	~~750.00~~
~~7~~	~~830.00~~
~~8~~	~~911.00~~
~~9~~	~~990.00~~
~~10~~	~~1,069.00~~
~~11~~	~~1,149.00~~
~~12~~	~~1,228.00~~
~~13~~	~~1,307.00~~
~~14~~	~~1,386.00~~
~~15~~	~~1,466.00~~
~~16~~	~~1,545.00~~

MEDICALLY NEEDY INCOME LEVELS
FOR SSI and AFDC-RELATED INDIVIDUALS
AND FAMILIES

Family Size	Monthly Income Level	Quarterly Income Level
1	$305.00	$ 915.00
2	375.00	1,125.00
3	400.00	1,200.00
4	425.00	1,275.00
5	501.00	1,503.00
6	564.00	1,692.00
7	624.00	1,872.00
8	685.00	2,055.00
9	744.00	2,232.00
10	804.00	2,412.00
11	864.00	2,592.00
12	923.00	2,796.00
13	983.00	2,949.00
14	1,042.00	3,126.00
15	1,102.00	3,306.00
16	1,162.00	3,486.00

~~(b)~~ (a) All families are assumed to have a shelter obligation, and no urban or rural differentials are recognized in establishing those amounts of net income protected for maintenance.

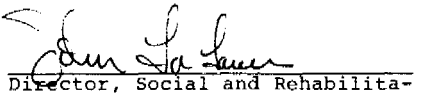
The authority of the department to amend the rule is based on Section 53-6-113, MCA and the rule implements Sections 53-6-131 and 53-6-141, MCA.

3. The Department is proposing to amend this rule to increase the medically needy income levels for single individuals. This is to conform with 42 CFR 435.812 which requires that the medically needy income level for an individual be at least as high as the SSI payment for an individual.

The Medically Needy Standards have been combined into one table for all eligible groups. This change was mandated by the Federal Tax Equity and Fiscal Responsibility Act which determined that the previous levels were greater than allowable standards.

4. 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 13, 1983.

5. 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 2, 1983.

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

In the matter of the adoption of rules pertaining to state public assistance	)))	NOTICE OF PUBLIC HEARING ON THE PROPOSED ADOPTION OF RULES PERTAINING TO STATE PUBLIC ASSISTANCE

TO: All Interested Persons

1. On June 2, 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 adoption of rules pertaining to state public assistance.

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

RULE I STATE SUPERVISED OFFICES (1) There shall be established in each county which has transferred its public assistance and protective service obligations to the department an office which shall be referred to as the "_____ county office of human services, department of social and rehabilitation services". The office name shall be preceded by the name of the county.

The authority of the department to adopt the rule is based on HB 798, Ch. 651, L. 1983, and the rule implements Section 53-2-301, MCA and HB 798, Ch. 651, L. 1983.

RULE II SAFEGUARDING/SHARING INFORMATION
(1) Disclosure of information concerning applicants or recipients of general relief is restricted to purposes directly connected with the administration of such aid. Such purposes include establishing eligibility, determining amount of assistance, and providing services for applicants and recipients.

(a) Requests for information from a government authority, a court, or a law enforcement agency, under a proper request which relates directly to the administration of the program or investigation of fraudulent applications will be released along with a notification of the confidentiality of the information and the penalty for misuse of such information. Whenever possible, the department will attempt to obtain the prior consent from the applicant or recipient, except in emergency situations where notification will be given after the release of information, and in cases where the information is released for legal and investigative actions concerning fraud, collection of support and third party medical recovery.

The authority of the department to adopt the rule is based on HB 798, Ch. 651, L. 1983, and the rule implements Sections 53-2-105 to 504, MCA and HB 798, Ch. 651, L. 1983.

RULE III COMPLAINTS AND INQUIRIES (1) Any person has the right to make a complaint to the department. A complaint is any communication expressing dissatisfaction, grievance or reporting alleged discrimination or negligence.

The authority of the department to adopt the rule is based on HB 798, Ch. 651, L. 1983, and the rule implements Section 53-3-107, MCA and HB 798, Ch. 651, L. 1983.

RULE IV FAIR HEARINGS (1) Any person who is dissatisfied with action taken on an application, grant status, form or condition of payment, may request a fair hearing as provided in ARM 46.2.202.

(2) It is the responsibility of the department to inform every applicant or recipient in writing at the time of application or redetermination or at the time any action affects his eligibility of the right to request a fair hearing.

The authority of the department to adopt the rule is based on HB 798, Ch. 651, L. 1983, and the rule implements Section 53-2-601, MCA and HB 798, Ch. 651, L. 1983.

RULE V FRAUD (1) If a person appears to have received assistance fraudulently, the county department must report all facts of the matter to the department's program integrity bureau, who will in turn refer the matter to the department of revenue or the county attorney of the county where the recipient resides for further action.

(2) If it appears that any person who receives assistance or benefits under general relief is guilty of abusing or misusing said assistance or benefits, any or all of the assistance or benefits, may be discontinued after:

(a) an investigation has been made to determine whether assistance was improperly granted;

(b) the recipient has been notified that benefits will be discontinued; and given the opportunity to request a fair hearing; and

(c) if a hearing is held and it is found that assistance was improperly granted, then no further payments shall be authorized for the length of time equal to the time period benefits were received fraudulently.

The authority of the department to adopt the rule is based on HB 798, Ch. 651, L. 1983, and the rule implements Section 53-2-501, et seq., 53-2-601, and 53-2-609 and HB 798, Ch. 651, L. 1983.

RULE VI TRANSFER OF PROPERTY (1) General relief shall not be granted to any person who has deprived himself directly or indirectly of any property for the purpose of qualifying for assistance. Any person who has transferred property or

interest in property within two years of the date of application without receiving adequate consideration in money or money's worth, shall be presumed to have made such transfer for the purpose of qualifying for assistance unless the applicant or recipient submits sufficient evidence to establish that he did not make the transfer of property for the purpose of qualifying for assistance.

(2) The uncompensated value of the non-excluded real or personal property which was transferred shall be counted toward the general resource limitation for eligibility according to one of the following, whichever is applicable:

(a) until the individual secures the return of the transferred property, at which time eligibility will be re-evaluated;

(b) until the individual receives adequate compensation, at which time eligibility will be re-evaluated;

(c) when the uncompensated value of the property is less than $12,000 for a period of time which shall be measured from the month of application or redetermination and at a rate of one month for each $500 of the uncompensated value of the transferred property except that the period of time shall not cause the uncompensated value to be counted as a resource for more than 24 months from the date of transfer; or

(d) when the uncompensated value of the property is $12,000 or more, for a period of time which shall be measured from the month of transfer and at a rate of one month for each $500 of the uncompensated value of transferred property.

The authority of the department to adopt the rule is based on HB 798, Ch. 651, L. 1983, and the rule implements Section 53-2-601, MCA and HB 798, Ch. 651, L. 1983.

RULE VII STANDARDS OF ASSISTANCE (1) Assistance will be granted to individuals who have a demonstrated need in the areas of shelter, utilities, food, transportation and personal needs at a level not to exceed AFDC standards as provided in the following schedule:

TABLE OF ASSISTANCE STANDARDS

No. of Persons in Household	Shelter	Utilities	Food	Personal Needs	Trans-portation	Maximum Standard
1	$120	$ 75	$ 75	$ 50	$ 50	$218
2	163	100	139	70	70	287
3	195	120	199	82	82	342
4	250	153	253	105	105	438
5	294	180	300	124	124	516
6	330	203	360	140	140	581
7	366	225	398	155	155	643
8	402	247	455	170	170	706
9	436	268	512	184	184	766
10	472	290	569	199	199	828
11	507	312	626	214	214	890
12	542	333	683	228	228	951
13	577	354	740	243	243	1,012
14	612	376	797	258	258	1,073
15	647	397	854	272	272	1,135
16	682	419	911	287	287	1,197

(a) An applicant or recipient of general relief may be eligible for an amount greater than specified in the plan for shelter and utilities if the need is documented and the total payment does not exceed the maximum standard.

(2) Monthly income is to be compared to the maximum standard in the above table for the size of the assistance unit. If the monthly income exceeds the maximum standard, the assistance unit is not eligible. If the assistance unit has income less than the maximum standard, the amount of the grant will be the difference between available income and the maximum standards if a need exists.

The authority of the department to adopt the rule is based on HB 798, Ch. 651, L. 1983, and the rule implements Section 53-2-602, MCA and HB 798, Ch. 651, L. 1983.

RULE VIII METHOD OF PAYMENT (1) All general assistance disbursements shall be made by warrant, check or disbursing orders.

The authority of the department to adopt the rule is based on HB 798, Ch. 651, L. 1983, and the rule implements Section 53-3-302, MCA and HB 798, Ch. 651, L. 1983.

RULE IX APPLICATION FOR GENERAL RELIEF (1) An individual must apply for general relief at the county welfare office in the county of residence, or, in the case of an interstate transient, in the county where present.

(2) Application for general relief must be on the form prescribed by the department, complete and signed by the applicant or a knowledgeable third party when a physical or mental condition precludes signature by the applicant.

(3) The "date of application" is established either by the date the application is received in the county office or the postmark on the envelope if an application is mailed.

(4) The applicant shall make himself available for an interview and cooperate with the department in its investigation.

The authority of the department to adopt the rule is based on HB 798, Ch. 651, L. 1983, and the rule implements Sections 53-2-201 and 53-3-301, MCA and HB 798, Ch. 651, L. 1983.

RULE X PROCEDURES FOLLOWED IN PROCESSING APPLICATIONS (1) The following procedures apply to all applicants for general relief:

(a) Verification by the applicant and documented in all cases will be:

(i) residency, except in the case of interstate transient;

(ii) property transfers;

(iii) employment or work registration;

(iv) need; and

(v) income and resources.

(2) Eligibility determination will be made within 30 days of the application date and the applicant promptly notified, in writing, of approval or disapproval and the basis for the determination.

(3) General relief payments shall be in the form of warrant, check, cash, or vendor payment directly to the client or vendor.

The authority of the department to adopt the rule is based on HB 798, Ch. 651, L. 1983, and the rule implements Sections 53-2-201 and 53-3-301, MCA and HB 798, Ch. 651, L. 1983.

RULE XI DETERMINATION OF INCOME (1) Income means all earned or unearned income currently or potentially available to the assistance unit to meet documented needs.

(a) "Potentially available" includes income reasonably anticipated based on an assessment of the individual's actual employment history and future earning potential as well as assured receipt of unearned income.

(b) "Assistance unit" includes any group of persons who share a common living arrangement and who by choice or legal relationship are mutually dependent.

(2) There is no exclusion for income available to the assistance unit and all income and other liquid assets must be used to meet needs before general assistance will be made available.

The authority of the department to adopt the rule is based on HB 798, Ch. 651, L. 1983 and the rule implements Sections 53-3-102 and 53-3-204, MCA and HB 798, Ch. 651, L. 1983.

RULE XII DETERMINATION OF RESOURCES (1) For the purpose of this subchapter "resources" means all real and personal property which any member of the assistance unit has a legal right to sell or liquidate in order to meet needs.

(2) The equity value of all available property will be considered as available to meet the needs of the assistance unit unless specifically excluded elsewhere in this rule.

(3) All assets not specifically excluded will be deducted from the grant award.

(4) Exclusions: The following items will be excluded when determining resource eligibility:

(a) home of residence including appurtenant land not exceeding 10 acres;

(b) vehicle, $1500;

(c) personal clothing, household furniture, appliances and other essential household items; and

(d) non-liquid assets, $1000.

(5) Conditional assistance may be granted for up to 60 days pending disposal or liquidation of non-liquid assets. After 60 days, equity value of the asset will be deducted from the grant award.

The authority of the department to adopt the rule is based on HB 798, Ch. 651, L. 1983 and the rule implements Sections 53-3-102 and 53-3-204, MCA and HB 798, Ch. 651, L. 1983.

RULE XIII WORK PROGRAM (1) All recipients of general relief, unless excluded elsewhere in this rule, are required to participate in a work program.

(2) The following persons may be exempt from the work requirement:

(a) caretaker relatives of children under 6 years old;

(b) children under age 16;

(c) incapacitated or disabled;

(d) persons geographically isolated; and

(e) persons sixty five years of age or older.

(3) Any recipient who refuses to participate in the work program will lose eligibility for general relief for one (1) week for each refusal.

The authority of the department to adopt the rule is based on HB 798, Ch. 651, L. 1983 and the rule implements Sections 53-3-305 and 53-3-504, MCA and HB 798, Ch. 651, L. 1983.

RULE XIV STATE ASSUMED COUNTY MEDICAL ASSISTANCE

(1) Medical aid and hospitalization shall be provided to individuals with inadequate income and resources to provide necessary services for themselves in accordance with this subchapter.

(2) Application for state assumed county medical is as described in Rule IX and X for general assistance unless specifically noted in other parts of this rule.

(3) Eligibility is determined based upon income and resources actually or potentially available on the date of application. Payment will not be made for claims accrued more than 90 days prior to application for assistance.

The authority of the department to adopt the rule is based on HB 798, Ch. 651, L. 1983 and the rule implements Section 53-3-103, MCA and HB 798, Ch. 651, L. 1983.

RULE XV ELIGIBILITY DETERMINATION FOR STATE ASSUMED COUNTY MEDICAL ASSISTANCE (1) Eligibility regarding resources and income is as described in Rule XI and XII for general assistance, except that the maximum income available to the household must not exceed the medically needy standards for the same size household. All non-excluded income and resources must be used to offset medical obligation. Conditional assistance as provided in Rule XII is not applicable. The medically needy standards can be found at ARM 46.12.3803.

(2) Income eligibility for state assumed county medical is as follows:

(a) Countable income is determined prospectively for a six month period using gross income less the applicable deductions of applicable federal, state and FICA taxes. Income is as defined in Rule XI.

(b) An individual or household with countable income between the general assistance standards and the medically needy income levels must incur medical obligations equal to the difference between the two standards during the six month prospective period prior to becoming eligible for the medical program (e.g., income multiplied by 6 less applicable general assistance standard multiplied by 6 equals incurment). For applicants with income greater than general assistance standard but less than medically needy standard the department will pay the medical obligation less the amount of incurment.

(c) Payment under the medical program will be made only for those services recognized by the Montana medicaid program and will not exceed the medicaid reimbursement rate.

(d) Except for emergency services, all other medical care must receive prior authorization.

(3) Services under this rule will be provided only after all other available resources have been identified and used. Such resources include, but are not limited to health and accident insurance; veteran's administration and hospital; industrial accident benefits; Montana medicaid program; Indian health services; and other liable third party.

The authority of the department to adopt the rule is based on HB 798, Ch. 651, L. 1983 and the rule implements Section 53-3-103, MCA and HB 798, Ch. 651, L. 1983.

RULE XVI PAYMENT PROCEDURES (1) A health care provider seeking reimbursement for an eligible recipient, including providers that are health care facilities operated by a county, must submit every claim for medical services to the county department of the county which is financially responsible for the case.

(2) Each claim must be submitted to the county department on an individual claim form.

(3) The appropriate county department must approve every claim prior to payment.

(4) A provider that is a health care facility operated by a county must follow the foregoing billing procedures in the submission of claims for approval to the county department and may not use an internal accounting write-off procedure for the purpose of paying the claims.

(5) A provider of medical services must be qualified and eligible to provide services according to the requirements of the Montana medicaid program pursuant to title 46, chapter 12, administrative rules of montana.

The authority of the department to adopt the rule is based on HB 798, Ch. 651, L. 1983 and the rule implements Section 53-3-102, MCA and HB 798, Ch. 651, L. 1983.

RULE XVII SUPPLEMENT TO OTHER ASSISTANCE PROGRAMS (1) General assistance payments may be provided to recipients of other public assistance programs only when the individual has been temporarily deprived of all or a portion of their regular assistance through theft, loss, non-delivery or exploitation.

(2) Documentation of all the circumstances must be provided to the county office.

(3) Any payment made as a result of this rule is subject to the prior approval of the department administrator or designee.

The authority of the department to adopt the rule is based on HB 798, Ch. 651, L. 1983 and the rule implements Section 53-3-102, MCA and HB 798, Ch. 651, L. 1983.

RULE XVIII EMERGENCY ASSISTANCE (1) Emergency general assistance may be used to meet an individual's emergent needs in special situations. Services covered will include but are not limited to special clothing, transportation, shelter and other personal needs which are a result of an occurrence beyond the control of the household.

(2) Emergency general assistance payments are limited to $250 per assistance unit per year unless an exception to this rule is granted by the division administrator.

(3) Total funds expended for emergency general assistance per county per fiscal year will not exceed the department's budgeted allocation for that county.

The authority of the department to adopt the rule is based on HB 798, Ch. 651, L. 1983 and the rule implements Section 53-3-102, MCA and HB 798, Ch. 651, L. 1983.

3. House Bill 798 permits counties to transfer all responsibilities for public assistance programs and protective services for children and adults to the Department. It is necessary for the Department to establish rules regarding eligibility and standards for medical and general assistance and other program operations.

4. 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 10, 1983.

5. The Office of Legal Affairs, Department of Social and Rehabilitation Services has been designated to preside over and conduct the hearing.

John LaFaver

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 2, 1983.

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

In the matter of the amendment of Rules 46.12.503 and 46.12.506 and the adoption of rules pertaining to inpatient and outpatient hospital reimbursement rates and services including drug and alcohol treatment services	)))))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED AMENDMENT OF RULES 46.12.503 AND 46.12.506 AND THE ADOPTION OF RULES PERTAINING TO INPATIENT AND OUTPATIENT HOSPITAL REIMBURSEMENT RATES AND SERVICES INCLUDING DRUG AND ALCOHOL TREATMENT SERVICES

TO: All Interested Persons

1. On June 3, 1983, at 2:30 p.m., a public hearing will be held in the auditorium of the Social and Rehabilitation Services Building, 111 Sanders, Helena, Montana, to consider the amendment of Rules 46.12.503 and 46.12.506 and the adoption of rules pertaining to inpatient and outpatient hospital reimbursement rates and services including drug and alcohol treatment services.

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

46.12.503 INPATIENT HOSPITAL SERVICES, DEFINITION

~~Inpatient hospital services are available but shall be limited to medically necessary hospitalization.~~

(1) "Inpatient hospital services" means services that are ordinarily furnished in a hospital for the treatment of an inpatient under the direction of a physician or dentist and that are furnished in an institution that:

(a) is maintained primarily for the care and treatment of patients with disorders other than tuberculosis or mental diseases;

(b) is licensed or formally approved as a hospital by the officially designated authority in the state where the institution is located.

(2) Inpatient hospital services include:

(a) bed and board;

(b) nursing services and other related services;

(c) use of hospital facilities;

(d) medical social services;

(e) drugs, biologicals, supplies, appliances and equipment;

(f) other diagnostic or therapeutic items, or services provided in the hospital and not specifically excluded in ARM 46.12.502;

(g) medical or surgical services provided by interns or residents-in-training in hospitals with teaching programs approved by the Council on Medical Education of the American

Medical Association, the Bureau of Professional Education of the American Osteopathic Association, or the Council on Dental Education of the American Dental Association.

(3) "Inpatient" means a patient who is receiving professional services and board and room in a licensed hospital on a 24-hour-a-day basis.

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

46.12.506 OUTPATIENT HOSPITAL SERVICES, DEFINITION

~~Outpatient--hospital--services--are--available--and--may include--diagnostic--benefits--required--by--an--attending--physician:~~ (1) "Outpatient hospital services" means preventive, diagnostic, therapeutic, rehabilitative, or palliative services provided by or under the direction of a physician or dentist by an institution that:

(a) is licensed or formally approved as a hospital by the officially designated authority in the state where the institution is located;

(b) meets the requirements for participation in medicare.

(2) "Outpatient" means a patient who is not receiving board and room and professional services on a 24-hour-a-day basis.

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

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

RULE I INPATIENT HOSPITAL SERVICES, REQUIREMENTS

(1) These requirements are in addition to those contained in ARM 46.12.301 through 46.12.308.

(2) Inpatient hospital services must be ordered by a physician or dentist licensed under state law.

(3) Services must be determined medically necessary by the designated review organization.

(4) Alcohol and drug treatment services are limited to:

(a) detoxification services up to four (4) days, except that more than four days may be covered if concurrently authorized by the designated review organization and a hospital setting is required; or

(b) the designated review organization determines that the patient has a concomitant condition that must be treated in the inpatient hospital setting, and the alcohol and drug treatment is a necessary adjunct to the treatment of the concomitant condition.

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

RULE II OUTPATIENT HOSPITAL SERVICES, REQUIREMENTS

(1) These requirements are in addition to those found in ARM 46.12.301-308.

(2) Cardiac rehabilitation exercise programs are not a benefit.

(3) Regimens of care programs attached to hospitals for administrative purposes that are excluded in ARM 46.12.502 are not a benefit.

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

RULE III ALL HOSPITAL REIMBURSEMENT, GENERAL

(1) Reimbursement for hospital services will be on a retrospective basis. The reimbursement period will be the provider's fiscal year. Cost of hospital services will be determined for inpatient and outpatient care respectively.

(2) Allowable costs will be determined in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants. Such definition of allowable costs is further defined in accordance with the HIM-15. The department hereby adopts and incorporates herein by reference the HIM-15, which is a manual published by the United States department of health and human services, social security administration, which provides guidelines and policies to implement medicare regulations which set forth principles for determining the reasonable cost of provider services furnished under the Health Insurance for Aged Act of 1965, as amended. A copy of the HIM-15 may be obtained from the Department of Social and Rehabilitation Services, P.O. Box 4210, 111 Sanders, Helena, Montana 59604.

(3) Hospitals located within the state will be reimbursed on an interim basis during the facility's fiscal year. The interim rate will be based on a percentage of customary charges as determined by the facility's medicare intermediary.

(4) Hospital services provided to medicaid patients by facilities outside of the state will be limited to the lower of the medicare rate or the medicaid rate established under the respective state's medicaid regulations.

(5) Facilities located within the state of Montana will be required to submit a medicare cost report in which costs have been allocated to the medicaid program as they relate to charges. The facility shall maintain appropriate accounting records which will enable the facility to fully complete the cost report.

(6) Facilities located within the state of Montana will

be required to file a cost report with the medicare intermediary within 90 days of the facility's fiscal year end.

(7) Upon receipt of the cost report, the department will instruct the medicare intermediary to perform a desk review or audit of the cost report and determine whether overpayment or underpayment has resulted.

(8) The facility will be notified of the department's findings. All amounts payable to the facility will be paid within 30 days of notification. All overpayments will be repaid to the department within 30 days of notice unless the department and the provider agree in writing to other terms.

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

4. These rules are proposed to clarify our method of establishing payment rates for hospital services and to clarify the department's policy on coverage for drug and alcohol detoxification and rehabilitation.

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 13, 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 2, 1983.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
BEFORE THE BOARD OF MEDICAL EXAMINERS

In the matter of the repeal of 8.28.901 - 8.28.903, 8.28.1001 - 8.28.1009, 8.28.1101 - 8.28.1108 and their replacement with new rules relating to the standards for emergency medical technicians.	NOTICE OF REPEAL OF RULES 8.28.901 - 8.28.903 EMERGENCY MEDICAL TECHNICIANS - GENERAL, 8.28.1001 - 8.28.1009 EMERGENCY MEDICAL TECHNICIANS - BASIC, 8.28.1101 - 8.28.1108 EMERGENCY MEDICAL TECHNICIANS - ADVANCED, and ADOPTION OF NEW RULES RELATING TO STANDARDS FOR EMERGENCY MEDICAL TECHNICIANS, 8.28.904 - 8.28.909, 8.28.1010 - 8.28.1015, 8.28.1109 - 8.28.1113

TO: All Interested Persons:

1. On November 24, 1982, the Board of Medical Examiners published a notice of public hearing on the proposed repeal of the above-stated rules and adoption of new rules relating to the standards for emergency medical technicians at pages 2039 through 2060, 1982 Montana Administrative Register, issue number 22.

The hearing was duly held in the conference room of the Department of Social and Rehabilitation Services, 111 Sanders, Helena, Montana on January 5, 1983. Present at the hearing were Drew Dawson of the Emergency Medical Services Bureau of the Department of Health and Environmental Services, Ken Threet, also of that agency, and Dr. John Layne, representing the Board of Medical Examiners. There were numerous persons in the audience to take part in the hearing and view the proceedings.

Mr. Dawson spoke in behalf of the EMS Bureau. In summary, his comments suggested technical language changes made to clarify the nature of the rules. With respect to basic EMT services, changes were made to reflect the desire of the Board of Medical Examiners to clarify the role of the local course committee in dealing with problems of the basic EMT and the reporting of those problems to the board.

On the advanced level, two levels are included to conform to national standards. Certain amendments were suggested with respect to these sections. The board's attention was directed to the amendments suggested which were the result of extensive public meetings held with the Department of Health and consultation with the board.

After outlining the rules, Mr. Dawson read three letters from supporters of the rules.

A request was made by the Yellowstone Valley Medical Society to grant a 45 day extension of the proceedings. Because of the length of time that has gone into the promulgation of the rules and the access the public has had in the meetings held by the Department of Health, the request was denied. The letter contained several suggestions for rule changes.

Nils Troedsson spoke on behalf of the Beaverhead EMS corporation and the Lima volunteer ambulance. He spoke in support of the rules and proposed several changes with respect to 24-hour service availability.

Cheryl Lee, RN, chairman of the Montana State Coordinating Council, Emergency Department of Nurses Association presented written testimony. With the exception of the list of drugs in the rules, the association favored the adoption of the rules.

Joe Hanson, chairperson of the certification and training committee of MEMSHA, spoke on behalf of the Montana Emergency Medical Services Association. The association supported the rules as drafted. He read letters of support from Norman Dewell of Carbon County Disaster and Emergency Services, and Linda Williams, EMS Trainer/Coordinator of Choteau County.

Gene Nobles spoke representing himself as Polson Ambulance Service and as a trustee of St. Joseph's Hospital in Polson. He spoke generally in support, but voiced concern with the rules concerning interhospital transport and the difficulty of compliance by small communities as a factor to be considered.

Dr. Stan Smith of Powell County spoke as a neutral party with respect to the rules, but voiced some concerns regarding the drug list that is proposed which might require some sophisticated monitoring not readily available in field situations and also concern about access to the central circulatory system by EMT's. He did not feel that such procedures were an appropriate in-field procedure in most circumstances. He was also concerned that transthoracic pacemaker placement is a technique which is not properly used in a field situation. He voiced general approval of the rules.

There were four letters in addition to the written statements presented which indicated general support of the rules as presented. There were three letters which, though not in opposition to the rules, offered some concerns with various aspects of the rules.

There were no direct opponents to the rules. Based on amendments which were offered by the EMS Bureau as a result of several public meetings and comments at the hearing, the board is repealing the rules as proposed and adopting the new rules with changes shown. To the extent any suggested amendments are not adopted herein, they are deemed rejected. (new matter underlined, deleted matter interlined)

"8.28.904 DEFINITIONS (1) Advanced EMT service means a comprehensive and integrated arrangement of personnel, facilities, communications and transportation necessary to allow an advanced emergency medical technician to function appropriately, and consistent with his level of training. An advanced EMT service, to assure adequate control of the practicing advanced EMT, must be approved by the board.

(2) Basic emergency medical technician (EMT-basic) means

an individual who has successfully completed the Basic Training Course/Emergency Medical Technician, developed by the U.S. Department of Transportation and who is certified by the board and registry~~, An individual qualified under this section shall be certified as either~~ and is an emergency care provider.

~~(a) Emergency Medical Technician - Ambulance (EMT-A), where an individual is an emergency care provider affiliated with an ambulance service; or~~

~~(b) Emergency Medical Technician - Nonambulance (EMT-NA), where the individual is an emergency care provider in a rescue squad, law enforcement, hospital or setting other than an ambulance service.~~

(3) Board means the board of medical examiners, department of commerce.

(4) Bureau means the emergency medical services bureau, department of health and environmental sciences.

(5) Candidate means a student who has completed one of the levels of training in accordance with these rules and who has been recommended by the Course Committee/Medical Director to the board for certification examination.

(6) Certification examination means the written and practical examinations, administered by the bureau to determine the competency of a candidate for each level of training~~, under the guidelines of the registry~~.

(7) Clinical experience means supervised instruction and practice in a patient care setting.

(8) Clinical preceptor means an individual trained to a level greater than the student, who is responsible for supervising and teaching the student in a clinical setting under the supervision of the medical director or medical training director.

~~(9) Conditional reciprocity means board recognition of EMT training conducted in another state as basis for certification eligibility in Montana. Application fees and additional testing are required prior to certification on the basis of conditional reciprocity.~~

~~(10)~~ (9) Course means a program of initial instruction which meets the specifications for a particular level of training.

~~(11)~~ (10) Course committee means those individuals officially recognized by the board to assist a medical advisor or medical training director in the management of an EMT course.

~~(12)~~ (11) Course coordinator means a person who has completed the appropriate training management course developed and conducted by the bureau, and recommended to the board by the bureau, and is authorized by the board every two years. He/she is under the supervision of a medical advisor and medical training director/advisor.

~~(13)~~ (12) Curriculum means the combination of instructor lesson plans, course guide and student study guide prepared by the U. S. department of transportation.

~~(14)~~ (13) Emergency care provider means an individual employed by or rendering volunteer service to a licensed ambulance service, rescue squad, law enforcement agency, fire department or other agency providing pre-hospital patient care.

~~(15)~~ (14) Emergency medical technician (EMT) means all pre-hospital emergency care personnel who are board and registry certified.

~~(16)~~ (15) Emergency medical technician - advanced means an EMT who has successfully completed one or more of the registry-recognized levels of EMT training above basic and shall include, but not be limited to:

(a) Emergency medical technician - intermediate (EMT-I) means an EMT-~~A~~ who has successfully completed ~~modules I, II, and III, and also the EOA training as set forth in the National Training Course Emergency Medical Technician--Paramedic, and is certified by the board and registry.~~ those portions of the national standard paramedic curriculum which deal with:

(i) roles and responsibilities

(ii) anatomy and physiology

(iii) medical terminology and patient assessment

(iv) shock

(v) fluid and electrolytes and fluid replacement including peripheral IV lines and pneumatic anti-shock garment

(vi) respiratory care including oxygen administration, positive pressure ventilation and esophageal airway maintenance device.

(b) Emergency medical technician - paramedic (EMT-P) means an individual who has successfully completed all the modules in the National Training Course Emergency Medical Technician - Paramedic (U.S. department of transportation), and is certified by the board and registry.

~~(17)~~ (16) Instructor means a person who is recommended by the course committee ~~to~~ and approved by the board to teach in an approved EMT training program, and who shall be capable of performing patient care techniques required in the portion of the curriculum which he is recommended to teach.

~~(18)~~ (17) Medical advisor means a physician licensed in Montana who provides off-line medical control over a basic EMT program.

~~(19)~~ (18) Medical control means the function of providing direction, advice or orders by a physician to ~~E.M.S. field personnel~~ advanced EMT's.

(a) On-line medical control means to provide 24 hour, 7 day per week medical direction, advice, or orders to

advanced EMT's in the field via direct patient-side communication within an approved service, and originating from the medical control facility. On-line medical direction is supervised by off-line medical director.

(b) Off-line medical control means to provide overall medical direction and advice insuring an accurate and thorough presentation of the medical content of the training programs, all continuing education, and performance reviews at all levels.

~~(20)~~ (19) Medical control facility means a ~~facility~~ Montana licensed hospital in which on-line medical control originates and shall have the following:

(a) Patient side communication with all advanced EMT's within the approved service areas.

(b) For EMT-P services, provide 24 hour physician radio coverage. For EMT-I services, provide 24 hour physician/surrogate radio coverage.

~~(21)~~ (20) Medical director (off-line) means a physician licensed in Montana who:

(a) is responsible and accountable for the overall direction and supervision of ~~the local advanced EMT program~~ an approved advanced EMT service;

(b) is capable of demonstrating all patient care techniques required at the advanced EMT level;

(c) is responsible for the application of patient care techniques and quality care provided by advanced EMT in the local program;

(d) has been approved in writing by all the local hospital medical staff(s) to function as medical director;

(e) is responsible for recommending the advanced EMT for recertification.

~~(22)~~ (21) Medical training director means a physician licensed in Montana who:

(a) is responsible and accountable for the overall direction and supervision of the advanced EMT class;

(b) is capable of demonstrating all patient care techniques required at the advanced EMT level;

(c) has been approved, in writing, by the medical staffs of the participating hospitals. If advanced training program is in conjunction with an advanced EMT service, the medical director and medical training director may be the same individual.

~~(23)~~ (22) Module means a unit of the advanced EMT curriculum.

~~(24)~~ (23) Patient means an individual who, as a result of illness or injury, needs immediate medical attention, and whose physical or mental condition suggests imminent danger of loss of life or of significant health impairment.

~~(25)~~ (24) Patient-side communication means direct voice communication which originates at the side and site of the

ill or injured patient and terminates with the delivery of the patient to a receiving hospital. Patient-side communications must be conducted by telephone or on a radio frequency spectrum licensed by the FCC and approved by the EMS bureau. The system configuration must be approved by the bureau.

~~(26)~~ (25) Protocol means a written standardized manner of adminstering patient care filed with and approved by the board and approved by the medical advisor/director, and local medical staffs.

~~(27)~~ (26) Receiving hospital means any Montana licensed hospital in or adjacent to an advanced EMT service area.

~~(28)~~ (27) Registry means the National Registry of Emergency Medical Technicians.

~~(29)~~ (28) Service area means the geographic boundary in which the advanced EMT service provides service. ~~in,~~ Ppatient-side radio communications must be maintained over 90% of the geographic area.

~~(30)~~ (29) State ambulance trip report form means a form developed and produced by the bureau to preserve minimum uniform documentation of pre-hospital care provided at the basic and advanced life-support levels.

~~(31)~~ (30) Student means an individual who meets all student prerequisites and who is selected and approved by the course committee to participate in the training program.

~~(32)~~ (31) Surrogate means a registered nurse, licensed in Montana, who, ~~may initiate approved written standard protocols~~ provides medical control through approved written protocols within an approved intermediate EMT service. The surrogate must be capable of demonstrating all the skills at the intermediate level. The surrogate must be approved by and responsible to the off-line medical control (medical director).

~~(33)~~ (32) Temporary suspension means the revocation of the advanced EMT's right to practice at an advanced level until a permanent ruling can be made by the board.

~~(34)~~ (33) Training management course means a course specifically developed and conducted by the bureau to prepare an individual to manage the operational aspects of an EMT training program under the supervision of a physician.

~~(35)~~ (34) ~~Unconditional~~ Rreciprocity agreement means board recognition of EMT training and certification in another state by written agreement with a cooperating state as a basis for certification in Montana. An application fee is required. No additional testing is required."

"8.28.905 EMERGENCY MEDICAL SERVICES BUREAU - DUTIES

(1) The bureau shall:

(a) review each program/service application and make recommendations to the board in writing ~~within 30 days after the bureau receives the final application;~~

(b) as requested by the board, make on-site visits to evaluate programs/service and submit written reports and recommendations to the board;

(c) conduct training management courses;

(d) select and train personnel to conduct final practical examinations for certification under the supervision of the board;

(e) conduct practical and written ~~registry~~ examinations for certification;

(f) establish and maintain a record-keeping system for EMT programs and related matters;

(g) develop, and produce state ambulance trip report forms appropriate for each level of pre-hospital care;

(h) perform other duties as requested by the board and agreed to by the bureau."

"8.28.906 APPLICATION - PROGRAM APPROVAL (1) No person, corporation, partnership or any other organization may initiate or conduct any program of EMT instruction until the board has approved an application submitted by a course committee. A copy of the written approval shall be provided to each student prior to initiation of training.

(2) A course committee seeking to establish a program shall complete an application form approved by the board and shall submit it to the bureau.

(3) Upon receipt of an application, the board and/or bureau may request from the course committee any information necessary for a proper evaluation of the proposed program including, but not limited to information concerning:

(a) the eligibility of student(s) or the qualifications of the medical director, medical advisor, course coordinator, instructor, student(s) and clinical preceptor;

(b) the adequacy of proposed teaching facilities and training aids.

(4) The board may request the bureau to make an on-site visit and evaluation of the proposed training program/sites.

(5) Within 30 days from receipt of the application or, if additional information is requested, within 30 days from receipt of such information, the board shall in writing approve or reject the application.

(6) The board may disapprove any proposed program which, in its judgement, does not:

(a) provide all requested information;

(b) assure compliance with the provisions of Rules ~~VIII~~ 8.28.1011 and ~~XIII~~ 8.28.1110.

(7) The board shall hear grievances and complaints

and conduct inquiries regarding the conduct and performance of EMT's, local program management and quality control and shall take appropriate action thereon."

"8.28.907 CANDIDATES - CERTIFICATION (1) The board shall not certify any candidate as basic or advanced EMT until the candidate submits a completed application for cetification on forms designated by the board, provides all the information necessary to establish eligibility for certification according to the requirements ~~of (the proposed rules)~~ herein, and passes written and practical examinations specified by the board and administered by the bureau."

"8.28.908 RECIPROCITY (1) a person certified as an EMT (basic or advanced) by the registry or by another state determined by the bureau to have training standards equivalent to those of Montana may receive provisional certification by the board when the person:

(a) submits a fee and application approved by the board;

(b) passes written and/or practical examinations as specified by the board;

~~(c) is currently an emergency care provider;~~

~~(d)~~ (c) is recommended by the course committee and the local medical advisor or medical director.

(2) A person certified as an EMT-(basic or advanced) by another state with which Montana has ~~an unconditional~~ a reciprocity agreement may receive provisional certification when the candidate:

(a) submits a fee and an application approved by the board;

~~(b) submits an application for unconditional reciprocity on forms designated by the board;~~

~~(c) is currently an emergency medical care provider;~~

~~(d)~~ (b) is recommended for certification by the course committee and by the local medical advisor or medical director.

(3) A person who has successfully completed a basic or advanced EMT program within two years of the examination which has been determined by the bureau to have training standards equivalent to or exceeding those of Montana may receive provisional certification by the board when the person:

(a) submits a fee and application approved by the board;

(b) passes written and/or practical examinations as specified by the board;

(c) is recommended by the course committee and the local medical advisor or medical director.

(4) The board may certify students who meet the requirements of (1)(a)-(c), (2) (a) and (b), or (3) (a) - (c) above and who document on forms approved by the bureau

six months of patient care experience.

(5) A person who has allowed his/her certification to expire can be eligible for recertification provided that the person:

(a) Submit documentation on approved forms to the board through the bureau evidence of successful completion of all required recertification requirements after their date of expiration and prior to examination;

(b) successful completion of the certification examination at the level to be recertified;

(c) provided there is not more than two years between the date of expiration and examination."

"8.28.909 SUSPENSION OR REVOCATION OF CERTIFICATION

(1) The certification of an EMT-basic or an EMT-advanced may be suspended or revoked if the EMT:

(a) represents himself/herself in any manner as a physician, nurse or other health care provider other than the highest EMT level for which he/she is certified;

(b) violates any of the provisions of sections 50-6-201 through 50-6-207, MCA, or the requirements ~~of (the proposed rules)~~ herein;

(c) is found by the board to be incapable of properly performing as an emergency medical technician at the level for which he/she is certified, or is adjudicated by a court to be mentally incompetent;

(d) does not renew his/her certification as required;

(e) performs acts in excess of those allowed at his/her level of certification.

(2) Any person having knowledge that an EMT-basic has engaged or is engaging in any of the acts listed in subsection (1) above shall notify the local medical advisor, who shall in cooperation with the course committee investigate the allegation. All complaints received about an individual EMT's performance shall be forwarded to the board and bureau along with a record of any action taken by the course committee. A copy shall be provided to the EMT.

(a) Any person having knowledge that an EMT-basic has engaged or is engaging in any of the acts listed in subsection (1) above or who otherwise has a complaint about an EMT's performance, or about a course committee may also notify the board.

(3) Any person having knowledge that an EMT-advanced has engaged, or is engaging in any of the acts listed in subsection (1) above shall notify the local medical director who shall investigate the allegation. All complaints received about an individual EMT's performance shall be forwarded to the board and bureau along with a record of any action taken by the course committee. A copy shall be provided to the EMT. The medical director

may temporarily suspend the certification of an EMT-advanced and may allow the EMT-advanced to practice at a basic level until a final ruling by the boad.

(a) Any person having knowledge that an EMT-advanced has engaged or is engaging in any acts listed in subsection (1) above or who otherwise has a complaint about an EMT's performance, or about a course committee may also notify the board.

(4) If the board finds that consideration of public health, safety or welfare require immediate action, the board may issue an order for summary suspension or certification pending the completion of proceedings for revocation or other action. Such order shall state the basis for the summary suspension.

(5) Upon referral to the board of an allegation under subsections (2) or (3) above, or by any interested party, the board may initiate an investigation and may request the assistance of the bureau. Within 30 days of such request, the bureau shall prepare a written report of the findings and recommendations to the board.

(6) Within 30 days from receipt of the bureau's report and considering the recommendations of the medical advisor, medical director and/or course committee, the board shall issue its findings and an appropriate order, providing a copy thereof to the EMT in question. Unless appealed under subsection (8) below, such order becomes final within 30 days.

(7) Where an EMT-basic or EMT-advanced received a board order adversely affecting his status as an EMT, he/she may initiate the following appeal procedure:

(a) within 30 days of receipt of the order, a written notice of appeal may be sent to the board setting out the reasons why the EMT deems the order inappropriate;

(b) within 30 days of receipt of the notice of appeal, the board shall conduct a hearing and shall provide notice to the EMT, who may participate in the hearing;

(c) the date of the hearing may be extended if a written request from the EMT is approved by the board;

(d) upon conclusion of the hearing, but not to exceed 5 days, the board shall consider all appropriate facts and issue a final order."

"8.28.1010 EMT - BASIC: ACTS ALLOWED (1) The emergency medical technician - basic:

(a) may perform any skills as taught in the approved curriculum for basic EMT training and in accordance with approved protocols;

(b) may not perform any skill defined as an advanced technique by the U.S. department of transportation emergency medical technician paramedic training curriculum except that an EMT-basic may apply pneumatic counter pressure devices (MAST) in complaince with additional local training

as approved by the board and approved proctocols."

"8.28.1011 EMT - BASIC: COURSE REQUIREMENTS (1) A basic EMT course shall be managed by a course committee under the supervision of a medical advisor and shall:

(a) be conducted according to the latest available curriculum furnished by the U.S. department of transportation;

(b) be completed within 7 months of the date the course commences;

(c) provide a minimum of 10 hours of physician participation;

(d) have at least one instructor per 6 students when practical skills are taught;

(e) ~~certify the students in airway obstruction and cardio-pulmonary resuscitation management at the "Basic Rescuer" level in accordance with standards established by either the American national red cross or the American heart assocation;~~ certify students in CPR according to the standards of the American heart association;

(f) provide a minimum of 10 hours of in-hospital clinical experience for students.

(2) The medical advisor of a basic EMT course shall be responsible for:

(a) overseeing the course for quality and consistency of training and for adherence to protocols;

(b) reviewing, approving and/or developing patient care protocols;

(c) overseeing quality of patient care and adherence to protocols through retrospective audits and patient care critiques.

(3) The course committee of a basic EMT course shall include, but shall not be limited to:

(a) the medical advisor;

(b) the course coordinator;

(c) a registered nurse licensed in Montana who provides emergency care;

(d) pre-hospital emergency care provider (an EMT-basic is required after the first course).

(4) The course coordinator shall, under the supervision of the medical advisor and the course committee;

(a) complete and submit the course application forms approved by the board;

(b) establish the course schedule(s);

(c) provide for facilities and training materials;

(d) arrange for in-hospital clinical experience;

(e) maintain attendance, evaluation and examination records for each student;

(f) schedule instructors and provide them with the material necessary to complete the instruction;

(g) recommend qualified instructors;

(h) perform other tasks as directed by the medical advisor.

(5) The course committee shall:

(a) provide direction and technical advice to the course and continuing education;

(b) assist in classroom and clinical instruction as appropriate;

(c) participate in student evaluation;

(d) participate in the performance evaluation of practicing EMT's;

(e) participate in review of student applications and selection;

(f) assure the availability of a local program of continuing education for EMT's;

(g) recommend candidates for certification or recertification to the board by endorsement on the application or certification form;

(h) approve or disapprove faculty selections recommended by the course coordinator;

(i) review results of interim exams;

(j) ~~perform other tasks as assigned by the medical advisor.~~ receive complaints regarding an individual basic EMT's performance, investigate such complaints and submit copies of the complaints and their disposition to the board and to the bureau."

"8.28.1012 EMT - BASIC: STUDENT PREREQUISITES (1) To be eligible for admission to an EMT basic course, a student must:

(a) be 18 years of age or older at the beginning of the course;

(b) be a high school graduate or equivalent;

(c) be approved for admission by the local medical advisor in consultation with the course committee;

(d) either demonstrate that he/she is currently functioning as a health care provider or submit from the applicant a letter of intent to become an emergency care provider ~~from the applicant.~~"

"8.28.1013 EMT - BASIC: CERTIFICATION---~~FEES~~

(1) Certification shall be for a period of not less than 18 months, nor more than 30 months. Certification shall become due for renewal on December 31. The EMT's certification shall terminate on March 31 following the date of expiration. The board may certify only those students who:

(a) submit an application ~~of~~ on forms designated by the board;

(b) ~~attend 90% of the classes and make up all lessons missed;~~ successfully complete a board approved EMT program within 2 years of the examination date including attending 90% of the classes and making up all lessons

missed;

(c) pass the written examination and the practical examination specified by the board and registry;

(d) complete a minimum of 10 hours of in-hospital clinical experience;

(e) pay a fee designated by the board as sufficient to cover costs of examination and processing of the application;

(f) provide from the emergency care facility or service that he/she ~~is/will become an active emergency care provider upon completion of certification~~ has completed 6 months experience as an emergency care provider."

"8.28.1014 EMT - BASIC: RECERTIFICATION---FEES (1) ~~An EMT-basic will be recertified by the board every 2 years (the EMT certification shall terminate on March 31 following the date of expiration) provided that the EMT-basic~~ The EMT's - basic certification shall terminate on March 31 following the date of expiration unless he/she:

(a) submits an application for recertification on forms designated by the board;

(b) has accumulated credits in compliance with registry and board guidelines;

(c) has been evaluated and recommended for recertication by the local course committee and medical advisor;

(d) demonstrates that he/she continues to be an emergency care provider;

(e) pays a fee designated by the board as sufficient to cover recertification costs;

(f) submits documentation of all approved continuing education and submits completed forms with the appropriate fee to the bureau on or before February 1, following the date of expiration."

"8.28.1109 EMT - ADVANCED: ACTS ALLOWED (1) The emergency medical technician - intermediate (EMT-I) may perform all acts allowed the EMT-basic and, when properly trained, certified, and functioning within an approved service and when directed to perform a specific act by medical control also may;

(a) insert an espohageal obturator airway (EOA) or an esophageal gastric tube airway (EGTA);

(b) place peripheral intravenous fluid lines;

(c) administer approved intravenous fluids;

(d) ~~perform endotracheal suctioning;~~

~~(e)~~ perform peripheral venipuncture;

(2) The emergency medical technician-paramedic (EMT-P) may perform all acts allowed the EMT-basic and the EMT-I and, when properly trained, certified, and functioning within an approved service and when directed to perform a specific act by medical control and within approved protocols also may:

(a) administer intramuscular, subcutaneous and intravenous injections;
(b) administer the following list of drugs approved for use by the board;
(i) medium acting barbiturates
(ii) Lidocaine (Xylocaine)
(iii) Morphine Sulfate
(iv) Diazepam (Valium)
(v) Calcium Gluconate
(vi) Calcium Chloride
(vii) Ipecac
(viii) Saline
(ix) Dextrose 5%-50%
(x) Lactated Ringers
(xi) Atropine Sulfate (Atropine)
(xii) Epinephrine (Adrenalin)
(xiii) Furosemide (Lasix)
(xiv) Naloxone (Narcan)
(xv) Aminophylline
(xvi) Diphenhydramine HCL (Benadryl)
(xvii) Isoproterenol (Isuprel)
(xviii) Dopamine (Intropin)
(xix) Metaraminol (Aramine)
(xx) Norepinephrine (Levarterenol/levophed)
(xxi) Sodium Bicarbonate
(xxii) Nitroglycerin
(xxiii) Propranolol (Inderal)
(xxiv) Procainamide (Pronestyl)
(xxv) Hydralazine (Apresoline/Hyperstat)
(xxvi) Phenytoin Sodium (Dilantin)
(xxvii) Mannitol
(xxviii) Pitocin
(xxix) Edecrin
(xxx) Dobutres (Dobutamine)
(xxxi) Nipride (Nitroprusside)
(xxxii) Decadron (Corticosteroids)
(xxxiii) Digitalis (Digoxion, Digitoxin)
(xxxiv) Quinidine
(xxxv) Bretylium Tosylate (Bretylol)
(c) perform tracheostomy suctioning;
(d) perform direct largnjoscopies;
(e) perform endotracheal intubations;
(f) apply electrodes and monitor EKG's;
(g) perform cardiac defibrillations;
(h) perform cardioversions.
(3) Where a medical director determines that a service has ~~both~~ the need, and ~~personnel have demonstrated competence,~~ when approved by the board, he may direct that the following skills be taught ~~to~~ in accordance to the national standard paramedic curriculum and

performed by EMT-P's. They must be functioning within an approved service and when directed to perform a the specific act by medical control within approved protocols also may:

(a) insert subclavian, external and internal jugular IV lines;

(b) perform cricolthyroidotomy;

(c) perform transtracheal jet insufflation;

(d) insert catheter and Heimlich valve tension pneumothorax relief;

(e) perform carotid sinus massage;

(f) administer intracardiac injections;

(g) perform transthoracic pacemaker placement;

(h) perform phlebotomy;

(i) perform minor suturing;

(j) insert urinary bladder catheter;

(k) insert naso-gastric tube;

(l) use rotating tourniquets.

(4) The advanced emergency medical technician may perform the specified advanced acts only:

(a) when he has patient-side voice contact with on-line medical control and is directed to perform a specific act;

(b) or, when he is initiating formally adopted, written protocols of the medical director prior to initiating voice communication in only the pulseless, non-breathing patient.

(5) When patient-side communications cannot be established within the service area and where the medical director has authorized by written policy, an EMT-advanced may initiate treatment according to approved written standing protocols provided that:

(a) voice contact with on-line medical control is made by the most expedient means possible after the initiation of treatment;

(b) within 24 hours from the time such emergency technique is performed, the EMT-advanced submits a full written report to the board through the bureau on forms designated by the bureau describing the circumstances;

(c) if in more than 10% of the total advanced calls per year, patient-side communications cannot or was not established the service shall be reinspected for conformance.

(6) A student who is participating in an approved advanced EMT program, may perform the advanced techniques listed in (1), (2) and (3) above only under the direct supervision ~~of a physician or registered nurse,~~ of an approved clinical preceptor. A student may administer parenteral medications only under the direct supervision of a physician or registered nurse.

(7) An EMT-I may not perform any technique defined as an advanced technique by the U.S. department of transportation "Emergency Medical Technician-Paramedic" training curriculum, nor may an EMT-I perform outside his/her approved advanced EMT service and medical control.

(8) An EMT-P may not perform any act determined by the medical director to be beyond the EMT-P acts allowed, nor may he/she function outside his/her approved advanced EMT service, and medical control."

"8.28.1110 EMT - ADVANCED: COURSE REQUIREMENTS

(1) An EMT-advanced course shall be managed by a course coordinator (who is not a student in this class) under the supervision of a training director and shall:

(a) be conducted according to the current advanced curriculum available from the U.S. department of transportation;

(b) provide clinical experience as specified in the approved curriculum;

(c) provide for the teaching of all required material in each module that is approved for presentation;

(d) provide at least one instructor per 2 students when practical skills are taught;

(e) be approved by the board prior to beginning instruction; a written copy shall be provided to each student prior to the initiation of training;

(f) provide that the course is completed as follows:

(i) EMT-Intermediate course - 6 months from starting date of course;

(ii) EMT-Paramedic - 18 months from starting date of course.

(2) The medical training director of an EMT-advanced course shall:

(a) obtain approval from the hospital medical staff(s) (providing clinical training) to initiate an advanced EMT course;

(b) be responsible for the selection and orientation of clinical preceptors;

(c) assure overall direction and coordination of the planning, organization, administration, periodic review, continued development and effectiveness of the program;

(d) oversee that the course is conducted as outlined in the curriculum;

(e) oversee the quality of instruction and clinical experience;

(f) oversee course compliance with all applicable board regulations;

(g) critique patient care during training and assure maintenance of written documentation of same;

(h) participate in review of student applications and selection;

(i) review results of interim examinations;
(j) in conjunction with the course committee, recommend to the board candidates for certification.
(3) The course committee of an EMT-advanced course shall include, but shall not be limited to:
(a) medical training director of the course;
(b) physician medical staff representative from participating medical facilities;
(c) course coordinator;
(d) registered nurses currently providing emergency care in the facility;
(e) currently-certified EMT's who are providing emergency care in the field (advanced-EMT will be required after completion of the first training course);
(f) hospital administrator(s) or representative from participating medical facility(s).
(4) The course coordinator, under the supervision of the medical training director and course committee, shall:
(a) complete and submit the course application forms approved by the board;
(b) arrange for training facilities and materials;
(c) arrange for in-hospital and in-field clinical experience with appropriate supervision;
(d) establish course schedules;
(e) maintain attendance, evaluation and examination records for each student;
(f) schedule instructors and provide them with the material necessary to complete the instructions;
(g) perform other tasks as assigned by the medical training director.
(5) The course committee shall:
(a) provide direction and technical expertise to the course;
(b) assist in classroom and clinical instruction as appropriate;
(c) participate in student evaluation;
(d) participate in review of student applications and selection of students;
(e) recommend candidates for certification to the medical training director by endorsement of applications for certification;
(f) perform other tasks as assigned by the medical training director.
(6) For EMT-Intermediate courses; training facilities and clinical experience shall include but shall not be limited to:
(a) classroom space sufficient to accommodate students, instructor(s) and all necessary equipment;
(b) access to maniquins, A-V equipment, A-V soft goods and expendable supplies/equipment as specified in the

EMT-Paramedic course guide;
(c) sufficient patient volume to allow students to complete all clinical experience within 6 months of the course starting date;
(d) clinical facilities, including but not limited to;
(i) emergency department with physician staffing,
(ii) intensive care unit/coronary care unit,
(e) clinical experience with an instructor/student ratio of no more than 1:2, which provides sufficient number of each of the following supervised experiences to demonstrate student proficiency and accuracy and in compliance with board specified criteria.
(i) patient examination and documentation of findings,
(ii) patient interview for pertinent medical/social history and documentation of findings,
(iii) peripheral IV insertions ~~online~~ on live patients and documentation of the procedure,
(iv) peripheral IV maintenance, adding, changing, or discontinuing IV fluids with appropriate documentation,
(v) airway management including oropharyngeal and endotracheal suctioning with appropriate documentation,
(vi) placement of esophageal obturator airways in live patients with appropriate documentation,
(vii) venipuncture for obtaining venous blood specimen with the appropriate documentation.
(7) For EMT-Paramedic courses, training facilities and experience shall include, but shall not be limited to:
(a) classroom space sufficient to accommodate students, instructor(s) and all needed equipment;
(b) access to maniquins, A-V equipment, A-V soft goods, patient care equipment and expendable supplies as specified in the EMT-Paramedic course guide,
(c) sufficient patient volume to allow students to complete all clinical experiences within 18 months of the starting date of the course;
(d) clinical facilities, including but not limited to:
(i) emergency department with 24 hour, in-house emergency physician staff,
(ii) intensive care unit/coronary care unit,
(iii) operating/recovery room,
(iv) pediatric unit,
(v) labor/delivery room/newborn nursery,
(vi) psychiatric unit,
(vii) morgue,
(viii) radiology department,
(ix) respiratory therapy department

(e) clinical experience provided with an instructor/student ratio of no more than 1:2;

(f) completion of all clinical objectives specified in required U. S. department of transportation emergency medical technician-paramedic training curriculum and in accordance with board specified criteria."

"8.28.1111 EMT - ADVANCED: STUDENT ELIGIBILITY

(1) To be eligible for admission to an EMT-Intermediate course, a student must:

(a) be 19 years of age or older at the beginning of the course;

(b) be a high school graduate or equivalent;

(c) be board certified as a Basic-EMT in Montana;

(d) prove that he/she is currently an emergency care provider with at least one year of pre-hospital patient care experience;

(e) be accepted by the medical training director and course committee;

~~(f) be free of any physical or mental disabilities that would render him/her incapable of performing as an emergency medical technician-intermediate.~~

(2) To be eligible for admission to an EMT-Paramedic course, a student must:

(a) be 19 years of age or older at the beginning of the course;

(b) be a high school graduate or equivalent;

(c) be board certified as a basic EMT or EMT-Intermediate in Montana;

(d) prove that he/she is currently providing pre-hospital emergency care at the basic or intermediate level;

(e) be accepted by the medical training director and course committee;

~~(f) be free of any physical or mental disabilities that would render him/her incapable of performing as an emergency medical technician-paramedic.~~"

"8.28.1112 EMT - ADVANCED: CERTIFICATION---FEES

(1) A qualified EMT-advanced shall be certified for a period of not less than 18 months, nor more than 30 months. Certification shall become due for renewal on December 31. The board may certify only those students who:

(a) submit an application on forms designated by the board;

(b) attend an approved advanced EMT program within 2 years of the examination date and participate in all of the required classes and clinical experience, both in-hospital and pre-hospital;

(c) pass the written examination and the practical examination for certification as specified by the board

and the registry;

(d) ~~prove that he/she will be functioning as an EMT-I or EMT-P within an approved advanced system;~~ pay a fee designated by the board as sufficient to cover costs of examination and the processing of the application;

(e) are recommended for certification by the medical director;

(f) provide from the emergency care facility or service that he/she has completed 6 months experience as an EMT-advanced."

"8.28.1113 EMT - ADVANCED: RECERTIFICATION (originally part of the above rule)

~~(2)~~ (1) The advanced EMT certification shall terminate on March 31 following date of expiration unless he:

(a) submits an application on forms designated by the board;

(b) pays a fee designated by the board as sufficient to cover recertification costs;

(c) accumulates sufficient credits in compliance with registry and board guidelines;

(d) has been evaluated and recommended for recertification by the medical director;

(e) demonstrates that he/she continues to be an emergency care provider within an approved advanced EMT service;

(f) submits documentation of all approved continuing education and submits completed forms with the appropriate fee to the bureau on or before ~~January~~ February 1, following the date of expiration."

"8.28.1114 EMT - ADVANCED: SERVICE APPROVAL (1) No person, corporation, partnership or any other organization may initiate or conduct any part of an advanced EMT activity until the board has approved its application for an advanced EMT service.

(a) A service approval shall be valid for 1 year from the date of approval,

(b) applications for renewal of the advanced EMT service shall be submitted to the board through the bureau on designated forms at least 90 days prior to the expiration date.

(2) Any person, corporation, partnership or any other organization seeking to establish an advanced EMT service shall complete an application form approved by the board and shall submit the application to the bureau.

(3) Upon receipt of an application, the board and/or bureau may request from the applicant any information necessary for a proper evaluation.

(4) Within ~~30~~ 90 days from receipt of the application or, if additional information is requested, within ~~30~~ 90 days from receipt of such information, the board shall in writing approve or reject the application for

an advanced EMT service.

(5) The board may disapprove any proposed advanced EMT service which, in its judgement, does not:

(a) provide all requested information;

(b) assure compliance with the ~~provisions of (Rule VIII and Rule XIII)~~ rules and regulations herein.

(6) The board shall hear grievances and complaints and conduct inquiries regarding the conduct and performances of advanced EMT's, local service management and quality control and shall take appropriate action thereon.

(a) The board may initiate an investigation and may request the assistance of the bureau.

(b) The board may revoke or suspend a service approval if, in their judgement;

(i) the rules and regulations are not being complied with,

(ii) considerations of public health, safety or welfare require immediate action.

(7) Each advanced EMT service shall have a service committee.

(a) The committee shall include, but not be limited to;

(i) the medical director (off-line),

(ii) representative of on-line medical control,

(iii) physician staff representative from participating hospitals,

(iv) registered nurse representative from participating hospitals,

(v) advanced EMT representative who is currently providing care in the service area.

(vi) If an advanced training program is in conjunction with an advanced EMT service, the service committee and the course committee may be one and the same.

(b) The committee shall:

(i) oversee compliance with all applicable board rules and regulations,

(ii) critique patient care and assure maintenance of written documentation of such critiques,

(iii) perform annual review of advanced EMT individual skills,

(iv) recommend advanced EMT's to the board for re-certification,

(v) assure availability of a local program of continuing education for advanced EMT's,

(vi) provide direction and technical advice for the overall operation of the approved service,

(vii) receive complaints regarding an individual advanced EMT's performance, or regarding the approved service, investigate such complaints and submit copies of the complaints and their disposition to the board, and the

bureau,
(viii) perform other tasks as assigned by the medical director.
~~(7)~~ (8) To be approved as an advanced EMT service by the board, the applicant shall meet the following service criteria:
(a) medical control;
(i) provide for designated medical director (off-line).
(ii) provide for designated on-line medical personnel,
(iii) provide for designated medical control facility,
(iv) provide for patient-side communications,
(v) provide for written protocols,
(b) sufficient personnel to assure 24 hour service availability consistent with acts allowed, and as adopted by the board;
(c) communications;
(i) provide for a designated service area dependent upon patient-side radio communications capability,
(ii) provide for a dispatch center that shall be capable of receiving calls from the service area via a single access phone number, and radio communication with all field advanced EMT's,
~~(iii) provide for the following equipment at the intermediate level.~~
(d) equipment;
(i) provide for the following equipment at the intermediate level:

(A) E.O.A. ~~Any combination~~ minimum of (1)
~~E.O.A. minimum of (3)~~
(B) IV Solutions (1000 cc or equivalent)
D5W ~~(2)~~ (1)
LR ~~(6)~~ (2)
Saline ~~(2)~~ (1)
(C) IV Administration Sets
MACRO ~~(4)~~ (2)
MINI (1)
~~MICRO (1)~~
(D) Intercaths
12 Gauge ~~(0)~~ (2)
14 Gauge ~~(0)~~ (2)
16 Gauge ~~(0)~~ (2)
18 Gauge ~~(0)~~ (2)
20 Gauge ~~(0)~~ (2)
(E) IV Tourniquets ~~(3)~~
(F) ~~M.A.S.T.-Pants~~ Pneumatic Anti-Shock Garments
Adult
Pediatric
(G) Swabs
Alcohol
Betadine

(H) ~~Pen/pencil-with-paper~~ American College of Surgeon's current minimum equipment for basic life support ambulance.

~~(I)--American College of Surgeon's current minimum equipment for a basic life support ambulance (June, 1981)~~

~~(iv)~~ (ii) Provide for the following equipment at the paramedic level:

(A) Monitor/Defibrillator
portable self contained DC powered - with self contained monitor and ECG strip writer with quick look paddles

~~(B)--Pediatric paddles~~

~~(C)~~ (B) IV Catheters
12 gauge ~~(10)~~ (2)
14 gauge ~~(10)~~ (2)
16 gauge ~~(10)~~ (2)
18 gauge ~~(10)~~ (2)
20 gauge ~~(10)~~ (2)

~~(D)~~ (C) Needles (Butterfly)
19 gauge ~~(10)~~ (2)
21 gauge ~~(10)~~ (2)
23 gauge ~~(10)~~ (2)

~~(E)~~ (D) Needles
18 gauge ~~(10)~~ (5)
22 gauge ~~(10)~~ (5)
25 gauge ~~(10)~~ (5)

~~(F)~~ (E) IV Solutions (1000cc or equivalent)
D5W ~~(5)~~ (2)
LR ~~(6)~~ (4)
Saline (2)

~~(G)~~ (F) IV Administration sets
MACRO ~~(7)~~ (4)
MINI ~~(3)~~ (2)
~~MICRO (3)~~

~~(H)~~ (G) Syringes
1cc TB
3cc Monoject
6cc Monoject
12cc Monoject
35cc Monoject

~~(I)~~ (H) ET Tubes
~~Oral 3, 9 (2 each)~~ 2 full sets of infant through adult

~~(J)~~ (I) Laryngoscopes
Handle (1)
Blades (1 set infant through adult)

~~(K)~~ (J) McGill Forceps ~~(1)~~

~~(L)~~ (K) E.O.A. ~~Total (3) B, G, T, A, any combination~~ Total 1

~~(M)~~ (L) Alcohol swabs

~~(N)~~ (M) Betadine swabs

~~(O)~~ (N) IV Tourniquets ~~(3)~~

~~(P)~~ (O) ~~Pen/pencil-with-paper~~ American College of Surgeon's current minimum equipment for basic life support ambulance

~~(Q) American College of surgeon's current minimum equipment for basic life support ambulance (June, 1981)~~

~~(R)~~ (P) Prejelled electrodes ~~(12)~~

~~(S)~~ (Q) Conductive jell

~~(T)~~ (R) ~~Approved Drugs~~ Drugs (as allowed in service approval

~~(U)~~ (S) ~~Copies of local approved ALS Protocols~~ ALS Protocols (as allowed in service approval)

~~(V)~~ (T) ~~M.A.S.T. Trousers~~ Pneumatic Anti-Shock Garments
Adult
Pediatric

~~(d)~~ (e) transportation:

(i) provide transportation via a Montana licensed ambulance service or via an air ambulance approved by the board.

(ii) provide designated emergency vehicles for initial response.

~~(e)~~ (f) mutual aid:

(i) provide mutual aid agreements that provide for 24 hour, 7 days a week coverage with all licensed pre-hospital EMS providers in and bordering the designated service area. These agreements shall, as a minimum, include the following:

(A) defined primary and secondary geographic response areas;

~~defined limitations of mutual aid agreements;~~

(B) defined initiation of mutual aid agreements.

(ii) provide mutual aid agreements with any existing medical control facilities within or serving the designated service area. These agreements shall, as a minimum, include the following:

(A) an acknowledgement of the others existence;

(B) provisions for assuming on-line medical direction ~~in the event of equipment failure~~.

(iii) provide a mutual aid agreement among all receiving hospitals within or adjacent to designated service area. These agreements shall, as a minimum include: ~~the following~~

(A) a distribution plan for patients to be initiated by medical control."

BOARD OF MEDICAL EXAMINERS
THOMAS MALEE, M.D., PRESIDENT

BY: _____
ROBERT WOOD, STAFF ATTORNEY
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, May 2, 1983.

STATE OF MONTANA
DEPARTMENT OF COMMERCE
MILK CONTROL BUREAU

In the matter of the amendment of Rule 8.79.301 regarding licensee assessments) NOTICE OF PROPOSED AMENDMENT) OF RULE 8.79.301 LICENSEE) ASSESSMENTS

TO: All Interested Persons

1. On March 7, 1983, the Milk Control Bureau of the Department of Commerce published a notice of amendment of Rule 8.79.301 regarding licensee assessments and reporting of those results at page 8-2313, 1983 Montana Administrative Register, issue no. 5.

2. The bureau has amended the rules as proposed. However, it should be noted that in the original notice, the implementing section was typed incorrectly and cited as 31-23-202, MCA. The implementing section should be 81-23-202, MCA. The Office of the Administrative Code Committee called regarding this.

3. No other comments or testimony were received.

William E. Ross

William E. Ross, Chief
Milk Control Bureau
Department of Commerce

Certified to the Secretary of State, May 2, 1983.

BEFORE THE DEPARTMENT OF REVENUE

OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL of Rules 42.20.111, 42.20.112) 42.20.121, 42.20.122, 42.20.123, 42.20.124, 42.20.125, 42.20.126, 42.20.127, 42.20.128, 42.20.129, 42.20.130, 42.20.131 and 42.20.132 relating to the appraisal of timberlands and the ADOPTION of Proposed Rules I, II, III and IV (42.20.113-42.20.116) relating to the appraisal of timberlands.	NOTICE OF THE REPEAL OF Rules 42.20.111, 42.20.112, 42.20.121, 42.20.122, 42.20.123, 42.20.124, 42.20.125, 42.20.126, 42.20.127, 42.20.128, 42.20.129, 42.20.130, 42.20.131, and 42.20.132 relating to the appraisal of timberlands, and the ADOPTION of Rules I, II, III and IV (42.20.113-42.20.116) relating to the appraisal of timberlands.

TO: All Interested Persons:

1. On November 24, 1982, the Department of Revenue published notice of the proposed repeal of existing rules relating to the appraisal of timberlands and the proposed adoption of four new rules (42.20.113 to 42.20.116) relating to the appraisal of timberlands, at pages 2076 through 2082 of the 1982 Montana Administrative Register, issue number 22. On December 20, 1982, a public hearing on the above proposed matter was held.

2. The Department of Revenue hereby repeals rules 42.20.111, 42.20.112 and 42.20.121 through 42.20.132 as proposed.

3. The Department hereby adopts Rule I (42.20.113) as proposed, except that subsection (4) thereof is amended as follows:

(4) All timberlands will be classified and ownership records maintained ~~by 40 acre tracts, fractional lots, or metes and bounds description~~ according to the provisions of 15-7-103, MCA. The county appraiser for the county where the timber is situated shall be responsible for maintaining the timber valuation records. Records must depict each timber type, acreage in each type, value for each type, total acreage value for each type, and total timber value for an ownership.

Rule II (42.20.114) is adopted as proposed except that subsection (6) thereof is amended as follows:

(6) The values assigned in each stand size class; sawtimber, poletimber and seedlings-saplings, shall be discounted using discount multipliers based on a discount rate for long-term forest investments applicable to privately owned forest land over a specified rotation period (in years).

Rule III (42.20.115) is adopted as proposed.

Rule IV (42.20.116) is adopted as proposed except that footnotes 1 and 2 thereof are amended as follows:

1./ To determine V_p, use the medium-stocked, sawtimber, board-foot volume for ~~the~~ well-stocked or medium stocked poletimber species in question. Use the poorly-stocked, sawtimber, board-foot volume for poorly-stocked poletimber species in question.

2./ To determine V_{ss}, use the medium-stocked, sawtimber, board-foot volume for ~~the~~ well-stocked or medium stocked seedling-sapling species in question. Use the poorly-stocked, sawtimber, board-foot volume for poorly-stocked seedling-sapling species in question.

4. A public hearing on the proposed rules was held on December 20, 1982, and several interested persons appeared. Two of those persons offered oral testimony. Four separate documents constructing written comments were received, one of which was a verbatim reiteration of the oral testimony which the person had offered at the hearing.

The Department has amended the proposed rules to reflect several of the concerns voiced at the hearing and in the written commentary. Written comments received from Champion International and the St. Regis Paper Co. contained remarks centered upon the proposed 40-acre basis for recordkeeping purposes. The parties offered the opinion that such a basis would be administratively burdensome. The 1983 Montana Legislature amended 15-7-103, MCA, so that lands will be classified according to parcels or subdivisions not exceeding one section each. This amendment conforms to past practices by the forest industry and the Department has subsequently amended Rule I (42.20.113(4)) to reflect this change.

The language "applicable to privately owned forest land" in Rule II (42.20.114(6)) was added per Champion International's suggestion. The Department feels that the inclusion of the language in this rule eliminates the need for multiple changes in the definition of the discount rate for long-term forestry investments found under rule III (42.20.115).

Finally, the Department has amended footnotes 1 and 2 of Rule IV (42.20.116) to reflect a concern of Mr. Phillip B. Donally, a private citizen, that the Department was going to "lump all potential reforestation lands and tree stands into one big figure". The amendments clarify the Department's requirements.

The Department has not adopted numerous other suggestions made by those at the hearing and through the written commentary. Mr. Randy Pearson of the Department of Revenue, Property Assessment Division, has prepared a detailed response to each of the written comments received by the Department. In this report, he examines each of the suggestions or comments made by the interested parties and provides a specific response to each. Because of the highly technical nature of the new rules, the

Department feels that it is most important that the rationale for the Department's action be set forth explicitly and unambiguously. Accordingly, Mr. Piearson's responses are hereby incorporated by reference. Copies of this document have been sent to those parties who presented oral or written commentary and the Revenue Oversight Committee. Copies of this document may also be obtained free of charge upon written request from the following source:

Department of Revenue
Property Assessment Division
Mitchell Building
Helena, Montana 59620

5. Authority to repeal the existing rules and to adopt the new rules is found in 15-1-201, MCA. The new rules implement 15-8-111, MCA.

ELLEN FEAVER, Director
Department of Revenue

Certified to Secretary of State 05/02/83

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

In the matter of the repeal of Rule 46.6.1401 pertaining to the kidney dialysis/ transplant program	))))	NOTICE OF THE REPEAL OF RULE 46.6.1401 PERTAINING TO THE KIDNEY DIALYSIS/ TRANSPLANT PROGRAM

TO: All Interested Persons

1. On February 24, 1983, the Department of Social and Rehabilitation Services published notice of the proposed repeal of Rule 46.6.1401 pertaining to the kidney dialysis/ transplant program at page 179 of the 1983 Montana Administrative Register, issue number 4.

2. The department has repealed the rule as proposed.

3. No comments or testimony were received.

Director, Social and Rehabilitation Services

Certified to the Secretary of State May 2, 1983.

VOLUME NO. 40 OPINION NO. 9

FIREFIGHTERS - Rural volunteer fire crews, eligibility for workers' compensation;
WORKERS' COMPENSATION ACT - Volunteer firefighters in unincorporated areas as employees;
MONTANA CODE ANNOTATED - Title 7, chapter 33, parts 21 to 23, sections 7-33-4106, Title 19, chapter 12, 19-12-102(3), 39-71-118, 39-71-401;
OPINIONS OF THE ATTORNEY GENERAL - 39 Op. Att'y Gen. No. 36 (1981).

HELD: Volunteer firefighters in unincorporated areas are not "employees" within the meaning of the Workers' Compensation Act, but are entitled to benefits under the Volunteer Firefighters' Compensation Act.

20 April 1983

William A. Douglas, Esq.
Lincoln County Attorney
Lincoln County Courthouse
Libby, Montana 59923

Dear Mr. Douglas:

You have requested my opinion on the following question:

> Whether volunteer firefighters in rural fire districts are "employees" within the meaning of the Workers' Compensation Act, and are therefore entitled to Workers' Compensation Insurance coverage and protection.

Section 39-71-401, MCA, provides that the Workers' Compensation Act shall apply to all employees as defined in section 39-71-118, MCA. Section 39-71-118(1)(a), MCA, defines "employees" as those who are "in the service of an employer...under any appointment or contract of hire, expressed or implied, oral or written."

Volunteer firefighters are not specifically referred to in the Workers' Compensation Act. However, a 1981

Attorney General's opinion concluded that volunteer firefighters in incorporated towns are "employees" under section 39-71-118, MCA. 39 Op. Att'y Gen. No. 36 (1981). The opinion was based on the "service by appointment" language in the definition of "employee" and the fact that in incorporated towns all firefighters, whether paid or volunteer, must be "appointed" by the mayor or manager under section 7-33-4106, MCA.

By contrast, firefighters in rural fire districts are not "appointed," according to the applicable statutes. Rural fire districts are regulated by Title 7, chapter 33, parts 21 through 23, MCA. While volunteer fire districts are permitted under these parts, there is no provision similar to the one providing for appointment of firefighters in incorporated municipalities. The fact that volunteer firefighters in rural fire districts neither serve under contract for hire, nor under appointment, renders the definition of "employee" in the Workers' Compensation Act inapplicable to them.

There is a separate statute concerning payments to volunteer firefighters for death or injury incurred in the performance of their duties. Insurance benefits are available to volunteer firefighters in unincorporated areas under the Volunteer Firefighters' Compensation Act, Title 19, chapter 12, MCA. That statute specifically covers fire companies in unincorporated areas, towns, or villages. § 19-12-102(3), MCA.

THEREFORE, IT IS MY OPINION:

> Volunteer firefighters in unincorporated areas are not "employees" within the meaning of the Workers' Compensation Act, but are entitled to benefits under the Volunteer Firefighters' Compensation Act.

Very truly yours,

MIKE GREELY
Attorney General

VOLUME NO. 40 OPINION NO. 10

RETIREMENT SYSTEMS - Teachers' unused vacation and sick leave included in earned compensation of disability retirees;
TEACHERS - Computation of earned compensation for disability retirees under retirement system;
ADMINISTRATIVE RULES OF MONTANA - Sections 2.21.133, 2.21.141, 2.21.221, 2.21.232;
MONTANA CODE ANNOTATED - Sections 1-2-101, 2-18-611, 2-18-617, 2-18-618, 19-4-101(8);
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 176 (1978).

HELD: When a teacher retires on a disability allowance prior to the completion of a full year and is statutorily entitled to earned compensation in the Teachers' Retirement System in an amount equal to the "compensation, pay or salary which he would have received had he completed the full year," the Teachers' Retirement Board must include in the calculation of his earned compensation the value of the sick leave and vacation leave the member would have earned had he completed the contract year.

21 April 1983

M. Valencia Lane
Associate Counsel
Department of Administration
Sam W. Mitchell Building
Helena, Montana 59620

Dear Ms. Lane:

You requested my opinion on the following question:

> When a teacher retires on a disability allowance prior to the completion of a full year and is statutorily entitled to earned compensation in the Teachers' Retirement System in an amount equal to the "compensation, pay, or salary which he would

> have received had he completed the full year," must the Teachers' Retirement Board include in the calculation of his earned compensation the value of the sick leave and vacation leave the member would have earned if he had completed the contract year?

Your opinion request arises from a college teacher's retirement due to disability. The teacher's contract included, as compensation, sick leave and vacation leave. Upon the teacher's retirement the college submitted a statement of his earned compensation, including amounts of vacation and sick leave he would have accrued had he completed the contract year. The administrative vice president of the college stated in a letter to the Teachers' Retirement System (hereinafter TRS) that the University System's policy was to include those amounts as compensation. The TRS, on the other hand, interprets the pertinent statutes to exclude those amounts because they are speculative; that is, it is impossible to determine how much of the vacation and sick leave the teacher would have used had he completed the year.

I understand that the contract in question here was entered into before 1981. Since that time, the Teachers' Retirement Act has been amended, and amendments are pending further in the present Legislature (House Bill 169), to restrict and to clarify the definition of "earned compensation." The focus of this opinion is limited to retirement benefits that are governed by the "average final compensation" and "earned compensation" definitions applied to this pre-1981 contract. I express no opinion here on questions arising under these statutes as subsequently amended.

The retirement benefits received by the member are determined on the basis of "average final compensation," which is the average earned compensation of three successive highest income years. § 19-4-101(5), MCA. The definition of "earned compensation," which is the crux of this opinion, is set forth in section 19-4-101(8), MCA:

> "Earned compensation" means the full compensation, pay, or salary actually paid to a member and reported to the retirement system, including irregular forms of

> remuneration, such as amounts paid for special duty or under a salary reduction agreement, and amounts paid in kind, such as maintenance. The employer shall fix the value of any compensation paid in kind. The earned compensation of a member who had less than 3 consecutive years of full-time service during the 5 years preceding his retirement is the compensation, pay, or salary which he would have earned had his part-time service been full-time service. The earned compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary which he would have received had he completed the full year. (Emphasis added.)

The Legislature enacted this subsection in 1977, and in so doing, created a separate and distinct treatment for disability recipients. For other retirees, the "average final compensation" is based on compensation actually paid, including payments for unused vacation and sick leave that are reported to the system. See 37 Op. Att'y Gen. No. 176 (1978). However, members who retire under a disability allowance are permitted to assume, for computation of "average final compensation," that they completed the contract year. The reason for this is obvious: the amount of retirement benefits the member will receive is based on an average of the three consecutive highest income years of service--usually the last three years of service. A member under normal conditions terminates his employment at the end of his final contract year. A person retiring due to a disability may not be able to complete the contract year. Thus, the Legislature gave the disability retirees the benefit of treating the final year as though it had been completed.

There is no dispute that the "earned compensation" used by regular retirees in computing "average final compensation" includes payments made for unused vacation and sick leave. The language in section 19-4-101(8), MCA, does not qualify the definition of "earned compensation" for disability retirees to be different from that of regular retirees. The Legislature could have limited the definition of "earned compensation" for disability retirees with such language as "base pay" or "excluding vacation and sick leave not actually earned."

Instead, it used the same language as that used for regular retirees: "compensation, pay, or salary."

The rules of statutory construction require words used to be given the natural and popular meaning in which they are usually understood. Jones v. Judge, 176 Mont. 251, 577 P.2d 846 (1978). "Compensation" is a generic term that when used with reference to services has been defined as "salary, fees, pay, remuneration for official services performed in whatever form or manner or at whatsoever periods the same may be paid." The term usually includes payment or credit for vacation and sick leave. Anderson v. Pension and Retirement Board, 355 A.2d 283 (Conn. 1974); 15A C.J.S. Compensation § 104. Thus, the interpretation of "earned compensation" to include unused vacation and sick leave is in accord with the accepted definition. If the Legislature had intended to exclude unused vacation and sick leave from the disability retiree's "earned compensation," it would have said so. I cannot impute that legislative intent by statutory construction. § 1-2-101, MCA.

TRS contends that the determination of vacation and sick leave the disability retiree would have earned had he completed the year was not intended by the Legislature to be included in "earned compensation" because it is speculative. Vacation and sick leave are benefits to which State employees are entitled by statute. §§ 2-18-611, 2-18-618, MCA. The employee is entitled "upon the date of such termination to cash compensation for unused vacation leave, assuming that the employee has worked the qualifying period...." § 2-18-617, MCA. Similarly, "[a]n employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave." § 2-18-618(5), MCA. It appears that unless the employee, in fact, uses the vacation and sick leave, he is entitled to the compensation for the unused benefits. See §§ 2-18-617, 618, MCA; ARM §§ 2.21.133, 2.21.141, 2.21.221, 2.21.232. On this basis the disability retiree should be treated as though he did not use any of the vacation or sick leave benefits because he did not, in fact, use those benefits.

An agency's long-standing interpretation of a statute which it has the responsibility to administer is entitled to considerable weight. Montana Power Co. v. Cremer, 182 Mont. 277, 596 P.2d 483 (1979). However,

this is a case of first impression: the agency does not have years of practical application of its interpretation of the statutes. Therefore, the aforementioned rule applies with little force. See Blackfeet Tribe of Indians v. Montana, 507 F. Supp. 446, 451 (D. Mont. 1981). Furthermore, legislation involving pensions and retirement benefits must be liberally construed in favor of the recipients. Automobile Drivers and Demonstrators Union Local No. 822 v. Department of Retirement Systems, 598 P.2d 379 (Wash. 1979); Goins v. Board of Pension Commissioners, 158 Cal. Pptr. 470 (1979). Construing the statutes liberally in favor of the recipients, I conclude that under section 19-4-101(8), MCA, a disability retiree is entitled to the benefit of the unused vacation and sick leave he would have earned had he completed the contract year.

THEREFORE, IT IS MY OPINION:

When a teacher retires on a disability allowance prior to the completion of a full year and is statutorily entitled to earned compensation in the Teachers' Retirement System in an amount equal to the "compensation, pay or salary which he would have received had he completed the full year," the Teachers' Retirement Board must include in the calculation of his earned compensation the value of the sick leave and vacation leave the member would have earned had he completed the contract year.

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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